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S 1285 GENERAL BILL/CS by Commerce; Crenshaw (Similar CS/1ST ENG/H 1248)

~~Mortgage Brokerage Act~~; provides definitions; provides additional exemptions from said act; provides for certification of registrants; changes requirements for registration of mortgage brokerage businesses to require minimum net worth; provides for rules; provides for denial or suspension of registration for failure to maintain minimum net worth; changes requirements & prohibitions. Amends 494.02,.03,.039,.0391,.055,.08; creates 494.036. Effective Date: 06/28/89.

04/10/89 SENATE Filed

04/14/89 SENATE Introduced, referred to Commerce -SJ 168

04/28/89 SENATE Extension of time granted Committee Commerce

05/11/89 SENATE On Committee agenda—Commerce, 05/15/89, 10:00 am, Room-A-(LL-37)

05/12/89 SENATE Extension of time granted Committee Commerce

05/15/89 SENATE Comm. Report: CS by Commerce, placed on Calendar -SJ 355

05/18/89 SENATE CS read first time -SJ 384

05/24/89 SENATE Placed on Special Order Calendar -SJ 402; CS passed; YEAS 30 NAYS 0 -SJ 443

05/25/89 SENATE Immediately certified -SJ 449

05/25/89 HOUSE In Messages

05/26/89 HOUSE Received, placed on Calendar -HJ 659; Taken up in lieu of CS/HB 1248 -HJ 663; Read second time; Read third time; CS passed; YEAS 114 NAYS 0 -HJ 663

05/26/89 Ordered enrolled -SJ 480

06/12/89 Signed by Officers and presented to Governor

06/28/89 Became Law without Governor's Signature; Chapter No.

89-237

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

REVISED: _____

BILL NO. CS/SB 1285DATE: May 16, 1989Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Jones JJ</u>	<u>Wilkes</u> <i>SW</i>	1. <u>COM</u>	<u>Fav/CS</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Mortgage Brokerage

BILL NO. AND SPONSOR:

CS/SB 1285 by
Commerce and Senator
Crenshaw

I. SUMMARY:

A. Present Situation:

Chapter 494, F.S., the Mortgage Brokerage Act, provides for the licensing and regulation of mortgage brokers and mortgage brokerage businesses by the Division of Finance, Department of Banking and Finance (department).

Exempt from the statutory provisions of ch. 494, F.S., are specified lending institutions, individuals who lend their own funds without intent to sell the mortgage, and attorneys rendering service in the course of their law practice. Any party claiming an exemption must establish the right to such exemption.

Each initial application for a mortgage brokerage license is required to be in written form as prescribed by the department. In order to obtain a license, the applicant must be 18 years of age, have submitted a completed application and a nonrefundable application fee, passed a written test, and filed a complete set of fingerprints. A license may be denied if the applicant has violated any of the provisions of s. 494.055(1), F.S., or if the applicant has pending any criminal prosecutions or administrative enforcement actions involving acts of moral turpitude. The department has the authority to require any information reasonably necessary to make a determination of eligibility for licensure pursuant to this chapter. In addition, the department is prohibited from granting to any individual more than one mortgage broker license at any one time. Similar provisions are required for mortgage brokerage businesses.

The department renews a mortgage broker's license upon receipt of the completion of a renewal application and the submission of an application fee. Similar requirements are specified for the registration of mortgage brokerage businesses.

Noncompliance with the provisions of ch. 494, F.S., may result in both criminal and civil penalties. When the department determines that a violation has occurred, it may revoke, suspend, or deny a license or registration. Also, the department may place a licensee or registrant on probation, issue a reprimand, or impose a fine for violations of the chapter. Numerous grounds are delineated in the chapter which may result in disciplinary action being taken.

Finally, s. 494.042, F.S., establishes the Mortgage Brokerage Guaranty Fund. The Mortgage Brokerage Guaranty Fund was created in 1977 and is designed to provide compensation to any person who is adjudged by a Florida court to have suffered monetary damages as a result of any violation of this chapter by a licensee or registrant.

B. Effect of Proposed Changes:

Committee Substitute for Senate Bill 1285 (CS/SB 1285) makes a number of substantive changes to ch. 494., F.S. A detailed section by section analysis of these changes is provided below:

Section 1 Deletes the word "make(s)", and thus the concept of a mortgage broker making mortgage loans, from the definition of mortgage broker. A mortgage broker would presumably be required to obtain a mortgage brokerage business registration before being able to make a mortgage loan. Furthermore, the committee substitute creates the term "certified registrant," which is a certified mortgage brokerage business.

Section 2 amends s. 494.03, F.S., to expand the exemptions from the Mortgage Brokerage Act. Savings banks are added to the list of financial institutions which are presently exempted. In addition, governmental agencies and quasi-governmental agencies are exempted, as well as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (federally chartered corporations which provide substantial liquidity to the secondary mortgage market). Employees of certified registrants are exempted from the licensing requirements of s. 494.037, F.S., when acting within the scope of employment. However, the age restrictions of being at least 18 years of age are maintained. Finally, certified registrants are exempted from the provisions requiring the designation of a principal mortgage broker or an associate broker in a branch office.

Section 3 creates s. 494.036 which sets forth the criteria regarding certified registrants. Pursuant to CS/SB 1285, a registrant must submit a completed application form and a nonrefundable application fee not to exceed \$500 before the department can issue a certification to the registrant. Additionally, the registrant must document a bona fide minimum net worth of \$250,000 which shall be calculated in accordance with the rules promulgated by the department. The minimum net worth of \$250,000 must be continually maintained by the certified registrant.

Section 4 amends s. 494.039, F.S., to add a \$25,000 minimum net worth requirement for a mortgage brokerage business seeking an initial registration from the department. The net worth calculation will be determined by department rule.

Section 5 creates s. 494.0391, F.S., authorizing the department to promulgate rules setting forth evidence or documentation of minimum net worth as it relates to the renewal of a registrant.

Section 6 provides for a registrant to be subject to summary suspension and an applicant for registration to be subject to denial of registration when there is a failure to maintain minimum net worth.

Section 7 amends s. 494.08, F.S., to provide that a mortgage broker may not receive a mortgage brokerage fee directly from a borrower unless it is pursuant to a separate written agreement between the licensed person and the borrower. The agreement must specify the amount of the fee and the terms of the loan to be negotiated and arranged. Such mortgage brokerage fee may only be paid to an employing mortgage brokerage registrant or a self-employed broker. In addition, where a mortgage broker or a registrant enters into a written mortgage brokerage agreement, such agreement must provide the borrower with a good faith estimate of the settlement costs expected to be paid by the borrower. Finally, the type of disclosures required by department rule and by the Federal Real Estate Settlement Procedures Act will be deemed to comply with s. 494.08(5), F.S.

Section 8 provides an effective date.

II. ECONOMIC IMPACT AND FISCAL NOTE:**A. Public:**

According to representatives of the mortgage brokerage industry, CS/SB 1285 should permit large mortgage banking companies to compete with other financial institutions in hiring qualified employees without the delay in testing and licensing.

B. Government:

According to information supplied by the department, the implementation of CS/SB 1285 should not necessitate the creation of any additional positions nor provide any other significant fiscal impact.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

STORAGE NAME: s1285-f.com

DATE: 07/06/89

HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/SB 1285

RELATING TO: Mortgage Brokerage Act

SPONSOR(S): Commerce and

EFFECTIVE DATE: Upon becoming law

DATE BECAME LAW: June 28, 1989

CHAPTER #: 89-237, Laws of Florida

COMPANION BILL(S): HB 1248

OTHER COMMITTEES OF REFERENCE: (1)

(2) Appropriations

I. SUMMARY:

The committee substitute amends the definition of a mortgage broker to provide that such person may not make loans and defines the term "certified registrant." Exemptions from ch. 494, F.S., the Mortgage Brokerage Act, are expanded. Additionally, the committee substitute establishes the criteria for a certified registrant. The minimum net worth for a mortgage brokerage business is prescribed. Finally, the committee substitute specifies when a mortgage brokerage agreement must be used, clarifies to whom a mortgage brokerage fee may be paid, and requires a good faith estimate upon the entering into a written agreement.

A. PRESENT SITUATION:

Chapter 494, F.S., the Mortgage Brokerage Act, provides for the licensing and regulation of mortgage brokers and mortgage brokerage businesses by the Division of Finance of the Department of Banking and Finance.

Exempt from the statutory provisions of Chapter 494, F.S., are specified lending institutions, individuals who lend their own funds without intent to sell the mortgage, and attorneys rendering service in the course of their law practice. Any party claiming an exemption must establish the right to the exemption.

Each initial application for a mortgage brokerage license is required to be in written form as prescribed by the Department. In order to obtain a license, the applicant must be 18 years of age, have submitted a completed application and a nonrefundable application fee of \$150, passed a written test, and filed a

complete set of fingerprints. A license may be denied if the applicant has violated any of the provisions of s. 494.055(1), F.S., or if the applicant has pending any criminal prosecutions or administrative enforcement actions. The department has the authority to require any information reasonably necessary to make a determination of eligibility for licensure pursuant to this chapter. The department is prohibited from granting to any individual more than one mortgage broker license at any one time. Similar provisions are required for mortgage brokerage businesses.

The department shall renew a mortgage broker license upon receipt of the completion of a renewal application and the submission of \$150 application fee. Similar requirements are specified for the registration of mortgage brokerage businesses.

Noncompliance with the provisions of chapter 494, F.S., may result in both criminal and civil penalties. When the Department determines that a violation has occurred, it may revoke, suspend, or deny a license or registration. Also, the department may place a licensee or registrant on probation, issue a reprimand, or impose a fine for violations of the chapter. Numerous grounds are delineated in the chapter which may result in disciplinary action being taken.

The Mortgage Brokerage Guaranty Fund was created in 1977 and is designed to provide compensation to any person who is adjudged by a Florida court to have suffered monetary damages as a result of any violation of this chapter by a licensee or registrant.

B. EFFECT OF PROPOSED CHANGES:

C. SECTION-BY-SECTION ANALYSIS:

Section 1 redefines the term "mortgage broker" to prohibit such persons from the making of mortgage loans. The word "make(s)" is deleted from the definition of mortgage broker. A mortgage broker would be required to obtain a mortgage brokerage business registration before being able to make a mortgage loan. Further, the committee substitute creates the term "certified registrant," which is a certified mortgage brokerage business. This category is created to assist large mortgage banking companies in their general lending process.

Section 2 amends s. 494.02, F.S., to expand the exemptions from the Mortgage Brokerage Act. Savings banks are added to the list of financial institutions which are presently exempted. In addition, governmental agencies and quasi-governmental agencies are exempted, as well as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, two federally chartered corporations which provide substantial liquidity to the secondary mortgage market. Employees of

certified registrants are exempted from the licensing requirement, but not the regulation requirements when acting within the scope of employment. However, the age restrictions of being at least 18 years of age are maintained. Finally, certified registrants are exempted from the provisions requiring the designation of a principal mortgage broker or an associate broker in a branch office. The additional exemptions are necessitated as a result of increased government activity in housing finance, the increased presence of savings banks in Florida, and the need for Mortgage Banking companies to respond quickly to consumer demands for mortgage loan financing.

Section 3 creates s. 494.036 to set forth the criteria regarding certified registrants. Under the committee substitute, a registrant must submit a completed application form and a non-refundable application fee not to exceed \$500 as set by rule of the department before the department can issue a certification to the registrant. Additionally, the registrant must document a bona fide minimum net worth of \$250,000 which shall be calculated in accordance with the rules promulgated by the department. The minimum net worth of \$250,000 must be continually maintained by the certified registrant.

Section 4 amends s. 494.039, F.S., to add a \$250,000 minimum net worth requirement for a mortgage brokerage business seeking an initial registration from the department.

Section 5 creates s. 494.0391, F.S., authorizing the department to promulgate rules setting forth evidence or documentation of minimum net worth as it relates to the renewal of a registrant.

Section 6 amends s. 494.055, F. S., to provide for a registrant to be subject to summary suspension and an applicant for registration to be subject to denial of registration when there is a failure to maintain minimum net worth.

Section 7 amends s. 494.08, F.S., to provide that a mortgage broker may not receive a mortgage brokerage fee directly from a borrower unless it is pursuant to a separate written mortgage brokerage agreement between the licensed person and the borrower. The agreement must specify the amount of the fee and the terms of the loan to be negotiated and arranged. Such mortgage brokerage fee may only be paid to an employing mortgage brokerage registrant or a self-employed broker. In addition, where a mortgage broker or a registrant enters into a written mortgage brokerage agreement, such agreement must provide the borrower with a good faith estimate of the costs expected to be paid by the borrower. Finally, the type of disclosures required by department rule and by the Federal Real Estate Settlement Procedures Act will be deemed to comply with s. 494.08(5), F.S.

Section 8 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

According to information supplied by the department, The implementation of the committee substitute should not necessitate the creation of any additional positions nor provide any other significant fiscal impact.

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise, and Employment Markets:

According to representatives of the mortgage brokerage industry, the committee substitute should permit large mortgage banking companies to compete with other financial institutions in hiring qualified employees without the delay in testing and licensing.

D. FISCAL COMMENTS:

None

III. LONG RANGE CONSEQUENCES:

This bill is not inconsistent with the State Comprehensive Plan.

IV. COMMENTS:

Statement of Substantial Changes:

Under the bill as filed, the name of the Mortgage Brokerage Act was changed to the Mortgage Lender and Broker Act. The overall intent of the proposed legislation was to provide a separate category of licensure for mortgage lenders and mortgage brokers. Additionally, SB 1285 increased the fees for mortgage brokers, established fees for mortgage lenders, and increased fees for mortgage brokerage businesses and branches. Moreover, the original bill provided a number of exemptions from the act which the committee substitute continues to provide.

Similarly, the committee substitute continues to prohibit a mortgage broker from the making of loans, however, the committee substitute does not create a mortgage lender to which such authority was granted under the original bill. The committee substitute requires a mortgage broker to obtain a mortgage brokerage business registration before being able to make a mortgage loan. Under the committee substitute a new category entitled a "certified registrant" is created to permit large mortgage banking companies to compete with other financial institutions in hiring qualified employees without the delay in testing and licensing. This certified registrant will be responsible for the acts of its employees which are within the scope of their employment. The requirements to become a certified registrant are described in the committee substitute as well as the requirements relating to renewal. A minimum net worth is established for certified registrants and mortgage brokerage businesses. Finally, the committee substitute specifies when a written mortgage brokerage agreement must be used, clarifies that a mortgage brokerage fee may only be paid directly to an employing registrant or a self-employed broker, and requires a good faith estimate of costs to be provided, upon the entering into a written mortgage brokerage agreement.

V. LEGISLATIVE HISTORY:

ENACTED BILL:

Senate bill 1285 was filed by Senator Crenshaw on April 10, 1989 and referred to the Committee on Commerce. On May 15, the bill was reported favorably as a committee substitute. It was placed on the Special Order Calendar (SJ 00402) and passed by a vote of 30-0 (SJ 00442). The CS was immediately certified and received in Messages on May 26 (HJ 00659). The CS was taken up in lieu of the similar House

bill and passed by a vote of 114-0 (HJ 00663). On May 26, the bill was ordered enrolled. On June 12, CS/SB 1285 was presented to the Governor and became law on June 28 (Chapter 89-237).

DISPOSITION OF COMPANION:

House Bill 1248 was prefiled by Representative Ritchie on March 23, 1989 and referred to the Committee on Commerce, Finance & Taxation, and Appropriations. Although the bill was ratified to the Subcommittee on Banking and Commerce, it was not heard in Subcommittee. The Full Commerce Committee reported the bill favorably as a committee substitute on April 26. The bill was later withdrawn from the Finance & Taxation and Appropriations Committees. On May 26, the bill was placed on the Special Order Calendar and the similar Senate bill was taken up in lieu of the House bill.

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Beryl D. Burke Beryl D. Burke

Staff Director:

William Leary William Leary

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director: