

BILL ANALYSIS

C.S.H.B. 3088
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Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that a lack of appropriate oversight allows certain lenders to take advantage of consumers. C.S.H.B. 3088 seeks to revise the law regarding exemptions for certain residential property owners from the applicability of certain regulations of residential mortgage loan companies and residential mortgage loan originators.

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. 3088 amends the Finance Code to specify, for purposes of determining eligibility for the exemptions from the Residential Mortgage Loan Company Licensing and Registration Act, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, and the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 for an owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured, that two or more owners of residential real estate are considered a single owner for the purpose of computing the number of mortgage loans made within the specified period if any of the owners are affiliates or if any of the owners have substantially common ownership as determined by the savings and mortgage lending commissioner. The bill makes the same specification with regard to owners of a dwelling for purposes of determining eligibility for the exemption from the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 for an owner of a dwelling who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the dwelling against which the mortgage or security interest is secured.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3088 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 156.002, Finance Code, is amended by adding Subdivision (16) to read as follows:

(16) "Wrap mortgage loan" has the meaning assigned by Section 180.002.

SECTION 2. Section 156.202(a-1), Finance Code, is amended to read as follows:

(a-1) The following entities are exempt from this chapter:

(1) a nonprofit organization:

(A) providing self-help housing that originates zero interest residential mortgage loans for borrowers who have provided part of the labor to construct the dwelling securing the loan; or

(B) that has designation as a Section 501(c)(3) organization by the Internal Revenue Service and originates residential mortgage loans for borrowers who, through a self-help program, have provided at least 200 labor hours or 65 percent of the labor to construct the dwelling securing the loan;

(2) a mortgage banker registered under Chapter 157;

(3) any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans, none of which is a wrap mortgage loan, to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured; and

(4) an entity that is:

(A) a depository institution;

(B) a subsidiary of a depository institution that is:

(i) owned and controlled by the depository institution; and

(ii) regulated by a federal banking agency; or

(C) an institution regulated by the Farm Credit Administration.

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Section 156.202, Finance Code, is amended by amending Subsection (a-1) and adding Subsection (b) to read as follows:

(a-1) The following entities are exempt from this chapter:

(1) a nonprofit organization:

(A) providing self-help housing that originates zero interest residential mortgage loans for borrowers who have provided part of the labor to construct the dwelling securing the loan; or

(B) that has designation as a Section 501(c)(3) organization by the Internal Revenue Service and originates residential mortgage loans for borrowers who, through a self-help program, have provided at least 200 labor hours or 65 percent of the labor to construct the dwelling securing the loan;

(2) a mortgage banker registered under Chapter 157;

(3) subject to Subsection (b), any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured; and

(4) an entity that is:

(A) a depository institution;

(B) a subsidiary of a depository institution that is:

(i) owned and controlled by the depository institution; and

(ii) regulated by a federal banking agency; or

(C) an institution regulated by the Farm Credit Administration.

(b) In determining eligibility for an exemption under Subsection (a-1)(3), two or more owners of residential real estate are considered a single owner for the purpose of computing the number of mortgage loans

made within the period specified by that subdivision if any of the owners are affiliates, as defined by Section 1.002(1), Business Organizations Code, or if any of the owners have substantially common ownership, as determined by the commissioner. In this subsection, "owners of residential real estate" include corporations, limited partnerships, limited liability companies, professional associations, cooperatives, and real estate investment trusts.

SECTION 3. Section 157.002, Finance Code, is amended by adding Subdivision (7) to read as follows:

(7) "Wrap mortgage loan" has the meaning assigned by Section 180.002.

No equivalent provision.

SECTION 4. Sections 157.0121(b) and (c), Finance Code, are amended to read as follows:

(b) The following individuals are exempt from this chapter:

(1) a registered mortgage loan originator when acting for:

(A) a depository institution;

(B) a subsidiary of a depository institution that is:

(i) owned and controlled by the depository institution; and

(ii) regulated by a federal banking agency; or

(C) an institution regulated by the Farm Credit Administration;

(2) an individual who offers or negotiates the terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney:

(A) takes a residential mortgage loan application; and

(B) offers or negotiates the terms of a residential mortgage loan;

(4) an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence;

SECTION 2. Section 157.0121, Finance Code, is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

(5) any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans, none of which is a wrap mortgage loan, to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured; and

(6) an individual who is exempt as provided by Section 180.003(b).

(c) Employees of the following entities, when acting for the benefit of those entities, are exempt from the licensing and other requirements of this chapter applicable to residential mortgage loan originators:

(1) a nonprofit organization:

(A) providing self-help housing that originates zero interest residential mortgage loans for borrowers who have provided part of the labor to construct the dwelling securing the loan; or

(B) that has designation as a Section 501(c)(3) organization by the Internal Revenue Service and originates residential mortgage loans for borrowers who, through a self-help program, have provided at least 200 labor hours or 65 percent of the labor to construct the dwelling securing the loan;

(2) any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans, none of which is a wrap mortgage loan, to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured; and

(3) an entity that is:

(A) a depository institution;

(B) a subsidiary of a depository institution that is:

(i) owned and controlled by the depository institution; and

(ii) regulated by a federal banking agency; or

(C) an institution regulated by the Farm Credit Administration.

(c) Employees of the following entities, when acting for the benefit of those entities, are exempt from the licensing and other requirements of this chapter applicable to residential mortgage loan originators:

(1) a nonprofit organization:

(A) providing self-help housing that originates zero interest residential mortgage loans for borrowers who have provided part of the labor to construct the dwelling securing the loan; or

(B) that has designation as a Section 501(c)(3) organization by the Internal Revenue Service and originates residential mortgage loans for borrowers who, through a self-help program, have provided at least 200 labor hours or 65 percent of the labor to construct the dwelling securing the loan;

(2) subject to Subsection (f), any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured; and

(3) an entity that is:

(A) a depository institution;

(B) a subsidiary of a depository institution that is:

(i) owned and controlled by the depository institution; and

(ii) regulated by a federal banking agency; or

(C) an institution regulated by the Farm Credit Administration.

(f) In determining eligibility for an exemption under Subsection (c)(2), two or more owners of residential real estate are considered a single owner for the purpose of computing the number of mortgage loans made within the period specified by that subdivision if any of the owners are affiliates, as defined by Section 1.002(1), Business Organizations Code, or if any of

the owners have substantially common ownership, as determined by the commissioner. In this subsection, "owners of residential real estate" include corporations, limited partnerships, limited liability companies, professional associations, cooperatives, and real estate investment trusts.

SECTION 5. Section 158.002, Finance Code, is amended by adding Subdivisions (8) and (9) to read as follows:

(8) "Wrap lender" has the meaning assigned by Section 180.002.

(9) "Wrap mortgage loan" has the meaning assigned by Section 180.002.

No equivalent provision.

SECTION 6. Section 158.052, Finance Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) This chapter does not require registration by:

(1) a federal or state depository institution, or a subsidiary or affiliate of a federal or state depository institution;

(2) a person registered under Chapter 157;

(3) a person licensed under Chapter 342 or regulated under Chapter 343, if the person does not act as a residential mortgage loan servicer servicing first-lien secured loans; or

(4) except as provided by Subsection (d), a person making a residential mortgage loan with the person's own funds, or to secure all or a portion of the purchase price of real property sold by that person.

(d) This chapter applies to a wrap lender who services a wrap mortgage loan.

No equivalent provision.

SECTION 7. Section 180.002, Finance Code, is amended by adding Subdivisions (24), (25), and (26) to read as follows:

(24) "Wrap borrower" means a person obligated to pay a wrap mortgage loan.

(25) "Wrap lender" means a person who makes a wrap mortgage loan.

(26) "Wrap mortgage loan" means a residential mortgage loan:

(A) made to finance the purchase of residential real estate that will continue to be subject to an unreleased lien that:

(i) attached to the residential real estate

No equivalent provision.

before the loan was made; and
(ii) secures a debt incurred by a person other than the wrap borrower that was not paid off at the time the loan was made; and
(B) obligating the wrap borrower to the wrap lender for payment of a debt the principal amount of which includes:
(i) the outstanding balance of the debt described by Paragraph (A)(ii); and
(ii) any remaining amount of the purchase price financed by the wrap lender.

SECTION 8. Section 180.003(a), Finance Code, is amended to read as follows:

- (a) The following persons are exempt from this chapter:
- (1) a registered mortgage loan originator when acting for an entity described by Section 180.002(16)(A)(i), (ii), or (iii);
 - (2) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;
 - (3) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney:
 - (A) takes a residential mortgage loan application; and
 - (B) offers or negotiates the terms of a residential mortgage loan;
 - (4) an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence;
 - (5) an owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans, none of which is a wrap mortgage loan, to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured; and
 - (6) an owner of a dwelling who in any 12-consecutive-month period makes no more than five residential mortgage loans, none of which is a wrap mortgage loan, to purchasers of the property for all or part of the purchase price of the dwelling against which the mortgage or security interest is secured.

SECTION 3. Section 180.003, Finance Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

- (a) The following persons are exempt from this chapter:
- (1) a registered mortgage loan originator when acting for an entity described by Section 180.002(16)(A)(i), (ii), or (iii);
 - (2) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;
 - (3) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney:
 - (A) takes a residential mortgage loan application; and
 - (B) offers or negotiates the terms of a residential mortgage loan;
 - (4) an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence;
 - (5) subject to Subsection (d), an owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured; and
 - (6) subject to Subsection (d), an owner of a dwelling who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the dwelling against which the mortgage or security interest is secured.

(d) In determining eligibility for an exemption under Subsection (a)(5) or (6), two or more owners of residential real estate or a dwelling, as applicable, are considered a single owner for the purpose of computing the number of mortgage loans made within the period specified by those subdivisions if any of the owners are affiliates, as defined by Section 1.002(1), Business Organizations Code, or if any of the owners have substantially common ownership, as determined by the savings and mortgage lending commissioner.

SECTION 9. This Act takes effect September 1, 2017.

SECTION 4. Same as introduced version.