

- SUBJECT:** Registered financial services companies and authority of exclusive agents
- COMMITTEE:** Financial Institutions — committee substitute recommended
- VOTE:** 6 ayes — Solomons, Flynn, Anchia, Anderson, McCall, Orr
0 nays
1 absent — Chavez
- WITNESSES:** For — Tarea Cotton, Suzanne Loomis, Primerica Financial Services; Everett Ives, TAMB; (*Registered, but did not testify:* Deborah Goodell Polan, Texas Financial Services Association)

Against — None

On — (*Registered, but did not testify:* Danny Payne, Texas Department of Savings and Mortgage Lending)
- BACKGROUND:** The banking system is a dual system of federal and state regulation, with federal regulation preempting state regulation when overlaps occur. National mortgage service companies are regulated by the federal government while their loan officers are licensed by the Texas Department of Savings and Mortgage Lending as mortgage brokers or loan officers.
- DIGEST:** CSHB 1716 would establish that a registered financial services company could perform the services of a mortgage broker as if the company were licensed as a mortgage broker through individuals who were exclusive agents of that company. An exclusive agent would be under written agreement prohibiting the individual from soliciting, processing, negotiating, or placing a mortgage loan with a person other than the registered financial services company or an affiliate of that company. As individuals, exclusive agents would be exempt from mortgage broker licensing.

Eligibility to register as a registered financial services company would be limited to depository institutions exempted from mortgage broker licensing and chartered or regulated by the Office of Thrift Supervision or the Office of the Comptroller of the Currency, including:

- banks;
- savings banks;
- savings and loan associations;
- credit unions; or
- subsidiaries or affiliates of any of these institutions.

These institutions also would be required to:

- provide evidence of an undertaking of accountability for the mortgage broker activities of exclusive agents supported by a \$1 million surety bond;
- submit a business plan for approval by the savings and loan commissioner detailing the education and supervision of its agents as well as the method for handling consumer complaints against agents;
- pay an annual registration fee of the lesser of \$200,000 or half the license fee for a mortgage loan officer multiplied by the number of exclusive agents; and
- designate an officer to be responsible for the activities of the exclusive agents.

If the institution met these requirements, the savings and loan commissioner would issue a one year registration renewable on or before the expiration date. A registration that had expired within the last 90 days could be renewed by paying a renewal fee of one-and-one-half times the standard renewal fee.

A registered financial services company would be subject to certain regulations governing mortgage brokers. These include regulations regarding:

- hearings;
- judicial review;
- civil actions;
- unlicensed activity;
- license revocation and suspension; and
- other actions against a license-holder.

No person could be an exclusive agent without consent of the commissioner if the person:

- had been convicted of a criminal offense involving dishonesty, breach of trust, or money laundering;
- pled guilty, *nolo contendere*, or entered into a pretrial diversion in connection with such offenses; or
- been the subject of a revocation or suspension of any professional license in Texas or any other jurisdiction.

The registered financial services company would provide the commissioner an exclusive agent's fingerprints and any required information regarding that person. The commissioner would obtain a criminal background check from the Department of Public Safety and the Federal Bureau of Investigation and could assess a fee to cover the cost of this service. This would not apply to a person already licensed as a mortgage broker or loan officer.

The commissioner would notify the person and the registered financial services company of the determination of the person's eligibility to be an exclusive agent. A person deemed ineligible could appeal the decision using the appeal process established for denials for mortgage broker and loan officer licenses.

CSHB 1716 would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 1716 would address concerns that the federal government might preempt the licenses of loan officers for national mortgage service companies by allowing a registered financial services company to be registered and licensed in Texas.

The bill would create a regulatory scheme reflecting the unique nature of exclusive agents and their relationship to registered financial services companies. The regulatory scheme would maintain appropriate oversight and protections including background checks, business plan review, a \$1 million surety bond, evidence of accountability, and a designee to take responsibility for the activities of the exclusive agents. CSHB 1716 also would provide protections by creating a way for consumers to make complaints to regulators as well as allowing the savings and loan commissioner to review the education plan for exclusive agents.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

HB 1716 as introduced would have required the registered financial services company, rather than the savings and loan commissioner, to conduct the criminal background check on its exclusive agents. It would not have required the commissioner to determine and communicate eligibility of applicants to act as exclusive agents. The original version of HB 1716 would not have required consent from the commissioner to act as an exclusive agent if the person had been the subject of a revocation or suspension of a professional license in any jurisdiction.

The author plans to offer a floor amendment clarifying that background checks by the commissioner would occur “prior to permitting an exclusive agent to solicit, process, negotiate or place a mortgage loan.”

The companion bill, SB 935 by Van de Putte, has been referred to the Senate Business and Commerce Committee.