

BILL ANALYSIS

C.S.H.B. 10
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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The federal Housing and Economic Recovery Act of 2008 included the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E.), which all states are required to adopt to comply with federal law. The S.A.F.E. Mortgage Licensing Act provides for the Nationwide Mortgage Licensing System and Registry, a system that issues a unique identifying number permanently identifying a residential mortgage loan originator. While current Texas law requires residential mortgage loan originators to be licensed, Texas must enact the provisions of the S.A.F.E. Mortgage Licensing Act to be in compliance with federal rules by the United States Department of Housing and Urban Development.

C.S.H.B. 10 enacts the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act for residential mortgage loan originators in Texas.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas, the banking commissioner of Texas, the savings and mortgage lending commissioner, the consumer credit commissioner, and the credit union commissioner in SECTION 1 of this bill, to the Credit Union Commission in SECTIONS 1 and 3 of the bill, and to the Finance Commission of Texas in SECTIONS 2, 6, 8, 9, 10, 14, 16, 17, 21, and 22 of this bill.

ANALYSIS

C.S.H.B. 10 amends the Finance Code to establish provisions relating to the regulation of residential mortgage loan originators. The bill prohibits an individual from engaging in business as a residential mortgage loan originator with respect to a dwelling located in Texas unless the individual is licensed to engage in that business under statutes governing mortgage brokers, mortgage bankers, consumer lenders, manufactured home creditors, motor vehicle installment sales, or tax refund anticipation lenders and complies with the licensing requirements as established by this bill, to be known as the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009. The bill prohibits a loan processor or underwriter who is an independent contractor from processing or underwriting loans unless the independent contractor loan processor or underwriter obtains and maintains appropriate residential mortgage loan originator license and complies with the provisions of the bill. The bill defines "clerical or support duties," "credit union," "credit union subsidiary organization," "depository institution," "dwelling," "federal banking agency," "finance commission," "immediate family member," "individual," "license," "loan processor or underwriter," "Nationwide Mortgage Licensing System and Registry," "nontraditional mortgage product," "person," "real estate brokerage activity," "registered mortgage loan originator," "regulatory official," "residential mortgage loan," "residential mortgage loan originator," "residential real estate," "rulemaking authority," "S.A.F.E. Mortgage Licensing Act," and "unique identifier."

C.S.H.B. 10 exempts from its provisions relating to the Texas Secure and Fair Enforcement

(S.A.F.E.) for Mortgage Licensing Act a registered mortgage loan originator when acting for a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration; an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual; a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a residential mortgage loan originator or an agent of a residential mortgage loan originator; an individual who is an exclusive agent of a registered financial services company, is exempt from regulation because of a written agreement prohibiting the individual from soliciting, processing, negotiating, or placing a mortgage loan with a person other than the registered financial services company or an affiliate of that company, and is individually enrolled as a registered mortgage loan originator with the Nationwide Mortgage Licensing System and Registry; and an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence. The bill provides broad authority to a regulatory official to administer, interpret, and enforce the provisions of the Texas S.A.F.E. Mortgage Licensing Act and to the Finance Commission of Texas and the Credit Union Commission to adopt rules to implement the provisions of the bill and carry out the legislature's intent. The bill provides broad authority to a regulatory official to investigate, revoke a license, and inform the proper authority when fraudulent conduct or a violation of the provisions of the Texas S.A.F.E. Mortgage Licensing Act occurs, does not limit the authority of a regulatory official to take disciplinary action against a license holder for a violation of these provisions or the rules adopted by the regulatory official under these provisions, and makes these provisions severable. The bill sets forth requirements for the annual renewal of the license and for the enrollment of a licensed residential mortgage loan originator with the Nationwide Mortgage Licensing System and Registry, including the enrollment of a loan originator employed by a non-federally insured credit union and an independent contractor loan processor or underwriter licensed as a residential mortgage loan originator.

C.S.H.B. 10 requires an applicant for a residential mortgage loan originator license to furnish to the Nationwide Mortgage Licensing System and Registry, fingerprints to conduct a criminal background check and personal history and experience information including the submission of authorization to obtain an independent credit report and to obtain information related to any administrative, civil, or criminal findings by a governmental jurisdiction. The bill authorizes a regulatory official to use the registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice, any governmental agency, or any source at the regulatory official's direction, or to and from any source as directed by the regulatory official.

C.S.H.B. 10 prohibits a regulatory official from issuing a residential mortgage loan originator license to an individual unless the regulatory official determines that the applicant has met certain minimum requirements. The bill prohibits a revocation that has been formally vacated from being considered a license revocation and a conviction that has been granted a full pardon from being considered a conviction when determining whether an applicant has met some certain minimum requirements. The bill establishes that an individual is considered not to be financially responsible for the purposes of minimum licensing requirements if the individual has shown a lack of regard in managing the individual's own financial affairs or condition.

C.S.H.B. 10 sets forth provisions relating to prelicensing educational courses and testing requirements established in accordance with the federal act and reviewed and approved or developed by the registry for a residential mortgage loan originator applicant or renewal applicant. The bill requires a rulemaking authority to adopt rules necessary to implement any changes made to these educational requirements by federal regulators and the registry.

C.S.H.B. 10 prohibits a regulatory official from issuing a residential mortgage loan originator license unless the official determines that the applicant meets the surety bond requirement or has

paid a recovery fund fee, as applicable, in accordance with the requirements of the federal act and requires each regulatory official to adopt rules as the official determines appropriate to comply with the federal act.

C.S.H.B. 10 authorizes the renewal of a residential mortgage loan originator license on or before its expiration date if the license holder continues to meet the minimum requirements for license issuance, pays all required fees for the renewal, and provides satisfactory evidence that the license holder has completed the continuing education requirements. The bill sets forth provisions relating to continuing education courses, established in accordance with the federal act, the registry, and the regulatory official, required to renew a residential mortgage loan originator license.

C.S.H.B. 10 authorizes a rulemaking authority to adopt rules establishing requirements as necessary for conducting background checks, payment of fees to apply for or renew licenses through the registry, setting or resetting license renewal dates or reporting periods, amending or surrendering a license or any other activity a regulatory official considers necessary for participation in the registry, and for purposes of investigating a violation or complaint arising under the provisions of the Texas S.A.F.E. Mortgage Licensing Act or for purposes of examining, reviewing, or investigating any license holder or individual subject to its provisions.

C.S.H.B. 10 provides that certain confidentiality of information requirements and privileges under federal or state law or regulation continue to apply to information or material after disclosure to the Nationwide Mortgage Licensing System and Registry. The bill authorizes the sharing of information and material as established by rule of the rulemaking authority or order of the regulatory official with federal and state regulatory officials with mortgage industry oversight authority through agreements or sharing arrangements without the loss of any privilege or confidentiality protections afforded by federal or state laws. The bill provides that these confidentiality of information provisions control to the extent that a statute related to public information, or other law, provides less confidentiality or a weaker privilege. The bill exempts from its provisions information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a residential mortgage loan originator that is included in the registry for access by the public.

C.S.H.B. 10 requires each licensed residential mortgage loan originator to submit to the registry a report of condition that is in the form and contains the information the registry requires and requires a regulatory official to report any violations, enforcement actions, and other relevant information to the registry on a regular basis. The bill requires the applicable rulemaking authority by rule to establish a process by which licensed residential mortgage loan originators may dispute information submitted by the regulatory official to the registry.

C.S.H.B. 10 requires the unique identifier of a person originating a residential mortgage loan to be clearly shown on each residential mortgage loan application form, solicitation, or advertisement, including business cards and websites, and any other document required by rule of the rulemaking authority. The bill prohibits an individual who is engaged exclusively in loan processor or underwriter activities from representing to the public that the individual can or will perform any of the activities of a residential mortgage loan originator, unless the individual is licensed as a residential mortgage loan originator. The bill sets forth the prohibited acts and practices of an individual or other person subject to the provisions of the Texas S.A.F.E. Mortgage Licensing Act.

C.S.H.B. 10 establishes the authority of a regulatory official to deny, suspend, revoke, condition, or decline to renew a license, order restitution against a person, impose an administrative penalty on a person, or issue orders or directives for the purpose of ensuring effective supervision and enforcement of these provisions. The bill authorizes a regulatory official to impose an administrative penalty on a residential mortgage loan originator or other person subject to regulation under these provisions, if, after notice and opportunity for hearing, the official

determines that the residential mortgage loan originator or other person has violated or failed to comply with the provisions, rules, or orders of those provisions. The bill prohibits the penalty from exceeding \$25,000 for each violation and sets forth requirements for establishing the amount of the penalty. The bill authorizes a regulatory official to issue cease and desist orders to a person subject to regulation under these provisions and to order or direct other affirmative action as the regulatory official considers necessary.

C.S.H.B. 10 requires the savings and mortgage lending commissioner to administer and enforce the provisions of the Texas S.A.F.E. Mortgage Licensing Act with respect to individuals licensed as mortgage brokers or mortgage bankers, requires the credit union commissioner to examine, inspect, or investigate employees of credit union subsidiary organizations who are licensed to act as residential mortgage loan originators under provisions governing the regulation of mortgage brokers and to enforce compliance by employees of these organizations with applicable rules and statutory requirements; requires the consumer credit commissioner to administer and enforce provisions of the Texas act with respect to individuals licensed as consumer lenders, manufactured home creditors, those who sell motor vehicles used as principal dwellings, or lenders of tax refund anticipation loans; and authorizes the banking commissioner of Texas to administer and enforce the provisions of the Texas S.A.F.E. Mortgage Licensing Act with respect to certain persons otherwise under the commissioner's jurisdiction. The bill authorizes a regulatory official to establish a relationship with or contract with the registry or an entity designated by the registry to collect and maintain records and process transaction fees or other fees related to licensed residential mortgage loan originators or other persons subject to regulation under the Texas S.A.F.E. Mortgage Licensing Act.

C.S.H.B. 10 requires the Finance Commission to set the fees for licensing and examination for a person licensed under provisions regulating manufactured home creditors and residential mortgage loan originators and authorizes the commission to provide for collection of a single annual fee from these licensees.

C.S.H.B. 10 authorizes the Credit Union Commission to adopt and enforce rules necessary for the credit union commissioner to examine, inspect, or investigate employees of credit union subsidiary organizations who are licensed to act as residential mortgage loan originators under provisions of the Texas S.A.F.E. Mortgage Licensing Act relating to mortgage brokers, and to enforce compliance by employees of credit union subsidiary organizations with applicable requirements relating to mortgage brokers and to residential mortgage loan originators. The bill requires the savings and mortgage lending commissioner to perform all duties relating to the issuance and renewal of licenses for employees of credit union subsidiary organizations who act as residential mortgage loan originators, and makes the credit union commissioner responsible for the examination, inspection, or investigation of licensed residential mortgage loan originators employed by credit union subsidiary organizations and for the enforcement of compliance by employees of credit union subsidiary organizations with existing statutory requirements and with provisions of the Texas S.A.F.E. Mortgage Licensing Act.

C.S.H.B. 10 requires a depository institution registered as a financial services company, before permitting an exclusive agent to solicit, process, negotiate, or place a mortgage loan, to submit information to the savings and mortgage lending commissioner, as the commissioner requires, relating to the exclusive agent, and requires the exclusive agent to have enrolled with the Nationwide Mortgage Licensing System and Registry as a registered residential mortgage loan originator and to have provided to the commissioner the exclusive agent's unique identifier. The bill removes a requirement for the company to submit a fingerprint imprint and a requirement for the commission to obtain the person's criminal history record information.

C.S.H.B. 10 requires the banking commissioner of Texas, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner, as applicable, to establish, administer, and maintain a state-licensed residential mortgage loan originator recovery fund to be held by the commissioner in trust. The bill sets forth the required

and authorized uses of the fund and authorizes investment and reinvestment of the fund in the same manner as funds of the Employees Retirement System of Texas are invested and requires investment interest to be deposited to the credit of the fund. The bill requires an applicant for an original or renewal of a residential mortgage loan originator license, in addition to paying the original application fee or renewal fee, to pay a fee in an amount determined by the commissioner for deposit in the fund. The bill requires any amount of the fund in excess of \$2.5 million at the end of the calendar year to be available to the commissioner to offset the expenses of participating in and sharing information with the Nationwide Mortgage Licensing System and Registry. The bill sets forth the statute of limitations, procedures for recovery, and recovery limits for a residential mortgage loan applicant recovering actual damages from the fund. The bill authorizes the commissioner to revoke a residential mortgage loan originator license on proof that the commissioner has made a payment from the fund of any amount toward satisfaction of a claim against a state-licensed residential mortgage loan originator, and authorizes the commissioner to seek to collect the amount paid from the fund and any collection costs and interest accrued. The bill authorizes the commissioner to probate an order revoking a residential mortgage loan originator license, sets forth other disciplinary action that the commissioner may carry out, and establishes subrogation provisions. The bill authorizes the Finance Commission of Texas to adopt rules on the commissioner's recommendation to promote a fair and orderly administration of the fund.

C.S.H.B. 10 amends the various statutory provisions governing the licensing of individuals engaged in business as mortgage brokers or mortgage bankers or in the business of consumer loans, manufactured home credit transactions, motor vehicle installment sales, or tax refund anticipation loans to prohibit such individuals from acting as residential mortgage loan originators unless they are authorized otherwise by a particular license, are enrolled with the Nationwide Mortgage Licensing System and Registry, and comply with applicable provisions in their licensing statutes, with the Texas S.A.F.E. Mortgage Licensing Act, and with associated rules, as applicable. The bill requires the Finance Commission of Texas, under these provisions, to adopt rules establishing procedures for issuing, renewing, and enforcing a license for residential mortgage loan originators operating under specific provisions of the Finance Code. The bill authorizes the finance commission, by rule, to waive or modify, wholly or partly, any requirement of the provisions regulating residential mortgage loan originators as reasonably necessary to enable the savings and mortgage lending commissioner, the consumer credit commissioner or the credit union commissioner, as applicable, to participate in the registry.

C.S.H.B. 10 amends the Government Code to add applicants for or holders of a license to engage in the sale of a motor vehicle to be used as a principal dwelling and to engage in the business of making, transacting, or negotiating a property tax loan for a principal dwelling to the list of those for whom the consumer credit commissioner is entitled to obtain criminal history record information from the Department of Public Safety.

C.S.H.B. 10 authorizes the Finance Commission of Texas, as soon as practicable after the bill's effective date, to adopt rules and establish interim procedures for licensing persons engaging in or conducting the business of a residential mortgage loan originator in Texas and for the approval or denial of applications for licenses authorizing persons to engage in business as a residential mortgage loan originator. The bill authorizes the Finance Commission of Texas to establish expedited review and licensing procedures for individuals or other persons who are authorized by Texas law to engage in mortgage loan origination activities immediately before the bill's effective date. The bill authorizes a regulatory official to determine that an applicant meets prelicensing education course and written test requirements if the applicant, on the effective date of this bill, is acting as a state-licensed residential mortgage loan originator and is in good standing with the regulatory official. The bill authorizes the regulatory official to determine this exemption by rule of the Finance Commission of Texas but provides that this provision does not grant a residential mortgage loan originator a waiver from continuing education requirements prescribed by the regulatory official and the federal S.A.F.E Mortgage Licensing Act of 2008. The bill provides that an individual is not required to comply with its

provisions until the later of July 31, 2010, or a subsequent date that is approved by the secretary of the United States Department of Housing and Urban Development under the authority granted under the federal act. The bill provides that an individual authorized to engage in residential mortgage loan origination activities in Texas as of July 31, 2009, is not required to comply with these provisions until the later of July 31, 2011, or a subsequent date approved by the secretary of the United States Department of Housing and Urban Development under the authority granted under the federal act.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 10 cites its provisions as the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009, rather than the Secure and Fair Enforcement for Mortgage Licensing Act as in the original, and removes the bill's statement of purpose. The substitute adds definitions not in the original for "credit union," "credit union subsidiary organization," "dwelling," "immediate family member," "individual," and "residential mortgage loan originator." The substitute removes the definition of "mortgage loan originator" from the original. The substitute adds a definition of "depository institution" that is different from the definition added by the original by specifying that the term does not include a credit union subsidiary organization. The substitute differs from the original by referring to the banking commissioner of Texas, rather than to the Texas Department of Banking, and by specifying which credit union activities are under the authority of the credit union commissioner within the definition of "regulatory official." The substitute refers to "residential mortgage loan originators," rather than to "mortgage loan originators" as in the original.

C.S.H.B. 10 exempts persons not exempt in the original from provisions relating to the Texas S.A.F.E. Mortgage Licensing Act. The substitute differs from the original by granting broad authority to a regulatory official to investigate, revoke a license, and inform the proper authority when fraudulent conduct or a violation of the provisions of the Texas S.A.F.E. Mortgage Licensing Act occurs and adding a severability provision, both of which provisions are absent from the original.

C.S.H.B. 10 differs from the original by prohibiting a loan processor from engaging in activities of a loan processor or underwriter unless certain conditions are met. The substitute differs from the original by requiring each independent contractor loan processor or underwriter licensed as a residential mortgage loan originator to have and maintained a valid unique identifier issue by the Nationwide Mortgage Licensing and Registry.

C.S.H.B. 10 differs from the original by authorizing a regulatory official to use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to and from any source as directed by the regulatory official.

C.S.H.B. 10 differs from the original by authorizing the renewal of a residential mortgage loan originator license on or before its expiration date if the license holder pays all required fees for the renewal of the license, in addition to continuing to meet minimum requirements and completing continuing education requirements, whereas the original omits any reference to such fees. The substitute omits a provision in the original that conditions the award of credit toward Texas' continuing education requirement for completion of similar requirements in another state on the commissioner's determination of substantial equivalence.

C.S.H.B. 10 differs from the original by authorizing a rulemaking authority to adopt rules for purposes of investigating a violation or complaint or for purposes of examining, reviewing, or

investigating any license holder or individual, whereas the original does not include such purpose in its grant of rulemaking authority. The substitute adds provisions not in the original relating to confidentiality of information requirements and to prohibited acts and practices of an individual or other person subject to the provisions of the Texas S.A.F.E. Mortgage Licensing Act. The substitute differs from the original by specifically enumerating prohibited acts and practices of an individual subject to regulation under the Texas Act, whereas the original does not.

C.S.H.B. 10 differs from the original by requiring the credit union commissioner to examine, inspect, or investigate employees of credit union subsidiary organizations who are licensed to act as residential mortgage loan originators under certain provisions to enforce compliance of these organizations with applicable rules and statutory requirements, whereas the original does not impose such a requirement. The substitute adds a provision not in the original authorizing the banking commissioner of Texas to administer and enforce the provisions of the Texas S.A.F.E. Mortgage Licensing Act with respect to certain persons otherwise under the commissioner's jurisdiction.

C.S.H.B. 10 differs from the original by omitting a new chapter in the original governing the regulation of mortgage loan originators employed by credit union subsidiary organizations, including rulemaking authority, required licenses and application fees, reporting requirements, and enforcement. The substitute replaces provisions removed from the original with statutory sections authorizing the Credit Union Commission to adopt and enforce rules necessary for the credit union commissioner to examine, inspect, or investigate employees of credit union subsidiary organizations who are licensed to act as residential mortgage loan originators, to enforce compliance and to require the credit union commissioner to issue and renew licenses for employees of credit union subsidiary organizations who act as residential mortgage loan originators. The substitute adds provisions not in the original setting forth the requirements for a depository institution registered as a financial services company regarding exclusive agents who solicit, process, negotiate, or place a mortgage loan.

C.S.H.B. 10 differs from the original by requiring the savings and mortgage lending commissioner to perform all duties relating to the issuance and renewal of licenses for residential mortgage loan originators employed by a credit union subsidiary organization while making the credit union commissioner responsible for the examination, inspection, or investigation of such licensees and for the enforcement of compliance by employees of credit union subsidiary organizations with existing statutory requirements and with provisions of the Texas S.A.F.E. Mortgage Licensing Act, whereas as the original addressed residential mortgage loan originators employed by credit union subsidiary organization employees in a separate chapter, omitted by the substitute and did not require such allocation of regulatory responsibilities.

C.S.H.B. 10 differs from the original by authorizing the finance commission, by rule, to waive or modify, wholly or partly, any requirement of the various statutory provisions governing the licensing of individuals engaged in business as mortgage brokers or mortgage bankers or in the business of consumer loans, manufactured home credit transactions, motor vehicle installment sales, or tax refund anticipation loans as reasonably necessary to enable the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner, as applicable, to participate in the registry. The original did not include the waiver or modification authorization in the provisions relating to mortgage bankers.

C.S.H.B. 10 adds provisions not in the original relating to the establishment, administration and maintenance of a state-licensed residential mortgage loan originator recovery fund to be held by the banking commissioner of Texas, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner, as applicable.

C.S.H.B. 10 removes mortgage loan originators employed by a credit union subsidiary organization from the list in the original of those about whom the consumer credit commissioner

is entitled to obtain criminal history record information from the Department of Public Safety.

C.S.H.B. 10 differs from the original by authorizing a regulatory official to determine that an applicant meets prelicensing education course and written test requirements if the applicant, on the effective date of this bill, is acting as a state-licensed residential mortgage loan originator and is in good standing with the regulatory official, whereas the original does not include such authorization.

C.S.H.B. 10 amends the original to change the effective date of the bill from September 1, 2009, to provide immediate effect, or, if the bill does not receive the required vote for immediate effect, September 1, 2009.