

BILL ANALYSIS

Senate Research Center

S.B. 1008
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Department of Savings and Mortgage Lending (SML) has regulatory authority over state savings banks (savings banks) and savings and loan associations (associations). The primary business of both savings banks and associations is residential mortgage lending. Many of the relevant provisions that govern these institutions, found in the Savings & Loan Act and Savings Bank Act in the Finance Code, are outdated, obsolete, and inconsistent with modern regulation.

In order to update these statutes, S.B. 1008 eliminates now-obsolete practices and makes clarifications to current law. Specifically, S.B. 1008 removes the liquidity and local service area requirements, amends the qualifications of the SML commissioner to better ensure the credibility of appointees, creates a criminal slander section explicitly applicable to savings banks, modifies the criminal slander section applicable to associations, clarifies supervisory and regulatory matters, removes outdated references, and updates sections relating to supervisory orders.

S.B. 1008 amends current law relating to the business, supervision, and regulation of state savings and loan associations and state savings banks and provides a criminal penalty.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Finance Commission of Texas (finance commission) is modified in SECTION 11 (Section 96.002, Finance Code) of this bill.

Rulemaking authority previously granted to the finance commission is rescinded in SECTION 15 (Section 94.203, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 13.002(b), Finance Code, to require that the savings and mortgage lending commissioner (commissioner) have not less than five years' experience in the executive management of a savings association or savings bank or in savings association or savings bank supervision during the 10 years preceding the commissioner's appointment, rather than not less than seven years' experience in the executive management of a savings association or savings bank or in savings association or savings bank supervision.

SECTION 2. Amends Section 61.002(1), Finance Code, by renumbering Subdivision (1) as Subdivision (1-a) and adding Subdivision (1) to define "appropriate banking agency."

SECTION 3. Amends Section 62.105(a), Finance Code, to require a savings and loan association subject to this subtitle (Savings and Loan Associations) (association) to maintain a blanket indemnity bond, rather than to maintain on file with the commissioner a blanket indemnity bond, with an adequate corporate surety protecting the association from loss by or through dishonest or criminal action or omission, including fraud, theft, robbery, or burglary, by an officer or employee of the association or a director of the association when the director performs the duties of an officer or employee.

SECTION 4. Amends Section 62.206(a), Finance Code, to require the converted association to file with the commissioner a copy of the charter issued to the federal association by the Office of

the Comptroller of the Currency, rather than the Office of Thrift Supervision; or a certificate showing the organization of the association as a federal association, certified by the secretary or assistant secretary of the Office of the Comptroller of the Currency, rather than the Office of Thrift Supervision.

SECTION 5. Amends Section 62.207, Finance Code, to provide that on the issuance of a charter by the Office of the Comptroller of the Currency, rather than the Office of Thrift Supervision, the association ceases to be an association incorporated under this subtitle; and is no longer subject to the supervision and control of the commissioner.

SECTION 6. Amends Section 62.251(b), Finance Code, to require that the application to convert be filed in the office of the commissioner and with the appropriate banking agency, rather than the Office of Thrift Supervision or its successor, not later than the 10th day after the date of the meeting, and to include a copy of the minutes of the meeting, sworn to by the secretary or an assistant secretary.

SECTION 7. Amends Section 89.052(c), Finance Code, to require the commissioner, when a supervisory order is issued under Chapter 66 (Enforcement and Regulation), Finance Code, to report the existence of the order promptly to the Finance Commission of Texas (finance commission) but to maintain the confidentiality of the content of the order, rather than report promptly to the finance commission and in a closed meeting to furnish any information about the association or the person that is the subject of the order that the finance commission members may require. Deletes existing text providing that any information discussed in the closed meeting is confidential.

SECTION 8. Amends Section 89.101, Finance Code, as follows:

Sec. 89.101. CRIMINAL SLANDER. (a) Provides that a person commits an offense if the person, rather than the person, with intent to injure an association or a federal association in this state, knowingly makes, utters, circulates, or transmits to another person a statement that is untrue and derogatory to the financial condition of an association, rather than of the association or federal association; or with intent to injure an association counsels, aids, procures, or induces another person to originate, make, utter, transmit, or circulate a statement or rumor that is untrue and derogatory to the financial condition of the association, rather than counsels, aids, procures, or induces another person to originate, make, utter, transmit, or circulate a statement or rumor that is untrue and derogatory to the financial condition of the association or federal association.

(b) Provides that an offense under Subsection (a) is a state jail felony, rather than providing that an offense under Subsection (a) is punishable by a fine not to exceed \$2,500, imprisonment in the Texas Department of Criminal Justice for not more than two years, or both the fine and imprisonment.

SECTION 9. Amends Section 91.002(1), Finance Code, to redefine "appropriate banking agency."

SECTION 10. Amends Section 94.002(b), Finance Code, to redefine "commercial loan."

SECTION 11. Amends Section 96.002(a), Finance Code, to authorize the finance commission to adopt rules necessary to supervise and regulate savings banks and to protect public investment in savings banks, including rules relating to the form and content of any report, rather than annual reports or other reports, that a savings bank is required to prepare and publish or file under Chapter 96 (Supervision and Regulation).

SECTION 12. Amends Section 96.053(b), Finance Code, to require a savings bank to make any, rather than any other, report the commissioner may require to administer and enforce Chapter 96, Finance Code. Requires that a report under this section be in the form and manner the commissioner prescribes; and filed on the date the commissioner prescribes. Deletes existing text requiring that an additional report be signed in the same manner as the annual report.

SECTION 13. Amends Section 96.111(a), Finance Code, to require the commissioner, when a supervisory order is issued under this chapter, to report the existence of the order promptly to the finance commission but to maintain the confidentiality of the content of the order, rather than requiring the commissioner to report promptly to the finance commission when a supervisory order is issued. Deletes existing text requiring the commissioner to furnish information about a savings bank or person as the finance commission may require in a closed meeting. Deletes existing text providing that all information discussed in the closed meeting is confidential.

SECTION 14. Amends Subchapter C, Chapter 119, Finance Code, by adding Section 119.202, as follows:

Sec. 119.202. CRIMINAL SLANDER OR LIBEL. (a) Provides that a person commits an offense if the person knowingly makes, utters, circulates, or transmits to another person a statement that is untrue and derogatory to the financial condition of a savings bank; or with intent to injure a savings bank counsels, aids, procures, or induces another person to originate, make, utter, transmit, or circulate a statement or rumor that is untrue and derogatory to the financial condition of the savings bank.

(b) Provides that an offense under Subsection (a) is a state jail felony.

SECTION 15. Repealer: Section 92.103 (Decision on Application; Issuance of Certificate of Incorporation), Finance Code.

Repealer: Section 92.202 (Liquidity), Finance Code.

Repealer: Subchapter E (Investment in Local Service Area), Chapter 94 (Loans and Investments), Finance Code.

Repealer: Section 96.051(d) (relating to providing that an audit by an independent accounting firm that is a member of the American Institute of Certified Public Accountants or its successor is not required under certain conditions), Finance Code.

Repealer: Section 96.053(a) (relating to requiring a savings bank to provide to the commissioner on a form to be prescribed and furnished by the commissioner a written report of its affairs and operations), Finance Code.

SECTION 16. Provides that the change in law made by this Act applies only to an offense committed on or after the effective date of this Act. Provides that an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 17. Effective date: September 1, 2013.