

## **BILL ANALYSIS**

C.S.S.B. 17  
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Pensions, Investments & Financial Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Mortgage servicers interface directly with mortgage borrowers on behalf of lenders. Observers of the industry note that most mortgage servicing is conducted by banks, thrifts, credit unions, or their subsidiaries, and that federal laws cover these servicers and their activities. However, according to observers, there are unregulated third parties acting as mortgage servicers who are not banks, thrifts, credit unions, or their subsidiaries, some of which have generated consumer complaints. Observers also have noted that there is no Texas agency specifically designated to receive these complaints.

C.S.S.B. 17 addresses these observations by requiring unregulated mortgage servicers to register with the Department of Savings and Mortgage Lending while exempting entities that already are licensed and regulated from this registration requirement and providing for complaints to be directed to the department.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 of this bill.

### **ANALYSIS**

C.S.S.B. 17 amends the Finance Code to enact the Residential Mortgage Loan Servicer Registration Act to provide regulatory authority to ensure a registered residential mortgage loan servicer's compliance with state and federal law, rules, and regulations. The bill authorizes the Finance Commission of Texas to adopt and enforce rules necessary for the purposes of or to ensure compliance with the act and requires the commission to consult with the savings and mortgage lending commissioner when proposing and adopting rules under the act.

C.S.S.B. 17 prohibits a person from acting as a residential mortgage loan servicer, directly or indirectly, for a residential mortgage loan secured by a lien on residential real estate in Texas unless the person is registered or is exempt from registration under the act. The bill exempts from its registration requirements the following entities:

- a federal or state depository institution, or a subsidiary or affiliate of such an institution;
- a person registered under the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act;
- a person licensed under state law relating to consumer loans or regulated under state law relating to home loans, if the person does not act as a residential mortgage loan servicer servicing first-lien secured loans; and
- a person making a residential mortgage loan with the person's own funds, or to secure all or a portion of the purchase price of real property sold by that person.

C.S.S.B. 17 makes the act applicable only to a residential mortgage loan servicer that services at

least one residential mortgage loan and establishes that nothing in the act permits a person who is not otherwise exempt from registration to act as a residential mortgage loan originator, as defined by state law, without obtaining a license under the applicable provisions of law.

C.S.S.B. 17 requires a residential mortgage loan servicer, in order to register, to file with the commissioner an application for registration; establishes form and content requirements for such application; and requires the applicant, at the time of making application, to pay a registration fee in an amount not to exceed \$500 as determined by the finance commission. The bill exempts an applicant from the requirement to pay the registration fee if the applicant collects delinquent consumer debts owed on residential mortgage loans, does not own the residential mortgage loans for which the applicant acts as a residential mortgage loan servicer, and is a third-party debt collector that has filed a bond in compliance with the surety bond requirements for a third-party debt collector or credit bureau to engage in debt collection. The bill requires a registrant to notify the commissioner of a change in any of the information provided in the registration application not later than the 30th day after the date the information changes.

C.S.S.B. 17 requires an applicant for registration, before approval of the registration, to file with the commissioner, and to keep in force while the registration remains in effect, a surety bond in an amount not to exceed \$200,000 payable to the commissioner or, if a surety bond is not available to the applicant from a surety company authorized to do business in Texas, other collateral of like kind as determined by the commissioner. The bill caps the amount of the required bond at \$25,000 if the applicant services only residential mortgage loans secured by unimproved residential real estate or services only residential mortgage loans secured by foreclosed property with a dwelling, or both, and sales of the property do not exceed \$1 million annually.

C.S.S.B. 17 authorizes the commissioner, if a registrant fails to comply with a final order of the commissioner, to make a claim on the bond to recover and pay a consumer the amount to which the consumer was entitled under the commissioner's order. The bill authorizes the commissioner, when an action is initiated on a registrant's bond, to require the filing of a new acceptable bond and requires the registrant to file a new bond immediately on recovery on any action on the bond. The bill establishes that such bond procedures are created specifically to exclude the participation of registrants in the recovery fund established under the Mortgage Broker License Act. The bill authorizes the finance commission to adopt rules establishing the terms and conditions of the surety bond and the qualifications of the surety. The bill exempts a registrant from the requirement to file the bond if the registrant collects delinquent consumer debts owed on residential mortgage loans, does not own the residential mortgage loans for which the registrant acts as a residential mortgage loan servicer, and is a third-party debt collector that has filed a bond in compliance with the surety bond requirements for a third-party debt collector or credit bureau to engage in debt collection.

C.S.S.B. 17 requires the commissioner to approve an application for registration on the applicant's payment of the required fees and the commissioner's approval of the surety bond. The bill requires a registrant to notify the commissioner in writing not later than the 10th day after the filing for bankruptcy or reorganization of the registrant; the filing of a criminal indictment related in any manner to the registrant's activities; or the receipt of notification of the issuance of a final order to cease and desist, a final order of the suspension or revocation of a license or registration, or another final formal or informal regulatory action taken against the registrant in Texas or another state. The bill requires the notification regarding the issuance of such a final regulatory action to include the reasons for the action.

C.S.S.B. 17 requires a registrant, on or before December 31 of each year, to renew its registration for the next calendar year and to pay to the commissioner a renewal fee in an amount not to exceed \$500 as determined by the finance commission. The bill requires a registrant, in order to renew a registration, to continue to meet all of the standards for registration. The bill establishes that, if a registrant fails to file a renewal and pay the renewal fee on or before

December 31 of a calendar year, the registrant's registration is considered expired at that time. The bill requires the registrant, in such a case, to reapply for registration and prohibits the registrant from conducting business as a residential mortgage loan servicer until the registration is approved.

C.S.S.B. 17 authorizes the commissioner to refuse to renew a registration if the registrant has failed to pay any fees or penalties imposed under the act, has failed to provide the required surety bond, or is not in compliance with any final order of the commissioner.

C.S.S.B. 17 authorizes the commissioner, after notice and hearing, to revoke a registration if the registrant fails or refuses to comply with the commissioner's written request for a response to a complaint; the commissioner determines that the registrant has engaged in an intentional course of conduct to violate federal or state law or has engaged in an intentional course of conduct that constitutes fraudulent, deceptive, or dishonest dealings; or the registrant is not in compliance with any final order of the commissioner. The bill establishes that the denial, nonrenewal, or revocation by the commissioner of a registration and the appeal of that action are governed by the Administrative Procedure Act.

C.S.S.B. 17 requires a registrant to provide to the borrower of each residential mortgage loan a notice not later than the 30th day after the registrant starts servicing the loan informing the borrower where complaints may be directed and sets out the content of the notice. The bill requires the commissioner or the commissioner's designee, on receipt of a signed written complaint concerning a registrant by the Department of Savings and Mortgage Lending, to notify the representative designated by the registrant in the registration application in writing of the complaint and provide a copy of the complaint to the representative. The bill authorizes the commissioner or the commissioner's designee, on receipt of such a complaint, to conduct an investigation with authority to access, receive, and use in the investigation any books, accounts, records, files, documents, information, or other evidence and to request that the registrant provide documentary and other evidence considered by the commissioner necessary to effectively evaluate the complaint, including correspondence, loan documents, and disclosures. The bill requires the registrant to promptly provide any evidence requested by the commissioner.

C.S.S.B. 17 establishes that information obtained by the commissioner during an investigation is confidential, unless disclosure of the information is permitted or required by other law or court order, and authorizes the commissioner to share information gathered during an investigation with any state or federal agency. The bill authorizes the finance commission by rule, in addition to the registration fee, to impose a complaint investigation fee on a registrant based on the costs incurred by the Department of Savings and Mortgage Lending resulting from the investigation of complaints against the registrant.

C.S.S.B. 17 authorizes the commissioner, if the commissioner determines after an investigation that the registrant has violated the Residential Mortgage Loan Servicer Registration Act or another applicable law, to issue an order to the registrant to resolve the complaint by paying to the consumer the damages to which the consumer would be entitled under law or to order the registrant to cease and desist from the actions found to be in violation of law. The bill authorizes a registrant to appeal such an order and establishes that the appeal is a contested case hearing under the Administrative Procedure Act.

C.S.S.B. 17 authorizes the commissioner or the commissioner's designee, to ensure that residential mortgage loan servicers required to register operate in Texas in compliance with the act and with other law in accordance with the act, to participate in multi-state mortgage examinations as scheduled by the Conference of State Bank Supervisors Multi-State Mortgage Committee in accordance with the Conference of State Bank Supervisors protocol for such examinations.

C.S.S.B. 17 authorizes the commissioner, if the commissioner has reasonable cause to believe

that a person who is not registered or exempt from registration has engaged, or is about to engage, in an act or practice for which registration 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 with the act. The bill requires such an order to contain a reasonably detailed statement of the facts on which the order is issued. The bill requires the commissioner, if the person against whom the order is made requests a hearing not later than the 30th day after the date the order is issued, to set and give notice of a hearing before the commissioner or a hearings officer. The bill requires the hearing to be governed by the Administrative Procedure Act.

C.S.S.B. 17 establishes that, if such a hearing is not requested within the specified period, 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 \$2,500 for each day of the violation. The bill authorizes the commissioner, in addition to any other remedy provided by law, to institute in district court a suit for injunctive relief and to collect the administrative penalty. The bill establishes that a bond is not required of the commissioner with respect to the injunctive relief. The bill authorizes the commissioner to order a residential mortgage loan servicer to pay to a complainant any compensation received by the servicer in a violation cited by the commissioner in a final order.

C.S.S.B. 17 defines "commissioner," "finance commission," "person," "registrant," "residential mortgage loan," "residential mortgage loan servicer," and "residential real estate" for purposes of the Residential Mortgage Loan Servicer Registration Act.

C.S.S.B. 17 redefines "mortgage banker," for purposes of the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, to include a person who services residential mortgage loans. The bill requires a mortgage banker that services residential mortgage loans to indicate in its registration that it acts as a residential mortgage loan servicer and requires a mortgage banker that indicates in its registration that it acts as a residential mortgage loan servicer to provide to the borrower of each residential mortgage loan it services a notice not later than the 30th day after the date the mortgage banker commences servicing the loan informing the borrower where complaints may be directed and sets out the contents of the notice.

C.S.S.B. 17 authorizes the commissioner or the commissioner's designee, to ensure that mortgage bankers that act as residential mortgage loan servicers operate in Texas in compliance with the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act and with other law in accordance with that act, to participate in multi-state mortgage examinations as scheduled by the Conference of State Bank Supervisors Multi-State Mortgage Committee in accordance with the Conference of State Bank Supervisors protocol for such examinations.

### **EFFECTIVE DATE**

September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 17 contains provisions not included in the original exempting an applicant registering to be a residential mortgage loan servicer under the bill's provisions from the requirement to pay the applicable registration fee and exempting such applicant or a registrant from the requirement to file and keep in force a bond under the Residential Mortgage Loan Servicer Registration Act if the applicant or registrant, as applicable, collects delinquent consumer debts owed on residential mortgage loans, does not own the residential mortgage loans for which the applicant acts as a residential mortgage loan servicer, and is a third-party debt collector that has filed a bond in compliance with the surety bond requirements for a third-party debt collector or credit bureau to engage in debt collection.