

BILL ANALYSIS

S.B. 1124
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Pensions, Investments & Financial Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act) requires states to comply with certain provisions of federal law relating to mortgage loan originators. One aspect of the S.A.F.E. Act is the Nationwide Mortgage Licensing System and Registry. Interested parties note that, while the legislature recently enacted certain provisions relating to residential mortgage loan originators that comply with the S.A.F.E. Act, other statutory provisions need to be enacted to ensure further compliance with certain federal housing and property rules. S.B. 1124 proposes to continue those compliance efforts by making changes in statutes relating to licensing and regulation of certain persons involved in residential mortgage lending.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTIONS 1, 7, 9, 11, 25, and 50 of this bill.

ANALYSIS

S.B. 1124 amends the Finance Code to create a mortgage company license, a credit union subsidiary organization license, and an auxiliary mortgage loan activity company license, each of which authorizes the holder to act as a residential mortgage loan originator on residential real estate located in Texas. The bill creates an independent contractor loan processor or underwriter company license that authorizes the holder to act as an independent contractor loan processor or underwriter and establishes registration requirements for a financial services company acting as a financial services company exclusive agent. The bill establishes application requirements for each license or registration and requires an applicant to establish to the satisfaction of the savings and mortgage lending commissioner that the applicant qualifies for a license or registration on the basis of certain criteria, including previous licensing history; criminal history record information; financial, moral, and general fitness to operate under the terms of the license or registration; prelicensing education and state and federal examination, as applicable; fee requirements; and citizenship. The bill establishes that, for purposes of determining an applicant's qualification or disqualification for a license and the basis of the applicant's criminal history record information, a person is considered to have been convicted of a criminal offense if a sentence is imposed on the person; the person received probation or community supervision, including deferred adjudication or community service; or the court deferred final disposition of the person's case. The bill adjusts the membership of the mortgage industry advisory committee.

S.B. 1124 requires the savings and mortgage lending commissioner to establish, administer, and maintain one recovery fund for the purposes of statutory provisions governing residential mortgage loan companies and residential mortgage loan originators and the registration of mortgage bankers and requires the fund to be administered and maintained under statutory provisions governing residential mortgage loan companies and residential mortgage loan originators. The bill establishes that the commissioner's authority to establish, administer, and maintain the recovery fund includes the authority to set fee amounts for deposit in the fund and

enforce disciplinary action for a person's failure to comply with applicable provisions of law and the rules adopted under those laws. The bill authorizes the finance commission on the savings and mortgage lending commissioner's recommendation to adopt rules to promote a fair and orderly administration of the recovery fund consistent with the statutory provisions governing residential mortgage loan companies and mortgage loan originators.

S.B. 1124 renames the amended statutes previously governing mortgage brokers as the Residential Mortgage Loan Company and Residential Mortgage Loan Originator Licensing and Registration Act. The bill makes other conforming changes in that act by replacing references to the terms mortgage broker, broker, and loan officer with references to the terms residential mortgage loan originator or residential mortgage loan company, as applicable, including in provisions containing references to related rulemaking by the Finance Commission of Texas. The bill authorizes the finance commission to adopt residential mortgage loan origination rules.

S.B. 1124 prohibits an exclusive agent of a registered financial services company, unless the agent is exempt from provisions of law governing residential mortgage loan originators, from acting or attempting to act as a residential mortgage loan originator unless the agent at the time is licensed and sponsored by a registered financial services company and is acting for the company. The bill requires a residential mortgage loan originator to be sponsored by at least one residential mortgage loan company.

S.B. 1124 removes previous exemptions from the application of the law governing mortgage brokers for certain entities and instead exempts the following individuals or entities, and employees of those entities when acting for the benefit of those entities, from the application of the Residential Mortgage Loan Company and Residential Mortgage Loan Originator Licensing and Registration Act:

- a registered mortgage loan originator when acting for a depository institution, for a subsidiary of a depository institution that is owned and controlled by the depository institution and regulated by a federal banking agency, or for an institution regulated by the Farm Credit Administration;
- an individual who offers or negotiates the 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 takes a residential mortgage loan application and offers or negotiates the terms of a residential mortgage loan;
- an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence;
- a nonprofit organization providing self-help housing that originates zero interest residential mortgage loans for borrowers who have provided part of the labor to construct the dwelling securing the loan;
- a registered mortgage banker;
- any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers for all or part of the purchase price of the residential real estate that secures the mortgage;
- an entity that is a depository institution, a subsidiary of a depository institution owned and controlled by the depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration; and
- an individual who is exempt from provisions of law governing residential mortgage loan originators.

S.B. 1124 establishes that an application for a residential mortgage loan company license means

an application for a mortgage company license, a credit union subsidiary organization license, an auxiliary mortgage loan activity company license, or an independent contractor loan processor or underwriter company license. The bill requires that an application for a financial services company registration be in writing, under oath, and on the form prescribed by the savings and mortgage lending commissioner. The bill, in a provision setting out fee requirements for a loan officer license application, replaces a reference to that license with a reference to a residential mortgage loan originator license and increases from \$275 to \$375 the cap on the amount of the application fee for a residential mortgage loan originator license.

S.B. 1124 requires an exclusive agent of a financial services company to meet the agent's financial requirements for holding a residential mortgage loan originator license by obtaining surety bond coverage in an amount equal to \$1 million. The bill requires the savings and mortgage lending commissioner, on receipt of an application for a residential mortgage loan originator license, to, at a minimum, conduct a credit history check of the applicant, in addition to the criminal background check, and to conduct the criminal background and credit history checks in accordance with state law. The bill authorizes the commissioner, in connection with each application for a residential mortgage loan originator license or other individual license, to conduct a criminal background check through the Department of Public Safety (DPS). The bill removes certain provisions requiring the commissioner to obtain an applicant's criminal history record maintained by DPS and removes provisions related to that requirement.

S.B. 1124 changes the period of validity of a residential mortgage loan company license and residential mortgage loan originator license from a term of not more than two years to a term continuing through December 31 of the year of issuance. The bill includes as a condition for the residential mortgage loan company license renewal that the company has not shown a pattern or practice of abusive mortgage activity and has no civil judgments or liens that, in the savings and mortgage lending commissioner's opinion, directly impact the ability of the company to conduct business while safeguarding and protecting the public interest. The bill increases the cap on a residential mortgage loan originator license renewal fee from \$275 to \$375. The bill removes provisions previously applicable to mortgage brokers and loan officers relating to the absence of a conviction for certain criminal offenses and relating to continuing education requirements as conditions for issuance of a license or a license renewal. The bill establishes similar terms for a license renewal for a registered financial services company's exclusive agent. The bill provides that a registration for a registered financial services company is valid for one year, expires on December 31 of each year, and must be renewed annually; removes provisions authorizing renewal of that registration on or before the expiration date and authorizing the renewal to be made in the same manner as a renewal after its expiration; and requires, rather than authorizes, a person to renew such a registration in the manner determined by the commission.

S.B. 1124 authorizes a person who is eligible to renew a license but has not done so before January 1 to renew the license before March 1 by paying the savings and mortgage lending commissioner a reinstatement fee in an amount equal to 150 percent of the required renewal fee. The bill prohibits a renewal of a license that has not been renewed before March 1. The bill removes provisions authorizing the renewal of a license expired for 90 days or less on payment of a similar renewal fee and prohibiting the renewal of a license expired for 91 days or more. The bill authorizes the commissioner to issue a conditional license rather than a probationary license and requires the finance commission by rule to adopt reasonable terms and conditions for such a license.

S.B. 1124 removes provisions relating to changes of address and sponsorship limits previously applicable to mortgage brokers and loan officers. The bill removes the requirement that a licensee pay to the savings and mortgage lending commissioner a \$25 change of name fee for the issuance of an amended license. The bill requires a residential mortgage loan company that changes the company's qualifying individual to notify the commissioner not later than the 10th business day after the date of the change.

S.B. 1124 establishes that, if a residential mortgage loan company's main office is outside of Texas, the requirement that the company maintain a physical office in Texas is satisfied if the company has a branch office located in Texas. The bill removes the requirement that the address of the office be designated on the license certificate. The bill requires a residential mortgage loan company that conducts mortgage business with Texas consumers or regarding residential real estate in Texas and maintains an office separate and distinct from the company's main office, whether located in Texas or not, to apply for, pay a fee of \$50 for, and obtain an additional license to be known as a branch office license for each additional office to be maintained by the company. The bill removes a similar requirement previously applicable to a mortgage broker maintaining more than one place of business in Texas.

S.B. 1124 amends Section 156.213, Finance Code, as added by Chapter 337 (H.B. 1636), Acts of the 77th Legislature, Regular Session, 2001, to require each licensed residential mortgage loan company or licensed residential mortgage loan originator, as required by the savings and mortgage lending commissioner, to file a mortgage call report with the commissioner or the commissioner's authorized designee on a form prescribed by the commissioner or the commissioner's authorized designee. The bill establishes the following: that the report is a statement of condition of the residential mortgage loan company and the company's operations, or a statement of condition of the residential mortgage loan originators sponsored by the company, as applicable, including financial statements and production activity volumes; that the report must include any other information required by the commissioner; and that the report must be filed as frequently as required by the commissioner. The bill removes certain information requirements applicable to the superseded annual report of a mortgage broker. The bill makes information contained in the mortgage call report related to residential mortgage loan origination volume or other trade information confidential and protected from disclosure by the commissioner, the commissioner's authorized designee, or any other Department of Savings and Mortgage Lending employee.

S.B. 1124 increases from \$2,500 to \$25,000 the cap on the amount of an administrative penalty for each violation for a person licensed under the Residential Mortgage Loan Company and Residential Mortgage Loan Originator Licensing and Registration Act who violates that act or a rule or order adopted under the act and removes a provision making each day a violation continues or occurs a separate violation for the purposes of imposing a penalty. The bill includes as a basis in determining the amount of the penalty the economic harm to property caused by the violation. The bill includes among the actions by a licensee or registrant under the act for which the savings and mortgage lending commissioner is authorized to order disciplinary action the failure within a reasonable time to honor a check issued to the commissioner after the commissioner has mailed a request for payment of any applicable fees to the entity's last known business address.

S.B. 1124 authorizes the savings and mortgage lending commissioner, in the commissioner's discretion, to rescind or vacate any revocation order previously issued under the Residential Mortgage Loan Company and Residential Mortgage Loan Originator Licensing and Registration Act.

S.B. 1124 expands the authorized uses of the recovery fund to include reimbursement for out-of-pocket losses caused by an act by a residential mortgage loan originator licensed under the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act that constitutes a violation of certain provisions of that act.

S.B. 1124, in provisions of law making a residential mortgage loan applicant's recovery from the recovery fund contingent on a showing by the applicant of certain facts, expands those conditions by including a showing of facts that the person has not aided a licensee in certain illegal activities for which the savings and mortgage lending commissioner may order disciplinary action against a mortgage banker who is a licensed residential mortgage loan originator. The bill authorizes the commissioner to suspend a license issued under the

Residential Mortgage Loan Company and Residential Mortgage Loan Originator Licensing and Registration Act on proof that the commissioner has made a payment from the recovery fund of any amount toward satisfaction of a claim against a residential mortgage loan originator.

S.B. 1124 requires a mortgage banker, in order to register to conduct business in Texas, to enroll with the Nationwide Mortgage Licensing System and Registry; be in good standing with the secretary of state; have a valid federal employer identification number; meet the qualification requirements for a mortgage banker; and provide to the commissioner a list of any offices that are separate and distinct from the primary office identified on the mortgage banker registration and that conduct residential mortgage loan business relating to Texas, regardless of whether the offices are located in Texas. The bill removes certain provisions relating to filing requirements applicable to the registration. The bill makes registration valid on approval of the commissioner and authorizes a denial of the registration if the commissioner determines the mortgage banker does not meet the registration requirements. The bill authorizes a mortgage banker, if the mortgage banker's registration is denied, to appeal the determination in the same manner as an applicant for a residential mortgage loan originator license may appeal a denial of issuance of a license. The bill establishes that registration is valid through December 31 of the year in which the registration is approved and removes a provision establishing that periodic renewal of the registration is not required.

S.B. 1124 provides for the expiration of a mortgage banker's registration on December 31 of the year in which the registration is approved, requires annual renewal, establishes certain compliance requirements, and establishes a renewal fee not to exceed \$500. The bill prohibits a mortgage banker whose registration has expired from engaging in an activity for which registration is required until the registration is renewed. The bill authorizes a renewal of an expired registration before March 1 on payment of a reinstatement fee not to exceed \$500, prohibits any renewal after that date, and authorizes a new registration under the same terms and conditions as for obtaining an original registration.

S.B. 1124 requires a mortgage banker that is a residential mortgage loan originator to include a notice to a residential mortgage loan applicant with an application for a residential mortgage loan and requires the finance commission by rule to adopt a standard disclosure form to be used by the mortgage banker. The bill requires the form to include the name, address, and toll-free telephone number for the Department of Savings and Mortgage Lending, contain information on how to file a complaint or recovery fund claim, and prescribe a method for proof of delivery to the consumer. The bill removes a provision specifying the text of the required notice.

S.B. 1124 reenacts and amends Section 157.012, Finance Code, as added by Chapters 1104 (H.B. 10) and 1147 (H.B. 2779), Acts of the 81st Legislature, Regular Session, 2009, to remove the definitions of "Nationwide Mortgage Licensing System and Registry" and "residential mortgage loan originator" under provisions requiring a license for certain employees of mortgage bankers. The bill prohibits an employee of a mortgage banker from acting in the capacity of a residential mortgage loan originator unless the employee is sponsored by a registered mortgage bank, in addition to satisfying other qualifying requirements. The bill requires an employee of a mortgage banker, for eligibility to be licensed as a residential mortgage loan originator, to not be in violation of the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 or a rule adopted under that act and to be a citizen of the United States or a lawfully admitted alien, in addition to meeting other requirements. The bill specifies that a mortgage banker employee who is not a residential mortgage loan originator is not required to enroll with the Nationwide Mortgage Licensing System and Registry or be licensed under the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act.

S.B. 1124 requires an application for a residential mortgage loan originator license to be accompanied by a recovery fund fee in an amount determined by the commissioner not to exceed \$20 in addition to the application fee.

S.B. 1124 requires a mortgage banker employee who is a residential mortgage loan originator to notify the commissioner or authorized designee in writing of a change of sponsorship, which notice must be accompanied by a fee of \$25.

S.B. 1124, in provisions of law requiring a mortgage banker to file with the savings and mortgage lending commissioner an annual call report, replaces the annual call report with a mortgage call report and requires the report to be filed as frequently as required by the Nationwide Mortgage Licensing System and Registry. The bill specifies that the report, in addition to being a statement of condition of the mortgage banker and the mortgage banker's operations, is a statement of any other similar information required by the Nationwide Mortgage Licensing System and Registry. The bill prohibits the disclosure of the report by any employee of the Department of Savings and Mortgage Lending.

S.B. 1124 requires the recovery fund established, administered, and maintained under the bill's provisions and the Residential Mortgage Loan Company and Residential Mortgage Loan Originator Licensing and Registration Act to be used as provided by that act to reimburse residential mortgage loan applicants for actual damages incurred because of acts committed by residential mortgage loan originators licensed when the act was committed.

S.B. 1124 authorizes the savings and mortgage lending commissioner, after notice and opportunity for a hearing, to impose an administrative penalty on a mortgage banker who is required to be licensed as a residential mortgage loan originator and who violates the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act or an applicable rule or order adopted under that act. The bill increases the cap on the penalty amount for each violation from \$2,500 to \$25,000 and removes a provision making each day a violation continues or occurs a separate violation for the purposes of imposing a penalty. The bill includes as a basis in determining the amount of the penalty the economic harm to property caused by the violation.

S.B. 1124 authorizes the savings and mortgage lending commissioner, in the commissioner's discretion, to rescind or vacate any cease and desist order previously issued under the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act.

S.B. 1124 authorizes the savings and mortgage lending commissioner to revoke or suspend a license issued to a mortgage banker on proof that the commissioner has made a payment from the recovery fund of any amount toward satisfaction of a claim against a mortgage banker operating as a mortgage loan originator. The bill authorizes the commissioner to seek to collect from a residential mortgage loan originator the amount paid from the recovery fund on behalf of the residential mortgage loan originator and any costs associated with investigating and processing the claim against the recovery fund or with collection of reimbursement for payments from the recovery fund, plus interest at the current legal rate until the amount has been repaid in full. The bill requires any amount, including interest, recovered by the commissioner to be deposited to the credit of the recovery fund.

S.B. 1124 authorizes the commissioner to probate an order revoking or suspending a license under the bill's provisions. The bill makes a person on whose behalf payment was made from the recovery fund not eligible to receive a new license or have a suspension lifted until the person has repaid in full, plus interest at the current legal rate, the amount paid from the recovery fund on the person's behalf and any costs associated with investigating and processing the claim against the recovery fund or with collection of reimbursement for payments from the recovery fund. The bill establishes that its provisions do not limit the authority of the commissioner to take disciplinary action against a residential mortgage loan originator for a violation of state law or rules adopted by the finance commission under the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act and that the repayment in full to the recovery fund of all obligations of a residential mortgage loan originator does not nullify or modify the effect of any other disciplinary proceeding.

S.B. 1124 exempts from provisions of the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 an owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property securing the mortgage and an owner of a dwelling who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the dwelling securing the mortgage or security interest. The bill removes from that exemption an individual who is an exclusive agent of a registered financial services company, is exempt from regulation of mortgage brokers, and is individually enrolled as a registered mortgage loan originator with the Nationwide Mortgage Licensing System and Registry.

S.B. 1124 exempts from provisions of the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 an individual who, in any 12-consecutive-month period originates five or fewer closed residential mortgage loans exclusively for a single federally chartered depository institution and the loans are closed within that period, is contractually prohibited from soliciting, processing, negotiating, or placing a residential mortgage loan with a person other than the depository institution, and is sponsored by a life insurance company, or an affiliate of the company, authorized to engage in business in Texas. The bill requires such an exempt individual, before conducting business in Texas with respect to a residential mortgage loan, to enroll as a financial exclusive agent with the Department of Savings and Mortgage Lending until the time any registration with the Nationwide Mortgage Licensing System and Registry is required for the individual by federal law or regulation and a suitable category is created for that registration with that nationwide registry. The bill requires such an enrollment to be renewed annually and requires an individual required to enroll as a financial exclusive agent to pay to the savings and mortgage lending commissioner an annual fee in an amount not to exceed \$40 as prescribed by the commissioner. The bill makes these provisions of law relating to the enrollment requirement effective on November 1, 2011.

S.B. 1124 requires an individual who fails to maintain a residential mortgage loan originator license for at least five consecutive years to retake the prelicensing education requirements prescribed by the S.A.F.E. Mortgage Licensing Act. The bill establishes that a licensed or registered individual is not required to obtain a license to make, negotiate, or transact a residential mortgage loan. The bill establishes that, to the extent of any conflict, the bill's provisions prevail over any other provisions of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

S.B. 1124 defines "auxiliary mortgage loan activity company," "department," "independent contractor loan processor or underwriter company," "mortgage company," "qualifying individual," "recovery fund," and "residential mortgage loan company." The bill provides for the meanings of "credit union subsidiary organization," "loan processor or underwriter," "Nationwide Mortgage Licensing System and Registry," "residential real estate," "depository institution," "dwelling," "federal banking agency," and "immediate family member" by reference. The bill redefines "residential mortgage loan originator," "mortgage applicant," and "mortgage banker" and redefines "residential mortgage loan" to provide for its meaning by reference.

S.B. 1124 establishes that the bill's provisions or the applications of those provisions are severable as provided by state law. The bill requires a provision in the bill to be held invalid if the secretary of Housing and Urban Development or the director of the Consumer Financial Protection Bureau by final administrative decision determines that any provision of the bill or application of the bill to any person or circumstance is considered to be inconsistent with or in conflict with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, or any rules or regulations adopted under that federal act. The bill establishes that in that instance the remainder of the bill or the application of the provision to other persons or circumstances is not affected.

S.B. 1124 repeals the following provisions of the Finance Code:

- Sections 156.002(4), (5), (6), (9), and (10)
- Section 156.2011
- Section 156.2015(a)
- Section 156.202(b)
- Section 156.204
- Section 156.2071
- Sections 156.208(f), (g), (h), and (i)
- Sections 156.2081(d) and (e)
- Section 156.213, as added by Chapter 407 (H.B. 1493), Acts of the 77th Legislature, Regular Session, 2001
- Sections 156.214(e), (f), and (g)
- Section 156.215
- Sections 157.003(b-1), (c), and (d)
- Section 157.009(b)
- Section 157.016(d)
- Section 157.018
- Section 342.051(f)

EFFECTIVE DATE

Except as otherwise provided, September 1, 2011.