

BILL ANALYSIS

C.S.H.B. 3803
By: Faircloth
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that Texas should follow the example of other states and expand the types of real estate loans in which domestic life, health, and accident insurers are authorized to invest. C.S.H.B. 3803 seeks to provide for this expansion.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3803 amends the Insurance Code to make statutory provisions relating to the payments of a domestic life, health, and accident insurer's obligation secured by a valid first lien on a leasehold estate in real property inapplicable to an obligation secured by a first lien on a leasehold estate in real property if the amount of the obligation, as of the date the obligation is acquired, does not 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, 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 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.

C.S.H.B. 3803 specifies that the term of a leasehold estate, for purposes of statutory provisions governing the duration of such a term and of the term of an obligation secured by a first lien on a leasehold estate in real property, includes any renewal options exercisable by a lessee. The bill replaces the requirement for such an obligation to be payable in one or more installments of an amount or amounts sufficient to ensure that, at any time 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 certain equal periodic payments of principal and interest with a requirement for such an obligation to be payable in one or more installments of an amount or amounts sufficient to ensure that, at any time during 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 certain equal periodic payments of principal and interest with payments of interest only for the first five years of the original term of the

obligation. The bill establishes that the property insurance otherwise required for the value of buildings included in the value of real property or a leasehold estate in real property to secure an insurer's obligation 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.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3803 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 425.118, Insurance Code, is amended by amending Subsections (d) and (e) and adding Subsections (d-1) and (e-1) to read as follows:

(d) An obligation secured by a first lien on a leasehold estate in real property must be payable in one or more installments of an amount or amounts sufficient to ensure that, at any time during [~~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

HOUSE COMMITTEE SUBSTITUTE

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

(c) The term of an obligation secured by a first lien on a leasehold estate in real property may not, as of the date the obligation is acquired, exceed 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 must fully amortize during that period. The term of the leasehold estate, including any renewal options exercisable by the lessee, may not expire sooner than the 10th anniversary of the expiration date of the term of the obligation.

(d) An obligation secured by a first lien on a leasehold estate in real property must be payable in one or more installments of an amount or amounts sufficient to ensure that, at any time during [~~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) Subsections (c) and (d) do not apply to an obligation secured by a first lien on a leasehold estate in real property if:

(1) the amount of the obligation does not exceed 75 percent of the value of the leasehold estate;

(2) 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

(3) 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) Except as provided by Subsection (e-1), if [H] 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:

(1) the buildings must be covered by adequate property insurance, including fire and extended coverage insurance, issued by:

(A) an insurer authorized to engage in business in this state; or

(B) an insurer recognized as acceptable to issue that coverage by the insurance regulatory official of the state in which the real property is located;

(2) the amount of insurance provided by one or more policies may not be less than the lesser of:

(A) the unpaid balance of the obligation; or

(B) the insurable value of the buildings; and

(3) the loss clause under each policy must be payable to the insurance company as the company's interest may appear.

(e-1) The property insurance otherwise required for purposes of 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 three times the amount

the obligation.

(d-1) Subsection (d) does not apply to an obligation secured by a first lien on a leasehold estate in real property if:

(1) 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;

(2) 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

(3) 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) Except as provided by Subsection (e-1), if [H] 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:

(1) the buildings must be covered by adequate property insurance, including fire and extended coverage insurance, issued by:

(A) an insurer authorized to engage in business in this state; or

(B) an insurer recognized as acceptable to issue that coverage by the insurance regulatory official of the state in which the real property is located;

(2) the amount of insurance provided by one or more policies may not be less than the lesser of:

(A) the unpaid balance of the obligation; or

(B) the insurable value of the buildings; and

(3) the loss clause under each policy must be payable to the insurance company as the company's interest may appear.

(e-1) 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.

of the indebtedness or \$100 million and:

(1) the insurance company has recourse against the borrower or the borrower's guarantor; or

(2) for an obligation secured by a leasehold estate:

(A) the tenant assigned the lease to the insurance company; and

(B) 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. Section 425.118, Insurance Code, as amended by this Act, applies only to an investment made on or after the effective date of this Act. An investment made before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION 2. Same as introduced version.

SECTION 3. This Act takes effect September 1, 2017.

SECTION 3. Same as introduced version.