

BILL ANALYSIS

Senate Research Center
85R19426 SMT-F

H.B. 3803
By: Faircloth (Zaffirini)
Business & Commerce
5/9/2017
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Domestic life and health insurers are authorized to invest in real estate loans. Those provisions are contained in Chapter 425, Section 425.118, Insurance Code. Modifications to Chapter 425, Insurance Code, could enhance the ability of Texas-domiciled life insurers to compete for prudent, quality loans and broaden access of Texas businesses to the insurers' capital resources. Accordingly, H.B. 3803 amends current law to allow Texas insurers to make interest-only mortgage loans in certain instances, allow borrowers with substantial financial strength to self-insure certain property, and allow mortgage loans in certain leasehold estates sometimes referred to as "phantom" leasehold estates.

H.B. 3803 amends current law relating to certain authorized investments for domestic life, health, and accident insurers.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 425.118, Insurance Code, by amending Subsections (c), (d), and (e), and adding Subsections (d-1) and (e-1), as follows:

(c) Provides that the term of an obligation secured by a first lien on a leasehold estate in real property is prohibited, as of the date the obligation is acquired, from exceeding a period equal to four-fifths of the unexpired term of the leasehold estate, including any renewal options exercisable by the lessee, and the obligation is required to fully amortize during that period. Prohibits the term of the leasehold estate, including any renewal options exercisable by the lessee, from expiring sooner than the 10th anniversary of the expiration date of the term of the obligation.

(d) Requires that an obligation secured by a first lien on a leasehold estate in real property be payable in one or more installments of an amount or amounts sufficient to ensure that, at any time during, rather than after the expiration of two-thirds of, the original term of the obligation, the principal balance on the obligation is not greater than the principal balance would have been if the obligation had been amortized over the original term of the obligation in equal monthly, quarterly, semiannual, or annual payments of principal and interest with payments of interest only for the first five years of the original term of the obligation.

(d-1) Provides that Subsection (d) does not apply to an obligation secured by a first lien on a leasehold estate in real property if the amount of the obligation does not, as of the date the obligation is acquired, exceed 75 percent of the value of the leasehold estate, the lease agreement provides that the fee simple estate in the real property transfers automatically to the lessee on or before the expiration of the term of the leasehold estate, including any renewal options exercisable by the lessee, or the lease agreement provides that the lessee has an option to purchase the fee simple estate in the real property on or before the expiration of the term of the leasehold estate, including any renewal options

exercisable by the lessee, for an amount that is less than 10 percent of the appraised value of the real property, and the insurance company has a contractual right if the lessee does not exercise that option to acquire the fee simple estate in the real property for that same amount, by assignment from the lessee or otherwise.

(e) Provides that except as provided by Subsection (e-1), if any part of the value of buildings is to be included in the value of real property or a leasehold estate in real property to secure an obligation under this section, certain criteria apply.

(e-1) Provides that the property insurance otherwise required under Subsection (e) is not required if the borrower maintains a net worth as indicated in the borrower's audited financial statements for the most recent fiscal year of at least the greater of five times the amount of the indebtedness or \$100 million and the insurance company has recourse against the borrower or the borrower's guarantor, or, for an obligation secured by a leasehold estate, the tenant assigned the lease to the insurance company and the lease agreement is in writing and provides that if a building on the property is damaged or destroyed, the tenant or the tenant's guarantor is obligated to rebuild or restore the damaged or destroyed building to the building's condition immediately before the damage or destruction occurred or compensate the owner for the loss arising from the damage or destruction.

SECTION 2. Makes application of Section 425.118, Insurance Code, as amended by this Act, prospective.

SECTION 3. Effective date: September 1, 2017.