

BILL ANALYSIS

C.S.H.B. 2779

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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The United States Congress passed the Secure and Fair Enforcement (S.A.F.E.) of Mortgage Licensing Act in 2008. The act requires the licensing, regulation, and registration of all residential mortgage loan originators in the United States by 2010. This federal legislation contemplates that states will adopt licensing and regulation legislation. However, if a particular state does not adopt legislation meeting the minimum requirements set out in the S.A.F.E. Mortgage Licensing Act, the Secretary of the U.S. Department of Housing and Urban Development (HUD) will establish a system for that state.

Texas mortgage bankers who are not subsidiaries of a depository institution currently register with the state Department of Savings and Mortgage Lending. Mortgage bankers are not licensed and regulated by the State of Texas since they already are subject to significant regulation, supervision, and oversight by HUD, Fannie Mae, Freddie Mac, and Ginnie Mae; however, the S.A.F.E. Mortgage Licensing Act requires the licensing and regulation of mortgage banker employees who are residential mortgage loan originators. Under the provisions of the S.A.F.E. Mortgage Licensing Act, residential mortgage loan originators who are employees or subsidiaries of a depository institution will be registered with the federal banking agency having jurisdiction over the particular depository institution and will be included in the Nationwide Mortgage Licensing System. All other residential mortgage loan originators are subject to state licensing and regulation.

The Conference of State Bank Supervisors, of which the Texas banking commissioner is a member, and the American Association of Residential Mortgage Regulators, of which the Texas savings and mortgage lending commissioner is a member, drafted model legislation that meets all of the minimum standards and requirements of the S.A.F.E. Mortgage Licensing Act. That model legislation is certified by the Secretary of HUD to meet the requirements of the act and was introduced in the current legislative session as H.B. 10 by Representative Burt Solomons. H.B. 10 applies to all residential mortgage loan originators who are not employees of depository institutions or their subsidiaries, including mortgage banker loan officers, mortgage brokers, and residential loan officers of consumer finance companies. The Committee on Pensions, Investments, and Financial Services heard H.B. 10 on March 18, 2009, and no witnesses appeared or registered in opposition to that legislation. While H.B. 10 provides that residential mortgage loan originators who are employees of a mortgage banker will be licensed by the savings and mortgage lending commissioner, the bill does not provide all of the details regarding the structure of the commissioner's regulation. H.B. 10 does not detail the application and renewal process for a residential mortgage loan originator license, how the commissioner should exercise enforcement and disciplinary authority, or the rights afforded to a residential mortgage loan originator.

C.S.H.B. 2779 is patterned after the existing provisions in the Mortgage Broker License Act. Those provisions proved to be a reasonable regulatory structure for mortgage brokers who also are licensed by the commissioner, so comparable provisions are created for mortgage banker loan officers who are residential loan originators.

C.S.H.B. 2779 provides the regulatory structure for the savings and mortgage lending commissioner to regulate mortgage banker employees who are residential mortgage loan originators.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTIONS 7 and 8 of this bill.

ANALYSIS

C.S.H.B. 2779 amends the Finance Code to add a list, promptly updated and submitted as necessary to reflect any changes, of a mortgage banker's employees who are residential mortgage loan originators to the statement a mortgage banker is required to file with the savings and mortgage lending commissioner in order to register under the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, and the bill removes provisions that exempt, under certain conditions, an authorized lender licensed to engage in consumer loan activities or an affiliate of a federally insured bank, savings bank, savings and loan association, Farm Credit System Institution, or credit union from the application of that act.

C.S.H.B. 2779 adds to the grounds upon which the savings and mortgage lending commissioner, after considering a complaint, may revoke a mortgage banker's registration the commissioner's conclusion that the mortgage banker has engaged in a negligent course of conduct exhibited through pattern or practice.

C.S.H.B. 2779 authorizes the Finance Commission of Texas to waive or modify, wholly or partly, by rule, any requirement of these provisions and to establish requirements that are reasonably necessary to enable Texas to participate in the Nationwide Mortgage Licensing System and Registry and to comply with the Texas Secure and Fair Enforcement (S.A.F.E.) for Mortgage Licensing Act of 2009. (Chapter 180, Finance Code, as proposed by H.B. 10, 81st Texas Legislature.)

C.S.H.B. 2779 prohibits an employee of a mortgage banker from acting in the capacity of a residential mortgage loan originator unless the employee is licensed and enrolled with the Nationwide Mortgage Licensing System and Registry and complies with other applicable requirements of the Texas Secure and Fair Enforcement (S.A.F.E.) for Mortgage Licensing Act of 2009 and rules adopted by the finance commission under that act. The bill sets forth the eligibility requirements for a mortgage banker employee to be issued a residential mortgage loan originator license. The bill requires the net worth of the mortgage banker to constitute the net worth requirement for the mortgage banker's residential mortgage loan originator employee in compliance with the Texas S.A.F.E. Mortgage Licensing Act in lieu of a surety bond or a recovery fund fee that otherwise would be required.

C.S.H.B. 2779 requires an application for a residential mortgage loan originator license to be in writing, under oath, and on the form prescribed by the savings and mortgage lending commissioner. The bill requires an application for a residential mortgage loan originator license to be accompanied by a nonrefundable application fee in an amount determined by the commissioner not to exceed \$500 and prohibits the fee from being credited or applied to any other fee or indebtedness owed by the person paying the fee.

C.S.H.B. 2779 requires the savings and mortgage lending commissioner to issue a residential mortgage loan originator license, or a renewal license, to an applicant if the commissioner determines that the applicant meets all requirements and conditions for the license. The bill requires each license to contain a license number or unique identifier.

C.S.H.B. 2779 provides that a residential mortgage loan originator license is valid for one year and may be renewed on or before its expiration date. The bill requires the renewal application to meet the same requirements as an application for an original license. The bill requires an application for renewal of a residential mortgage loan originator license to meet all of the standards and qualifications for license renewal contained in the Texas S.A.F.E. Mortgage Licensing Act. The bill authorizes the commissioner to deny the renewal application for a residential mortgage loan originator license for the same reasons and grounds on which the commissioner could have denied an original application for a license, and sets forth those grounds for denial.

C.S.H.B. 2779 prohibits a person whose residential mortgage loan originator license has expired from engaging in activities that require a license until the license has been renewed. The bill authorizes a person whose residential mortgage loan originator license has not been renewed before January 1 but who is otherwise eligible to renew a license, and does so before March 1, to renew the license by paying the savings and mortgage lending commissioner a reinstatement fee equal to 150 percent of the normal renewal fee. The bill prohibits a person whose residential mortgage loan originator license has not been renewed before March 1 from renewing the license but authorizes the person to obtain a new license by complying with the requirements and procedures for obtaining an original license. The bill requires the commissioner or the commissioner's authorized representative to send written notice of the impending expiration to the person at the person's last known address according to the official licensing records not later than the 60th day before the date a person's residential mortgage loan originator license is scheduled to expire.

C.S.H.B. 2779 requires the savings and mortgage lending commissioner to give prompt written notice to an applicant that the person's application for an original license or license renewal was denied if the commissioner declines or fails to issue or renew a residential mortgage loan originator license. The bill requires the applicant for a license or license renewal, before appealing to a district court, to file an appeal of the ruling with the commissioner not later than the 10th day after the date on which the notice is received requesting a time and place for a hearing before an administrative law judge designated by the commissioner. The bill requires the designated administrative law judge to set the time and place for a requested hearing not later than the 90th day after the date on which the appeal is received and requires the administrative law judge to provide at least a 10 day notice of the hearing to the applicant or person requesting the renewal. The bill authorizes a periodic continuance of the time of the hearing with the consent of the applicant for the license or license renewal and requires the commissioner, after the hearing, to enter an order relative to the applicant based on the findings of fact, conclusions of law, and recommendations of the administrative law judge. The bill provides that if an applicant for the license or license renewal fails to request a hearing, the commissioner's refusal to issue or renew a license is final and not subject to judicial review. The bill provides that the hearing is governed by the Administrative Procedure Act and authorizes an appeal of a final order to be made in accordance with these provisions. The bill requires a person who requests a hearing to pay a deposit to secure the payment of the costs of the hearing in an amount to be determined by the commissioner not to exceed \$500 and requires the entire deposit to be refunded to the person if the person prevails in the contested case hearing. The bill requires any portion of the deposit in excess of the costs of the hearing assessed against that person to be refunded if the person does not prevail. The bill provides that a person whose application for a license has been denied is not eligible to be licensed for two years after the date the denial becomes final, or a shorter period determined by the commissioner after an evaluation of the specific circumstances of the person's subsequent application. The bill authorizes the Finance Commission of Texas to adopt rules to provide conditions for which the commissioner may shorten the time for eligibility for a new license.

C.S.H.B. 2779 authorizes the savings and mortgage lending commissioner to issue probationary and provisional licenses. The bill requires the finance commission to adopt, by rule, reasonable terms and conditions for probationary and provisional licenses.

C.S.H.B. 2779 requires a mortgage banker employee who is a residential mortgage loan originator to notify the commissioner or the commissioner's authorized designee in writing of an address or name change before the 10th day preceding the effective date of the change, and requires a license holder to notify the commissioner or designee of a name change, for the issuance of an amended license, not later than the 10th day after the date of the change.

C.S.H.B. 2779 requires each mortgage banker to file an annual call report with the savings and mortgage lending commissioner or the commissioner's authorized designee on the prescribed form, which report is a statement of condition of the mortgage banker and the mortgage banker's operations, including financial statements and production activity volumes. The bill provides that the information contained in the call report related to residential mortgage loan origination volume or other trade information is confidential and protected from disclosure by the commissioner or authorized designee.

C.S.H.B. 2779 authorizes the savings and mortgage lending commissioner to conduct inspections of a licensed residential mortgage loan originator as necessary to determine whether the person is complying with the Texas S.A.F.E. Mortgage Licensing Act, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act and applicable rules. The bill authorizes inspections to include the inspection of the person's books, records, documents, operations, and facilities, and authorizes the commissioner to request the mortgage banker's assistance and cooperation in providing needed documents and records. The bill prohibits the commissioner from requesting documents and records from the mortgage banker that are unrelated to the person being investigated or inspected. The bill authorizes the commissioner to share evidence of criminal activity gathered during an inspection or investigation with any state or federal law enforcement agency. The bill requires the commissioner to investigate the actions and records of a licensed residential mortgage loan originator on the signed written complaint of a person if the complaint, or the complaint and documentary or other evidence presented in connection with the complaint, provides a reasonable cause. The bill requires the commissioner, before beginning an investigation, to notify the licensed residential mortgage loan originator in writing of the complaint and pending investigation. The bill authorizes the commissioner at any time to investigate a licensed residential mortgage loan originator for reasonable cause to determine whether the person is complying with the applicable statutes and rules. The bill authorizes the commissioner to conduct an undercover or covert investigation only if the commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of this act. The bill requires the finance commission to provide, by rule, guidelines to govern an inspection or investigation. The bill provides that information obtained by the commissioner during an inspection or an investigation is confidential unless disclosure of the information is permitted or required by other law, and authorizes the commissioner to share information gathered during an investigation or inspection with any state or federal agency only if the commissioner determines there is a valid reason for doing so.

C.S.H.B. 2779 authorizes the savings and mortgage lending commissioner, during an investigation, to issue a subpoena addressed to a Texas peace officer or other person authorized by law to serve citation or perfect service, which subpoena may require a person to give a deposition, produce documents, or do both. The bill authorizes the commissioner, if a person disobeys a subpoena or if a person appearing in a deposition in connection with the investigation refuses to testify, to petition a district court in Travis County to issue an order requiring the person to obey the subpoena, testify, or produce documents relating to the matter. The bill requires the court to promptly set an application to enforce the subpoena for hearing and to require cause notice of the application and the hearing to be served upon the person to whom the subpoena is directed.

C.S.H.B. 2779 authorizes the savings and mortgage lending commissioner, after notice and opportunity for a hearing, to impose an administrative penalty on a licensed residential mortgage

loan originator who violates the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act or an applicable rule or order. The bill prohibits the amount of the penalty from exceeding \$2,500, provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty, and sets forth the basis for the amount of the violation. The bill authorizes a stay of the enforcement of the penalty during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty, and the bill authorizes a person who cannot afford to pay the penalty or file the bond to stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the commissioner to contest the affidavit as provided by those rules. The bill authorizes the attorney general to sue to collect the penalty. The bill provides that an appeal of an administrative penalty under this section is considered to be a contested case under the Administrative Procedure Act.

C.S.H.B. 2779 sets forth the grounds, as determined by the savings and mortgage lending commissioner, that authorize the commissioner to order disciplinary action against a licensed residential mortgage loan originator after notice and opportunity for a hearing. The bill authorizes the commissioner to order disciplinary action against a licensed residential mortgage loan originator, after notice and opportunity for a hearing, if the commissioner, during the current term of the license, becomes aware of any fact that would have been grounds for denial of an original license if the fact had been known by the commissioner on the date the license was granted. The bill authorizes the commissioner, if the commissioner has reasonable cause to believe that a licensed residential mortgage loan originator has or is about to violate these provisions, to issue without notice and hearing an order to cease and desist continuing a particular action or an order to take affirmative action, or both, to enforce compliance with the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act. The bill requires that this order contain a reasonably detailed statement of the facts on which the order is made and, if a residential mortgage loan originator against whom the order is made requests a hearing, requires the commissioner to set and give notice of a hearing before the commissioner or an administrative law judge. The bill requires the hearing to be governed by the Administrative Procedure Act and authorizes the commissioner, based on the findings of fact, conclusions of law, and recommendations of the administrative law judge, to find a violation has occurred or not occurred. The bill provides that if the hearing is not requested before the 30th day after the date on which an order is made, the order is considered final and not appealable. The bill authorizes the commissioner, after giving notice, to impose against a residential mortgage loan originator who violates a cease and desist order an administrative penalty in an amount not to exceed \$1,000 for each day of the violation. The bill authorizes the commissioner to file in district court a suit for injunctive relief and to collect the administrative penalty in addition to any other remedy provided by law. The bill provides that a bond is not required of the commissioner with respect to injunctive relief. The bill provides that a residential mortgage loan originator is considered convicted if a sentence is imposed on that person; that person receives community supervision, including deferred adjudication community supervision; or the court defers final disposition of that person's case.

C.S.H.B. 2779 authorizes the savings and mortgage lending commissioner, with at least a 10 day notice to the residential mortgage loan originator, to suspend the residential mortgage loan originator's license without a hearing if the residential mortgage loan originator fails to pay an administrative penalty that has become final or fails to comply with an order of the commissioner that has become final. The bill authorizes an appeal of this order of suspension and provides that the appeal is a contested case governed by the Administrative Procedure Act. The bill requires a hearing of an appeal of an order of suspension to be held not later than the 15th day after the date of receipt of the notice of appeal and requires the appellant to be provided at least a three day notice of the time and place of the hearing. The bill sets forth the activities that may be prohibited to a person by an order revoking the license of a residential mortgage loan originator without obtaining prior written consent of the commissioner. The bill authorizes the commissioner to suspend the license of a residential mortgage loan originator on notice and

opportunity for hearing if an indictment or information is filed or returned alleging that the person committed a criminal offense involving fraud, theft, or dishonesty. The bill provides that the suspension continues until the criminal case is dismissed or the person is acquitted.

C.S.H.B. 2779 authorizes the savings and mortgage lending commissioner to order a residential mortgage loan originator to make restitution for any amount received in violation of the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act.

C.S.H.B. 2779 authorizes the savings and mortgage lending commissioner to employ an enforcement staff to investigate and prosecute complaints made against residential mortgage loan originators and to employ an administrative law judge to conduct hearings under these provisions. The bill authorizes the commissioner to collect and deposit any court costs assessed pursuant to a final order. The bill entitles a license holder or applicant, if the commissioner proposes to suspend or revoke a license of a residential mortgage loan originator or refuses to issue or renew a license, to a hearing before the commissioner or an administrative law judge who is required to make a proposal for decision to the commissioner. The bill requires the commissioner or administrative law judge to prescribe the time and place of the hearing, which is governed by the Administrative Procedure Act. The bill authorizes the commissioner or administrative law judge to issue subpoenas for the attendance of witnesses and the production of records or documents. The bill provides an individual aggrieved by a ruling, order, or decision of the commissioner the right to appeal to a district court in the county in which the hearing was held, which appeal is governed by the Administrative Procedure Act.

C.S.H.B. 2779 authorizes a residential mortgage loan applicant injured by a residential mortgage loan originator's violation of the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act to bring an action for recovery of actual monetary damages and reasonable attorney's fees and court costs. The bill authorizes the commissioner, the attorney general, or a residential mortgage loan applicant to bring an action to enjoin a violation of this act by a residential mortgage loan originator. The bill provides that a remedy provided by these provisions is in addition to any other remedy provided by law.

C.S.H.B. 2779 places the burden of proving an exemption in a proceeding or action brought under these provisions on the person claiming the benefit of the exemption.

C.S.H.B. 2779 provides that a person does not violate the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act with respect to an action taken or omission made in reliance on a written notice, written interpretation, or written report from the savings and mortgage lending commissioner, unless a subsequent amendment to this act or its rules affects the commissioner's notice, interpretation, or report.

C.S.H.B. 2779 provides that on disbursement of mortgage proceeds to or on behalf of the residential mortgage loan applicant, the residential mortgage loan originator who assisted the residential mortgage loan applicant in obtaining the residential mortgage loan is considered to have completed the performance of the residential mortgage loan originator's services for the residential mortgage loan applicant and owes no additional duties or obligations to the residential mortgage loan applicant with respect to the residential mortgage loan. The bill provides that this provision does not limit or preclude the liability of a residential mortgage loan originator for failing to comply with the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act or an applicable rule, failing to comply with a provision of or duty arising under an agreement with a residential mortgage loan applicant under this act, or violating any other state or federal law.

C.S.H.B. 2779 creates a Class B misdemeanor offense for a person who is an employee of a mortgage banker and who is not exempt under the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act and who acts as a residential mortgage loan originator without first obtaining a license required under that act and enhances the penalty for a second or

subsequent conviction for such an offense to a Class A misdemeanor. The bill authorizes the savings and mortgage lending commissioner, if the commissioner has reasonable cause to believe that a person who is not licensed or exempt has engaged, or is about to engage, in an act or practice for which a residential mortgage loan originator license is required, to issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance. The bill requires the order to contain a reasonably detailed statement of the facts on which the order is made and authorizes the order to assess an administrative penalty in an amount not to exceed \$1,000 per day for each violation and to require a person to pay to a mortgage applicant any compensation received by the person from the applicant in violation of this act. The bill requires the commissioner to set and give notice of a hearing before the commissioner or an administrative law judge if a person against whom the order is made requests a hearing, which hearing is governed by the Administrative Procedure Act. The bill provides that an order under these provisions becomes final unless the person to whom the order is issued requests a hearing not later than the 30th day after the date the order is issued. The bill provides that if a hearing has not been requested before the 30th day after the date the order is made, the order is considered final and not appealable. The bill authorizes the commissioner, after giving notice, to impose against a person who violates a cease and desist order, an administrative penalty in an amount not to exceed \$1,000 for each day of a violation. The bill authorizes the commissioner, in addition to any other remedy provided by law, to file a suit for injunctive relief in district court and to collect the administrative penalty. The bill provides that a bond is not required of the commissioner with respect to the injunctive relief.

C.S.H.B. 2779 provides that certain employees of mortgage bankers are not required to comply with the residential mortgage loan originator licensing requirements 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 Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

C.S.H.B. 2779 provides that it takes effect only if House Bill 10 or another similar bill of the Regular Session of the 81st Legislature relating to the licensing of residential mortgage loan originators is enacted and becomes law.

C.S.H.B. 2779 amends the title of the Mortgage Banker Registration Act to allow it to be cited as the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act.

C.S.H.B. 2779 defines "disciplinary action," "finance commission," and "residential mortgage loan originator," and redefines "mortgage banker" and "residential mortgage loan." The bill specifies in the definition of "mortgage banker" that the type of residential mortgage loan application accepted by a mortgage banker is a residential mortgage loan and makes a conforming change.

EFFECTIVE DATE

Except as provided by Section 12, April 1, 2010.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2779 differs from the original by amending the title of Chapter 157, Finance Code, to read the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act rather than the Mortgage Banker Registration and Loan Originator Act as in the original. The substitute adds a definition not in the original for "residential mortgage loan originator" and removes definitions from the original for "loan processor or underwriter," "mortgage loan originator," "mortgage loan servicer," and "Secure and Fair Enforcement for Mortgage Licensing Act." The substitute refers to "residential mortgage loan originators" and "residential mortgage loans" rather than to "mortgage loan originators" and "mortgage loans" as in the original.

C.S.H.B. 2779 differs from the original by requiring the list of mortgage banker employees who are residential mortgage loan originators that is included in the statement to be filed by the mortgage banker to be promptly updated as necessary to reflect any changes and to be submitted to the savings and mortgage lending commissioner, whereas the original describes the list as being continuously updated when there is a change.

C.S.H.B. 2779 adds provisions not in the original specifying the eligibility requirements for an employee of a mortgage banker to act in the capacity of a residential mortgage loan originator, including licensing and compliance requirements and enrollment with the Nationwide Mortgage Licensing System and Registry.

C.S.H.B. 2779 removes a provision from the original specifying a December 31 expiration date for each mortgage loan originator license issued. (Both versions of the bill specify that year-end expiration for license renewals.)

C.S.H.B. 2779 requires any portion of a deposit in excess of the costs of an administrative hearing assessed against a person, if the person does not prevail, to be refunded, rather than to be refundable as in the original.

C.S.H.B. 2779 adds a provision not in the original providing that certain employees of mortgage bankers are not required to comply with residential mortgage loan originator licensing requirements 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 Secure and Fair Enforcement for Mortgage Licensing Act of 2008. The substitute provides that the substitute takes effect only if H.B. 10 or another similar bill of the Regular Session of the 81st Legislature relating to the licensing of residential mortgage loan originators is enacted and becomes law, whereas the original does not include such contingency.