

SUBJECT: Revising mortgage broker licensing and regulation for SAFE Act rules

COMMITTEE: Pensions, Investments and Financial Services — committee substitute recommended

VOTE: 6 ayes — Truitt, Anderson, Hernandez, Hopson, Parker, Veasey

0 nays

3 absent — Anchia, Flynn, Woolley

WITNESSES: For — Everett Ives, Texas Association of Mortgage Brokers

Against — None

On — Tony Florence, Sandy Weller, Texas Department of Savings and Mortgage Lending (DSML); (*Registered, but did not testify*: Jane Black, DSML)

BACKGROUND: The federal Housing and Economic Recovery Act of 2008 is designed to assist with the recovery and revitalization of the nation's residential housing market. The act includes the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), which seeks to enhance consumer protection and reduce fraud by encouraging states to establish minimum standards for the licensing and registration of state-licensed mortgage loan originators.

The SAFE Act also establishes a Nationwide Mortgage Licensing System and Registry (NMLSR) for the residential mortgage industry that:

- provides uniform license applications and reporting requirements for state-licensed loan originators;
- provides a comprehensive licensing and supervisory database;
- provides increased accountability and tracking of loan originators;
- streamlines the licensing process and reduces the regulatory burden; and
- facilitates the collection and disbursement of consumer complaints on behalf of state.

Under the SAFE Act, a residential mortgage originator must obtain and annually maintain a license and registration as a state-licensed loan originator.

Texas must meet minimum requirements outlined in the SAFE Act by July 31, 2010, to prevent the U.S. Department of Housing and Urban Development from implementing and administering its own mortgage licensing system.

Finance Code, ch. 156 outlines provisions for the regulation of mortgage brokers. Currently, mortgage broker and loan officer licenses are issued for two-year terms. New and renewal license applicants pay a \$20 fee to the Mortgage Broker Recovery Fund, which is used to reimburse, up to \$25,000, aggrieved persons who are awarded actual damages by a court for violations committed by a licensed mortgage broker or loan officer.

DIGEST:

CSHB 2774 would allow the Texas Department of Savings and Mortgage Lending (DSML) to participate in the Nationwide Mortgage Licensing System and Registry, amend requirements for the Mortgage Broker Recovery Fund, and revise several administrative statutes.

***Participation in the Nationwide Mortgage Licensing System and Registry.*** CSHB 2774 would allow DSML to participate in the Nationwide Mortgage Licensing System and Registry (NMLSR). To enable Texas to participate in NMLSR, the Finance Commission could waive or modify existing requirements or establish reasonable new requirements.

Excess balance beyond the \$3.5 million limit for the Mortgage Broker Recovery Fund could be used to cover expenses related to participating in and sharing information with the NMLSR.

***Mortgage Broker Recovery Fund.*** The Finance Commission could adopt any necessary rules to ensure a fair and orderly administration of the Mortgage Broker Recovery Fund. CSHB 2774 would change financial requirements for holding a mortgage broker or loan officer license from current net assets of at least \$25,000 or a surety bond of at least \$50,000 to participation in the Mortgage Broker Recovery Fund. The recovery fund fee from new or renewal license applicants could not exceed \$20.

The Mortgage Broker Recovery Fund would be used to reimburse residential mortgage loan applicants for actual damages incurred because

of violations committed by a licensed mortgage broker or loan officer. Payments from the fund would be reduced by the recovery amount from the mortgage broker or loan officer or from any surety, insurer, or other person or entity making restitution to the applicant on the violator's behalf.

The fund could be used to reimburse expenses incurred from:

- securing and destroying residential mortgage loan documents that have been abandoned by a current or former mortgage broker, loan officer, or financial services companies providing mortgage broker services; and,
- the management of the fund, including costs and expenses from applications filed in a court.

***Administration of the recovery fund.*** CSHB 2774 would change the current procedures to recover from the fund from a court judgment to an administrative procedure. A residential mortgage loan applicant would file a written sworn application to DSML to recover from the fund. A person knowingly making a false statement to recover money from the fund could be subject to criminal prosecution under Penal Code, sec. 37.10, tampering with a government record.

The applicant would have to demonstrate that his or her claim is based on facts allowing recovery from established violations and that he or she does not have the following relationship with the licensed mortgage broker or loan officer:

- a spouse;
- a child, parent, grandchild, grandparent, or sibling, including relationships by adoption;
- roommate, current or former employer, employee, or associate;
- anyone who had aided, abetted, or participated other than as a victim in any illegal activity; and
- a personal representative.

Licensed mortgage brokers or loan officers could not seek to recover compensation.

After receiving a verified application, DSML would:

- notify each appropriate license holder and the issuer of any surety issued in connection with the licenses; and
- investigate the application and issue a preliminary determination, giving the applicant, the license holder, and any surety an opportunity to resolve the matter by agreement or to dispute the determination.

If the preliminary determination was not otherwise resolved by agreement and is not disputed by written notice to DSML after 31 days of the notification date, the determination would become final and payment would be issued from the recovery fund within existing limits. If the preliminary determination was disputed by any of the parties within the established timeframe, the issue would be set for a hearing under existing administrative procedures in the Government Code and hearing rules of the Finance Commission.

DSML would prorate recovery based on the amount of damage suffered by each claimant if there were concurrent claims that exceeded allowed reimbursement amounts by the fund.

DSML could seek from a mortgage broker or loan officer the amount paid from the fund on their behalf as well as costs associated with investigating and processing a claim against the fund or with collection of reimbursement for fund payments, plus interest until the amount had been fully repaid.

***Terms to renew a license.*** CSHB 2774 would amend Finance Code, sec. 156.208 to allow issuance of a renewal mortgage broker license or loan officer license of less than two years. The maximum renewal fee for a loan officer license would be increased from \$175 to \$275.

DSML could deny license renewal for a mortgage broker or loan officer who had defaulted on a student loan administered by the Texas Guaranteed Student Loan Corporation.

***Advisory committee composition.*** The mortgage broker advisory committee would be renamed the Mortgage Industry Advisory Committee and its members would be appointed solely by the savings and mortgage lending commissioner and would be under the regulatory authority of DSML. (Currently, two committee members are appointed by the Texas Real Estate Commission.) Under the bill, each committee member would

be actively engaged in originating, brokering, or funding residential mortgage loans for at least two years prior to his or her appointment. The advisory committee would be composed of:

- two mortgage brokers;
- two mortgage bankers; and
- two persons holding a real estate license and either a mortgage broker license or registered as a mortgage banker.

***Revision of penalties.*** DSML could order disciplinary action against a licensed mortgage broker or a licensed loan officer after notice and opportunity for a hearing if it became aware during the term of the license any fact that would have been grounds for denying the original license had it then been known.

The bill would remove the current provision that an administrative penalty for violating a cease and desist order would be deposited in the Mortgage Broker Recovery Fund.

***Other changes.*** The \$200,000 cap for annual registration fees for financial services companies providing mortgage broker services would be eliminated.

DSML could seek reimbursement of up to \$325 per day per examiner for on-site examinations or investigations of mortgage broker records if the records were located out of state or if the review required going beyond the routine examination process.

The bill also would revise several provisions relating to insurance agents licensed by DSML, required education courses, and notice and opportunity for a hearing for administrative penalties and disciplinary actions.

All provisions of CSHB 2774 would take effect September 1, 2009, if HB 10 by Solomons, regulation of residential mortgage loan originators, also is enacted and becomes law. If HB 10 is not enacted, the provisions in CSHB 2774 relating to NMLSR would not take effect.

SUPPORTERS  
SAY:

CSHB 2774 would enact minimum requirements in the federal SAFE Act that must be met by July 31, 2010, to keep the U.S. Department of Housing and Urban Development from implementing and administering a

mortgage licensing system for the state. Fortunately, Texas is closest of any other state in its existing statute in meeting the new federal requirements. Texas should be proud of its standing and take the necessary steps to ensure compliance with the SAFE Act requirements.

CSHB 2774 would make important changes to the Mortgage Broker Recovery Fund to enhance consumer access, prevent improper payment from the fund, and increase efficiency in DSML's operation of the fund. Changing current financial requirements for licensees from holding a surety bond or maintaining a certain net worth would remove a major administrative burden from DSML, which no longer would have to monitor these requirements. Consumer safeguards that the recovery fund is intended to protect would not be diminished, as the fund, which has been operating at its established cap of \$3.5 million, has never been properly utilized. Since the fund was established in 2000, only 13 claims totaling less than \$285,000 have been recovered by homeowners.

The limited use of the fund can be attributed to the burdensome process consumers must navigate to access the fund. The bill would streamline the recovery process by removing the requirement of a court judgment as a basis to reimburse mortgage loan applicants, a costly and onerous process for consumers. Allowing applicants to appeal directly to DSML for recovery would enhance consumer protection and allow for better use of the industry's recovery fund fee.

By clarifying that only narrowly defined resident mortgage loan applicants could be reimbursed from the recovery fund — instead of aggrieved parties as is currently allowed — the bill would provide safeguards to prevent mortgage broker firms and persons associated with a licensee who violated the law from accessing the fund meant to benefit consumer victims.

Other changes in CSHB 2774 would streamline and improve DSML's operations. For example, the bill would allow the commissioner of savings and mortgage lending to take disciplinary action against a licensed mortgage broker or loan officer when new information became available from sources such as FBI reports that, if known at the time the license was issued, would have been grounds for denial. Other revisions in the bill would codify into statute existing practices allowing for increased transparency and more efficient operations.

OPPONENTS  
SAY:

CShB 2774 would be strengthened by codifying in statute additional requirements of the SAFE Act, such as education requirements, rather than enacting them through rulemaking or policy. This would provide long-term clarity for both the mortgage broker industry as well as DSML and eliminate possible subjective interpretation in the future.

NOTES:

The committee substitute added the contingent effect of its provisions concerning NMLSR only if HB 10 were enacted. Additionally, the committee substitute refers to Finance Code, ch. 180, introduced in HB 10, regarding excess balance in the Mortgage Broker Recovery Fund used for NMLSR. The committee substitute also would allow the Finance Commission to adopt rules to administer fairly and orderly the Mortgage Broker Recovery Fund.

CShB 2774, along with HB 2779 by Truitt, concerning regulation of mortgage bankers, are companions to HB 10 by Solomons, which would enact federal requirements under the SAFE Act. HB 10 is on the Monday Major State Calendar, and HB 2779 is on the Monday General State Calendar.