

## **BILL ANALYSIS**

C.S.H.B. 716  
By: Solomons  
Financial Institutions  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Fraudulent activities are a rising concern in the residential mortgage arena. The amount of fraud and its costs are unknown at this time because no central organization exists to collect this information. The closest organization is the Financial Crimes Enforcement Network (FinCEN). FinCEN is an agency under the U.S. Department of the Treasury that collects Suspicious Activity Reports (SARs) from all federally insured financial institutions. According to recent FinCEN statistics, the number of mortgage fraud incidents is increasing and Texas ranks in the top ten in the nation for mortgage foreclosures.

The effects of mortgage fraud to the residential lending industry range from monetary losses incurred by financial companies to criminal and administrative actions. Consequences to the consumer are higher loan rates and fees, stolen identities, and possibly impaired credit ratings. These losses increase the cost of financing for consumers and increase risks to all participants in the mortgage process.

The 80th Legislative Session provides Texas the opportunity to enact legislation to combat mortgage fraud. Committee Substitute House Bill 716 would provide prosecutors, agencies and law enforcement the tools necessary to fight fraudulent conduct in the mortgage lending process.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 716 amends the Finance Code to require lenders, mortgage bankers or licensed mortgage brokers to provide each loan applicant for a home loan a written notice at closing. The notice will include the name, employment information and annual income information of the applicant. The notice will be a separate document in 14-point font and will include a warning to those involved in the process that intentionally or knowingly making false or misleading statements to obtain property, credit or a mortgage loan is a violation of Penal Code Section 32.32 and, depending upon the amount of the loan or value of the property, is punishable by imprisonment and a fine. The loan applicant shall verify the information and execute the notice.

C.S.H.B. 716 amends the Government Code to allow individuals to report fraudulent activity to an authorized governmental agency. An authorized governmental agency includes the attorney general, any duly constituted local, or state law enforcement agency of this state or federal law enforcement agency, a prosecuting attorney of any county or judicial district of this state or of the United States, the Department of Public Safety, the Texas Department of Insurance, the Office of Consumer Credit Commissioner, the Texas Department of Banking, the credit union department, the Department of Savings and Mortgage Lending, the Texas Real Estate Commission, or the Texas Appraiser Licensing and Certification Board. C.S.H.B. 716 defines fraudulent activity to be any act that constitutes a violation of any penal law and is part of an attempt or scheme to defraud any person. If a person determines or reasonably suspects that fraudulent activity committed or about to be committed, the person shall report the information to an authorized governmental agency. If a person reports fraudulent activity to the attorney general, the attorney general will notify each agency with representation on the residential mortgage fraud task force under Section 402.032. If a financial institution or person reports fraudulent activity to an authorized governmental agency, the financial institution or person may not notify any person involved in the fraudulent activity that the fraudulent activity has been

reported, and the authorized governmental agency who has any knowledge that such report was made shall not disclose the report to any person involved in the fraudulent activity. Any financial institution or person that makes a voluntary report of any possible violation of law or regulation to an authorized governmental agency shall not be liable to any person under any law or regulation of the state or the United States for such report. This section does not eliminate or diminish any common law or statutory privilege or immunity.

C.S.H.B. 716 amends the Government Code to establish the Residential Mortgage Fraud Task Force. The task force is established by the attorney general to form a partnership between state, federal and local authorities to enable law enforcement and state agencies to better track and prosecute mortgage fraud. The task force will consist the following persons or their appointees: the attorney general, the consumer credit commissioner, the banking commissioner, the credit union commissioner, the commissioner of insurance, the savings and mortgage lending commissioner, the presiding officer of the Texas Real Estate Commission and the presiding officer of the Texas Appraiser Licensing and Certification Board. The task force may request assistance from the Federal Bureau of Investigations, United States Secret Service, United States Department of Justice, United States Department of Homeland Security, Internal Revenue Service, and the United States Postal Service. The task force will focus its efforts in sharing information and resources, and successfully enforcing administrative and criminal actions against perpetrators of mortgage fraud. The agencies that comprise the task force may share confidential information or information that is otherwise restricted by law with one or more of the other agencies on the task force for investigative purposes. Except as provided by this subsection, confidential information that is shared under this section remains confidential and legal restrictions on access to the information apply. The task force shall submit to the governor, lieutenant governor, and speaker of the house of representatives an annual report on the progress of each agency listed in subsection c in accomplishing the purposes of subsection b. The attorney general's office shall oversee the administration of the task force and provide the necessary staff and facilities to assist the task force in performing its duties. The attorney general may solicit and accept gifts, grants and donations of money, services or property on behalf of the state for disbursement to any state agency or local law enforcement agency to aid the task force in the investigation and prosecution of mortgage fraud in this state.

C.S.H.B. 716 amends the Government Code to include the Department of Savings and Mortgage Lending, the Texas Real Estate Commission, the Texas Appraiser Licensing and Certification Board, Texas Department of Banking, the credit union department, and the Office of Consumer Credit Commissioner as agencies that can share confidential information that relates to the possible commission of corporate fraud or mortgage fraud within a secure limited manner.

C.S.H.B. 716 amends the Penal Code to include a mortgage loan in the definition of credit in Section 32.32. A person commits an offense if he intentionally or knowingly makes a materially false or misleading written statement to obtain property, credit or a mortgage loan. C.S.H.B. 716 deletes the language "for himself or another." C.S.H.B. 716 does not change the offenses in Penal Code, Section 32.32. C.S.H.B. 716 amends the Penal Code to require the office of the attorney general, the Department of Public Safety, the Texas Department of Insurance, the Office of Consumer Credit Commissioner, the Texas Department of Banking, the credit union department, the Department of Savings and Mortgage Lending, the Texas Real Estate Commission, and the Texas Appraiser Licensing and Certification Board to assist prosecutors of the United States or of a county or judicial district of Texas, a county or state law enforcement of this state or a federal law enforcement agency in the investigation to prosecute an offense under this section involving a mortgage loan.

C.S.H.B. 716 amends the Code of Criminal Procedure by changing the statute of limitations for the offenses of false statement to obtain property or credit and money laundering from three years to seven years.

The change in law made by C.S.H.B. 716 to the Code of Criminal Procedure do not apply to an offense if the prosecution of that offense became barred by the statute of limitation before the effective date of this Act. If a conflict arises, this Act prevails over any other Act of the 80th Legislature, Regular Session.

## **EFFECTIVE DATE**

September 1, 2007.

## **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 716 removes the offense of mortgage fraud from the Business & Commerce Code. C.S.H.B. 716 amends the Finance Code to require lenders, mortgage bankers or licensed mortgage brokers to provide each loan applicant for a home loan a written notice at closing. C.S.H.B. 716 amends the Government Code to allow individuals to report fraudulent activity to authorized governmental agency. C.S.H.B. 716 amends the Government Code to establish the Residential Mortgage Fraud Task Force. The task force is established to form a partnership between state, federal and local authorities. The task force will focus its efforts in sharing information and resources, enforcing administrative and criminal actions against perpetrators of mortgage fraud. C.S.H.B. 716 amends the Government Code to allow the agencies to share confidential information regarding corporate fraud or mortgage fraud within a secure limited manner.

C.S.H.B. 716 amends the Penal Code to include a mortgage loan in the definition of credit in Section 32.32. A person commits an offense if he intentionally or knowingly makes a materially false or misleading written statement to obtain property, credit or a mortgage loan. C.S.H.B. 716 deletes the language "for himself or another." C.S.H.B. 716 does not change the offenses in Penal Code, Section 32.32. C.S.H.B. 716 amends the Penal Code to require the office of the attorney general, the Department of Public Safety, the Texas Department of Insurance, the Office of Consumer Credit Commissioner, the Texas Department of Banking, the credit union department, the Department of Savings and Mortgage Lending, the Texas Real Estate Commission, and the Texas Appraiser Licensing and Certification Board to assist prosecutors of the United States, or of any county or judicial district of Texas, a county or state law enforcement agency of this state or a federal law enforcement agency in the investigation of an offense under this section involving a mortgage loan. C.S.H.B. 716 amends the Code of Criminal Procedure by changing the statute of limitation for the offenses of false statement to obtain property or credit and money laundering from three years to seven years.