

BILL ANALYSIS

C.S.H.B. 2774

By: Truitt

Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Department of Savings and Mortgage Lending licenses and regulates mortgage brokers and loan officers. As part of its regulatory duties, the department informs the legislature when licensing statutes need revisions.

C.S.H.B. 2774 amends the Finance Code to provide for compliance with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, to make clarifying revisions to the statute, and to make revisions to the recovery fund claim process.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 2774 amends the Finance Code to require the savings and mortgage lending commissioner to participate in the Nationwide Mortgage Licensing System and Registry as provided by provisions in the Finance Code (as proposed by H.B. 10, 81st Legislature, Regular Session, 2009). The bill establishes that these provisions take effect only if H.B. 10 or another similar bill of the 81st Legislature relating to the licensing of residential mortgage loan originators is enacted and becomes law.

C.S.H.B. 2774 authorizes the Finance Commission of Texas, by rule, to waive or modify in whole or in part any requirement of the Mortgage Broker License Act and to establish requirements under that act that are reasonably necessary to enable Texas to participate in the Nationwide Mortgage Licensing System and Registry and comply with state law. The bill authorizes the finance commission, on the commissioner's recommendation, to adopt rules to promote a fair and orderly administration of the mortgage broker recovery fund consistent with the purposes of the administrative provisions of the Mortgage Broker License Act and makes the above provisions effective only if H.B. 10, 81st Legislature, Regular Session, 2009, or a similar bill relating to the licensing of residential mortgage loan originators is enacted and becomes law.

C.S.H.B. 2774 renames the mortgage broker advisory committee as the mortgage industry advisory committee and requires the commissioner to appoint all six members to the committee, rather than having two of the six appointed by the Texas Real Estate Commission. The bill requires the committee to include two mortgage brokers, two mortgage bankers, and two active Texas real estate licensees who are also licensed as a mortgage broker or registered as a mortgage banker. The bill requires each appointee to be under the regulatory authority of the Department of Savings and Mortgage Lending; actively engaged in the business of originating, brokering, or funding residential mortgage loans at the time of appointment; and primarily engaged in that business for at least two years before the member's appointment. The bill removes a requirement for the committee to advise the commissioner with respect to the proposal and adoption of rules for continuing education for licensed mortgage brokers and loan

officers and the types of courses acceptable as continuing education courses and for the granting or denying of an application or request for renewal for a mortgage broker license or loan officer license.

C.S.H.B. 2774 authorizes the commissioner, in addition to a disciplinary action imposed for the failure to honor within a reasonable time a check issued to the commissioner, to collect a maximum \$50 fee for any returned check or credit card charge back.

C.S.H.B. 2774 revises one of the alternative conditions of eligibility for a mortgage broker license to require that an individual provide the commissioner with satisfactory evidence that the applicant is licensed in Texas as an active general lines insurance agent, a limited lines insurance agent, or holds an equivalent insurance license under the Texas Insurance Code, rather than evidence that the applicant maintains an active license as a local recording agent or insurance solicitor or agent for a legal reserve life insurance company or holds an equivalent license.

C.S.H.B. 2774 revises one of the alternative conditions of eligibility for a loan officer license to require a person to provide the commissioner with satisfactory evidence that the applicant has successfully completed at least 60 hours of education courses approved by the commissioner or, under certain conditions, has successfully completed 30 hours of education courses and removes the requirement that these be classroom hours. The bill allows a person to satisfy the education requirement by completing 30 hours of education courses if the applicant either has 18 months of experience as a mortgage loan officer as evidenced by documentary proof of full time employment as a mortgage loan officer with a person exempt under the provision relating to exemptions or submits satisfactory evidence that the applicant is licensed in Texas as an active general lines insurance agent, a limited lines insurance agent, or holds an equivalent license under the Insurance Code. The bill removes the requirement that the education hours be classroom based and removes an obsolete provision applicable to applications received before January 1, 2000, providing for a sponsoring mortgage broker to certify the applicant's education and training.

C.S.H.B. 2774 requires the financial requirements for holding a mortgage broker or loan officer license to be met through participation in the recovery fund and removes provisions requiring a mortgage broker to maintain net assets or a surety bond in specified amounts as a financial requirement.

C.S.H.B. 2774 modifies the two-year period for which a mortgage broker license or a loan officer license is valid to specify that the license term is a two-year maximum and provides, as one of the alternative conditions for eligibility for renewal of a mortgage broker's license or a loan officer's license, that the licensee provides the commissioner with satisfactory evidence that the licensee maintains an active license in Texas as an active general lines insurance agent, a limited lines insurance agent, or holds an equivalent insurance license under the Insurance Code, rather than evidence that the applicant maintains an active license as a local recording agent or insurance solicitor for a legal reserve life insurance company or an equivalent license. The bill increases from \$175 to \$275 the license renewal fee for a loan officer's license.

C.S.H.B. 2774 adds to the grounds on which the commissioner may deny the renewal of a mortgage broker license or a loan officer license to include the circumstance that the mortgage broker or loan officer is in default on a student loan administered by the Texas Guaranteed Student Loan Corporation, pursuant to the specified provision in the Education Code. The bill authorizes the commissioner, in addition to a disciplinary action imposed for the failure to honor within a reasonable time a check issued to the commissioner, to collect a maximum \$50 fee for any returned check or credit card charge back. The bill repeals requirements for the prominent display of a mortgage broker license certificate, a branch office certificate, or a loan officer license certificate, as applicable, in the license holder's place of business.

C.S.H.B. 2774 sets the annual registration fee for a financial services company at one-half of the

license fee for a loan officer multiplied by the number of exclusive agents under contract to act for the person in Texas and removes a provision capping the annual registration fee at the lesser of that amount or \$200,000.

C.S.H.B. 2774 authorizes the commissioner to require reimbursement not to exceed \$325 per examiner per day for onsite examination or investigation of a mortgage broker where records are located out of state or where the review is deemed necessary beyond the routine examination process. The bill provides that the commissioner's authority to impose an administrative penalty on a license holder who violates a rule or order adopted under the Mortgage Broker License Act and to order disciplinary action against a licensed mortgage broker or licensed officer who has engaged in certain enumerated activities, may be exercised in each case after notice and opportunity for a hearing. The bill adds to the grounds for a commissioner-ordered disciplinary action against a licensed mortgage broker or a licensed officer a determination that, during the current term of the license, the commissioner becomes aware of any fact that would have been grounds for denial of any original license if the fact had been known by the commissioner on the date the license was issued. The bill removes a requirement that an administrative penalty collected from a person who violated a cease and desist order be deposited in the recovery fund and adds a requirement that the commissioner give opportunity for hearing before imposing such a penalty.

C.S.H.B. 2774 extends the period during which a hearing may be held on an appeal of an order of suspension issued for the failure to pay an administrative penalty or to comply with a cease and desist order from not later than the 15th day to not later than the 30th day after the date of receipt of the notice of appeal. The bill establishes a requirement of not less than 10 days' notice to a person before the commissioner may exercise the authority to suspend a person's license if an indictment or information is filed or returned alleging that the person committed a criminal offense involving fraud, theft, or dishonesty and allows the suspension to occur without a prior hearing. The bill authorizes a person to appeal the suspension.

C.S.H.B. 2774 authorizes the commissioner to collect and deposit court costs collected pursuant to a final order.

C.S.H.B. 2774 includes administration of the recovery fund among the commissioner's duties and clarifies that the required use of the fund is to reimburse residential mortgage loan applicants actual damages because of acts committed by a licensed mortgage broker or loan officer, rather than to reimburse aggrieved persons to whom a court awards actual damages, and that the fund's use is limited to reimbursement for out-of-pocket losses caused by an act by a mortgage broker or loan officer that constitutes a violation of certain provisions. The bill requires the payments from the recovery fund to be reduced by the amount of any recovery from the mortgage broker or loan officer or from any surety, insurer, or other person or entity making restitution to the applicant on behalf of the mortgage broker or loan officer. The bill authorizes the recovery fund to be used at the commissioner's discretion to reimburse expenses incurred to secure and destroy residential mortgage loan documents that have been abandoned by a current or former individual or entity under the regulatory authority of the Department of Savings and Mortgage Lending and entitles the commissioner, as manager of the fund, to reimbursement for reasonable and necessary costs and expenses incurred in the management of the fund, including costs and expenses incurred with regard to applicants pursuant to the specified procedure for recovery.

C.S.H.B. 2774 changes the additional fee paid by an applicant for an original license or for a license renewal for deposit into the recovery fund from \$20 to an amount determined by the commissioner, not to exceed \$20. The bill requires that, if the balance remaining in the recovery fund at the end of the calendar year is more than \$3.5 million, the amount of money in excess of \$3.5 million is to be made available to the commissioner to offset the expenses of participating in and sharing information with the Nationwide Mortgage Licensing System and Registry and provides that this provision takes effect only if H.B. 10, 81st Legislature, Regular Session, 2009, or a similar bill relating to the licensing of residential mortgage loan originators is enacted and

becomes law. The bill repeals a provision transferring excess funds to the general revenue fund. The bill removes the existing requirement for license holders to pay an additional fee if the year-end fund balance is less than \$500,000.

C.S.H.B. 2774 prohibits the filing of an application for the recovery of actual damages from the recovery fund after either the second anniversary of either the date of the alleged act or omission causing the actual damages or the date the act or omission should reasonably have been discovered. The bill establishes that this statute of limitations does not apply to subrogation claims brought by the commissioner for recovery of money paid out of the recovery fund. The bill removes the provision prohibiting the institution of an action for a judgment that subsequently results in an order for collection from the fund after the second anniversary of the date on which the cause of action accrues.

C.S.H.B. 2774 requires a residential mortgage loan applicant seeking a recovery from the fund to file a written sworn application with the commissioner in the form prescribed by the commissioner, subject to the statute of limitations. The bill makes a person who knowingly makes a false statement in connection with applying for money out of the recovery fund subject to criminal prosecution for the offense of tampering with governmental records. The bill requires the residential mortgage loan applicant seeking recovery to show that the claim is based on facts allowing recovery and that the applicant is not a spouse, child, parent, grandchild, grandparent, or sibling, including relationships by adoption, of the mortgage broker or loan officer, or a person sharing living quarters with the mortgage broker or loan officer or a current or a former employer, employee, or associate of the mortgage broker or loan officer, or a person who has aided, abetted, or participated other than as a victim with the licensed mortgage broker or loan officer in any illegal activity that is grounds for a commissioner-ordered disciplinary action, or the personal representative of such a person, and that the applicant is not licensed as a mortgage broker or loan officer who is seeking to recover any compensation in the transaction or transactions for which application for payment is made. The bill requires the commissioner's staff, on receipt of the verified application, to notify each appropriate license holder and the issuer of any surety bond issued in connection with the license of each such license holder; and to investigate the application and issue a preliminary determination, giving the applicant, the licensee, and any surety an opportunity to resolve the matter by agreement or to dispute the preliminary determination.

C.S.H.B. 2774 establishes a new procedure for recovery. The bill makes the preliminary determination automatically final if the preliminary determination is not otherwise resolved by agreement and is not disputed by written notice to the commissioner before the 31st day after the notification date, and the bill requires the commissioner to make payment from the recovery fund, subject to certain limits. The bill requires the matter to be set for a hearing if the preliminary determination is disputed by the applicant, licensee, or surety by written notice to the commissioner before the 31st day after the notification date, which hearing is governed by the Administrative Procedures Act and the hearing rules of the finance commission. The bill removes the existing procedure for an aggrieved person's recovery from the fund.

C.S.H.B. 2774 limits a person's entitlement to payment from the fund to reimbursement of actual out-of-pocket expenses, removing the entitlement to reasonable attorney's fees and court costs, and removes other references to a court order, attorney's fees, court costs, and judgments. The bill clarifies that a payment for claims against a single person licensed as a mortgage broker or loan officer arising out of separate transactions, including interest, is limited in the aggregate to \$50,000 until the fund has been reimbursed for all amounts paid. The bill requires the commissioner, in the event there are concurrent claims that exceed the limits on the amount payable for each claim, to prorate recovery based on the amount of damage suffered by each claimant.

C.S.H.B. 2774 authorizes the commissioner to revoke a license issued under the Mortgage Broker License Act on proof that the commissioner has made a payment from the recovery fund

of any amount toward satisfaction of a claim, rather than a judgment, against a mortgage broker or loan officer. The bill authorizes the commissioner to seek to collect from the mortgage broker or loan officer the amount paid from the fund on behalf of the mortgage broker or loan officer and any costs associated with investigating and processing the claim or with collection of reimbursement for payments from the fund, plus interest at the current legal rate until the amount has been repaid in full. The bill requires any amount, including interest, that is recovered by the commissioner to be deposited to the credit of the fund.

C.S.H.B. 2774 adds to the repayment condition required to restore a person's eligibility to receive a new license after a revocation on the grounds described above a requirement to repay any costs associated with investigating and processing the claim against the recovery fund or with collection of reimbursement for payments from the fund.

C.S.H.B. 2774 makes provisions regarding the commissioner's subrogation on the payment of an amount from the recovery fund applicable to an applicant for that recovery rather than to a judgment creditor and requires the applicant to assign all of the applicant's right, title, and interest in any subsequent judgment against the licensee up to the amount paid by the commissioner.

C.S.H.B. 2774 expands the conditions that constitute a waiver of rights by an applicant for reimbursement to include a failure to comply with a rule adopted by the finance commission relating to the recovery fund.

C.S.H.B. 2774 establishes that, to the extent of any conflict, it prevails over another act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes.

C.S.H.B. 2774 repeals the following sections in the Finance Code:

- Sections 156.212(c) and (d)
- Section 156.502(c)

EFFECTIVE DATE

Except as otherwise provided, September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2774 differs from the original by making conforming and nonsubstantive organizational changes that the original does not make. The substitute differs from the original by citing certain provision of the Finance Code according to chapter (Chapter 180, Finance Code, as proposed by H.B. 10, 81st Legislature, Regular Session, 2009), whereas the original cites these provisions as the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2008, the short title for the proposed chapter. The substitute refers to participation in the Nationwide Mortgage Licensing System and Registry, rather than the Nationwide Mortgage Licensing System and Registration as in the original. The substitute provides that these provisions and a provision setting forth the Finance Committee of Texas's rulemaking authority take effect contingent on the enactment of H.B. 10 or similar legislation relating to the licensing of residential mortgage loan originators, whereas the original does not.

C.S.H.B. 2774 differs from the original in affixing the same contingency to a provision requiring an excess balance in the recovery fund to be made available to the commissioner to offset the expenses of participating in and sharing information with the Nationwide Mortgage Licensing System and Registry, whereas the original made those provisions effective retroactively to December 31, 2008, with no H.B. 10 contingency and no prerequisite that the Nationwide Mortgage Licensing System and Registry be adopted.

C.S.H.B. 2774 differs from the original by requiring a residential mortgage loan applicant seeking a recovery from the mortgage broker recovery fund to file a written sworn application with the commissioner, in the form prescribed by the commissioner, rather than in the form required by the commissioner as in the original.

C.S.H.B. 2774 adds a provision not in the original to establish that, to the extent of any conflict, it prevails over another act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes. The substitute differs from the original by changing the effective date from on passage, or, if the act does not receive the necessary vote, September 1, 2009, to September 1, 2009, except as otherwise provided for certain provisions.