

BILL ANALYSIS

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C.S.S.B. 2330
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2008, Congress enacted the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289), known as the SAFE Act. The SAFE Act required each state to adopt state laws to provide uniform requirements for the licensing of residential loan originators employed by non-depository entities, such as a mortgage banker. The federal SAFE Act also established a registration system that requires residential mortgage loan originators employed by depository institutions or their subsidiaries to register with the National Mortgage License System. Residential mortgage loan originators who are registered generally must meet the same requirements as state-licensed originators as to lack of criminal history and financial responsibility.

Chapter 180 of the Finance Code is the Texas SAFE Act, passed to comply with the federal SAFE Act.

Under the original federal and state SAFE Acts, a registered residential mortgage loan originator that transitions to employment with a non-depository mortgage entity or an out of state licensed loan originator seeking to originate loans in Texas must complete the licensing process in Texas and is prohibited from originating loans until the license is granted. In 2008, Congress amended the federal SAFE Act to authorize a registered residential mortgage loan originator or an out of state licensed originator seeking to be licensed in another state temporary authority to originate loans for a period of up to 120 days while the person completes the licensing process. While many believe that the changes to the federal SAFE Act are self-implementing without changes to state law, it is desirable to conform the Texas SAFE Act to these new federal changes.

S.B. 2330 would amend the Finance Code to conform the Texas SAFE Act to the changes in federal law. Persons who had been employed by a bank or other depository institution and registered under the federal system for at least a year and persons who are licensed out of state but become employed by a Texas licensed or registered mortgage lender would be granted temporary authority to originate mortgage loans for a period of not more than 120 days while the person completes the licensing process in Texas. These individuals have already been subject to criminal background checks and personal history reviews and are experienced loan originators. These changes will make it easier for loan originators to transition from one employer to another. The Texas mortgage entity that employs these persons will be fully responsible for these persons to the same extent as if they were licensed. These individuals are also subject to all of the laws and regulations related to mortgage lending during this transitional period, just as they would be if they were licensed. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 2330 amends current law relating to the temporary authority of certain individuals to engage in business as a residential mortgage loan originator.

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 157.012(a), Finance Code, as follows:

(a) Prohibits an individual from acting or attempting to act in the capacity of a residential mortgage loan originator unless the individual is exempt under Section 157.0121 (Exemptions From Residential Mortgage Loan Originator Requirements) or 180.003(b) (relating to a provision that an individual is exempt under certain circumstances), is acting under the temporary authority granted under Section 180.0511, or:

(1)–(2) makes no changes to these subdivisions.

SECTION 2. Amends Section 180.051(a), Finance Code, as follow:

(a) Prohibits an individual, unless exempted by Section 180.003 (Exemption) or acting under the temporary authority described under Section 180.0511, from engaging in business as a residential mortgage loan originator with respect to a dwelling located in this state unless the individual:

(1) is licensed to engage in that business under certain chapters of the Finance Code; and

(2) complies with the requirements of this chapter (Residential Mortgage Loan Originators).

SECTION 3. Amends Subchapter B, Chapter 180, Finance Code, by adding Section 180.0511, as follows:

Sec. 180.0511. TEMPORARY AUTHORITY TO ORIGINATE LOANS. (a) Provides that a registered mortgage loan originator who does not hold a license issued under a chapter listed in Section 180.051(a)(1) is considered to have temporary authority to act as a residential mortgage loan originator for a period not to exceed 120 days as provided by Subsection (d) if the individual:

(1) becomes employed by an entity that is licensed or registered in this state to engage in the business of residential mortgage loan origination in this state;

(2) has not had:

(A) an application for a residential mortgage loan originator license or other loan originator license required by another jurisdiction to engage in business as a residential mortgage loan originator denied; or

(B) a residential mortgage loan originator license or other loan originator license required by another jurisdiction to engage in business as a residential mortgage loan originator revoked or suspended in any governmental jurisdiction;

(3) has not been subject to or served with a cease and desist order:

(A) in any governmental jurisdiction; or

(B) under 12 U.S.C. Section 5113(c);

(4) has not been convicted of a misdemeanor or felony that would preclude licensure to engage in business as a residential mortgage loan originator in this state under the chapters listed in Section 180.051(a)(1);

(5) has submitted to the appropriate regulatory official the application form prescribed by the regulatory official under Section 180.053

(Application Form) and the information required under Section 180.054 (Criminal and Other Background Checks); and

(6) was registered with the Nationwide Mortgage Licensing System and Registry as a loan originator during the one-year period preceding the date on which the individual submitted to the appropriate regulatory official the application form and information required by Subdivision (5).

(b) Provides that an individual licensed by another state or governmental jurisdiction to engage in mortgage loan origination in that other state or governmental jurisdiction is considered to have temporary authority to act as a residential mortgage loan originator in this state for a period not to exceed 120 days as provided by Subsection (d) if the individual:

(1) is employed by an entity that is licensed or registered in this state to engage in the business of residential mortgage loan origination in this state;

(2) meets the eligibility requirements provided by Subsections (a)(2), (3), (4), and (5); and

(3) held the license issued by another state or governmental jurisdiction to engage in mortgage loan origination during the 30-day period preceding the date on which the individual submitted to the appropriate regulatory official the application form required under Section 180.053 and the information required under Section 180.054.

(c) Provides that a residential mortgage loan originator licensed by a regulatory official to engage in business as a mortgage loan originator in this state under a chapter listed in Section 180.051(a)(1) is considered to have temporary authority to act as a residential mortgage loan originator under a different chapter listed in Section 180.051(a)(1) for a period not to exceed 120 days as provided by Subsection (d) if the individual:

(1) is employed by an entity that is licensed or registered in this state to engage in the business of residential mortgage loan origination in this state;

(2) meets the eligibility requirements provided by Subsections (a)(2), (3), (4), and (5); and

(3) held the license issued by the regulatory official to engage in mortgage loan origination during the 30-day period preceding the date on which the individual submitted to the appropriate regulatory official the application form required under Section 180.053 and the information required under Section 180.054.

(d) Establishes that the 120-day period of temporary authority described under this section begins on the date on which the individual submits to the appropriate regulatory official the application form required under Section 180.053 and the information required under Section 180.054 and ends on the earliest of:

(1) the date on which the individual withdraws the application;

(2) the date on which the regulatory official denies or issues a notice of intent to deny the application;

(3) the date on which the regulatory official issues the individual a license;
or

(4) the 120th day after the date on which the individual submitted the application, if the application is listed on the Nationwide Mortgage Licensing System and Registry as incomplete.

(e) Provides that a person employing an individual who is considered to have temporary authority to act as a residential mortgage loan originator in this state under this section is subject to the requirements of applicable federal and state laws and to the applicable rules and regulations to the same extent as if that individual was a residential mortgage loan originator licensed by this state.

(f) Provides that an individual who is considered to have temporary authority to act as a residential mortgage loan originator in this state under this section and who engages in residential mortgage loan origination activities is subject to the requirements of applicable federal and state laws and to applicable rules and regulations to the same extent as if that individual was a residential mortgage loan originator licensed by this state.

SECTION 4. Amends Section 342.0515(b), Finance Code, as follows:

(b) Requires an individual who acts as a residential mortgage loan originator in the making, transacting, or negotiating of a loan subject to this chapter (Consumer Loans), unless exempt under Section 180.003, or acting under the temporary authority described under Section 180.0511, to meet certain requirements.

SECTION 5. Amends Section 347.4515(b), Finance Code, to make a conforming change.

SECTION 6. Amends Section 348.5015(b), Finance Code, to make a conforming change.

SECTION 7. Amends Section 351.0515(b), Finance Code, to make a conforming change.

SECTION 8. Makes application of Section 180.0511, Finance Code, as added by this Act, prospective.

SECTION 9. Effective date: November 24, 2019.