

BILL ANALYSIS

S.B. 1994
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Investments & Financial Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that a lack of appropriate oversight allows certain lenders to take advantage of consumers who are trying to purchase residential real estate. S.B. 1994 seeks to provide for this oversight.

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 rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 3 of this bill.

ANALYSIS

S.B. 1994 amends the Finance Code to establish, for purposes of determining the eligibility of an owner of residential real estate who makes residential mortgage loans for an exemption from the Residential Mortgage Loan Company Licensing and Registration Act, the eligibility of employees of such owners when acting for the benefit of those owners for an exemption from the provisions of the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act applicable to residential mortgage loan originators, and the eligibility of an owner of residential real estate or a dwelling who makes residential mortgage loans for an exemption from the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009, that 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 relevant 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.

S.B. 1994 prohibits a person from originating or making a wrap mortgage loan, as defined by the bill, unless the person is licensed to originate or make residential mortgage loans under the Residential Mortgage Loan Company Licensing and Registration Act or the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act or is exempt from licensing as provided under the applicable provisions of those acts. The bill establishes that the requirement to hold such a license applies to a person originating or making a wrap mortgage loan regardless of whether the person engages in a specific activity for which a license is required under those acts in connection with the originating or making of the loan.

S.B. 1994 requires a wrap lender not otherwise required to provide a written disclosure statement to the wrap borrower under Property Code provisions relating to the conveyance of residential property encumbered by a lien to provide to the wrap borrower, on or before the seventh day before the wrap mortgage loan agreement is entered into, a separate written disclosure statement

in at least 12-point type that contains the information required for a written disclosure statement under such Property Code provisions. The bill sets out certain requirements for the wrap lender's disclosure statement to the wrap borrower that apply regardless of whether the statement is provided under the bill's provisions or under such Property Code provisions. The bill establishes that, if a wrap lender fails to provide a compliant disclosure statement, the limitations period applicable to any cause of action of the wrap borrower against the wrap lender arising out of the wrap lender's violation of a state law in connection with the wrap mortgage loan transaction is tolled until the 120th day after the date the required disclosure statement is provided.

S.B. 1994 voids a lien securing a wrap mortgage loan unless the residential real estate was conveyed to the purchaser with the written consent of each holder of an applicable unreleased lien, a copy of each lienholder's written consent is attached to the recorded instrument conveying the residential real estate, the wrap mortgage loan and the conveyance of the residential real estate securing the loan are closed by an attorney or a title company, and an affidavit of a person knowledgeable of the facts regarding the closing location that confirms the closing location is attached to the recorded instrument conveying the residential real estate.

S.B. 1994 authorizes a wrap borrower to bring an action to obtain declaratory or injunctive relief to enforce the bill's provisions relating to wrap mortgage loan transaction requirements, to recover any actual damages suffered by the wrap borrower as a result of a violation of such provisions, or to obtain other remedies available in an action under the Deceptive Trade Practices-Consumer Protection Act as otherwise authorized. The bill authorizes a wrap borrower who prevails in such an action to recover court costs and reasonable attorney's fees. The bill voids any purported waiver of a right of a wrap borrower under such bill provisions or purported exemption of a person from liability for a violation of such bill provisions. The bill prohibits a person who is a party to a residential real estate transaction from evading the application of such bill provisions by any device, subterfuge, or pretense and establishes that any attempt to do so is void and a deceptive trade practice under the Deceptive Trade Practices-Consumer Protection Act and is actionable under the act. The bill authorizes the Finance Commission of Texas to adopt and enforce rules necessary for the intent of or to ensure compliance with such bill provisions.

S.B. 1994 establishes that a person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan holds the money in trust for the benefit of the borrower and that a person who collects or receives a payment from a wrap borrower under the terms of or in connection with a wrap mortgage loan owes a fiduciary duty to the wrap borrower to use the payment to satisfy any of the wrap lender's obligations affecting the residential real estate for which the wrap lender is responsible.

S.B. 1994 authorizes a wrap borrower, without taking judicial action, to deduct from any amount owed to the wrap lender under the terms of a wrap mortgage loan for a purchase of residential real estate to be used as the wrap borrower's residence the amount of any payment made by the wrap borrower to an obligee of a debt incurred by a person other than the wrap borrower that was not paid off at the time the loan was made to cure a default by the wrap lender caused by the lender's failure to make payments for which the lender is responsible under the terms of the wrap mortgage loan or any other amount for which the wrap lender is liable to the wrap borrower under the terms of the wrap mortgage loan. Such authorization does not apply to a wrap mortgage loan for a sale of residential real estate that is the wrap lender's homestead.

S.B. 1994 authorizes the savings and mortgage lending commissioner to conduct an inspection of a wrap lender registered as a residential mortgage loan servicer under the Residential Mortgage Loan Servicer Registration Act as the commissioner determines necessary to determine whether the wrap lender is complying with the act and applicable rules. The bill authorizes the inspection to include an inspection of the books, records, documents, operations, and facilities of the wrap lender. The bill authorizes the commissioner to share evidence of criminal activity gathered during an inspection or investigation with any state or federal law

enforcement agency. The bill authorizes the commissioner at any time, for reasonable cause, to investigate such a registered wrap lender to determine whether the lender is complying with the act and applicable rules and authorizes the commissioner to conduct an undercover or covert investigation only if the commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of the act. The bill requires the finance commission by rule to provide guidelines to govern such an inspection or investigation, including rules to determine the information and records of the wrap lender to which the commissioner may demand access during an inspection or investigation and to establish what constitutes reasonable cause for an investigation.

S.B. 1994 makes information obtained by the commissioner during an inspection or investigation conducted under the bill's provisions confidential unless disclosure of the information is permitted or required by other law. The bill authorizes the commissioner to share information gathered during such an investigation with a state or federal agency and authorizes the commissioner to share information gathered during an inspection with such an agency only if the commissioner determines there is a valid reason for the sharing. The bill authorizes the commissioner to require reimbursement of expenses for each examiner for an on-site examination or inspection of an applicable registered wrap lender if records are located out of state and are not made available for examination or inspection by the examiner in Texas and requires the finance commission by rule to set the maximum amount for such reimbursement.

S.B. 1994 authorizes the commissioner, during an investigation conducted under the bill's provisions, to issue a subpoena that is addressed to a peace officer of the state or other person authorized by law to serve citation or perfect service and authorizes the subpoena to require a person to give a deposition, produce documents, or both. The bill authorizes the commissioner, if a person disobeys a subpoena or if a person appearing in a deposition in connection with the investigation refuses to testify, to petition a district court in Travis County to issue an order requiring the person to obey the subpoena, testify, or produce documents relating to the matter. The bill requires the court to promptly set an application to enforce such a subpoena for hearing and to cause notice of the application and the hearing to be served on the person to whom the subpoena is directed.

S.B. 1994 authorizes the commissioner, if the commissioner has reasonable cause to believe that a wrap lender or wrap mortgage loan originator to whom the bill's provisions relating to wrap mortgage loan financing apply has violated or is about to violate those provisions, to issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with those provisions. The bill requires such an order to contain a reasonably detailed statement of the facts on which the order is made and requires the commissioner, if a person against whom the order is made requests a hearing, to set and give notice of a hearing before the commissioner or a hearings officer. The bill requires the hearing to be governed by the Administrative Procedure Act and authorizes the commissioner by order, based on the findings of fact, conclusions of law, and recommendations of the hearings officer, to find a violation has occurred or not occurred. If such a hearing is not requested not later than the 30th day after the date on which an order is made, the order is considered final and not appealable. The bill authorizes the commissioner, after giving notice and an opportunity for hearing, to impose against a person who violates such a cease and desist order an administrative penalty capped at \$1,000 for each day of the violation. The bill authorizes the commissioner, in addition to any other remedy provided by law, to institute in district court a suit for injunctive relief and to collect the administrative penalty. The bill establishes that a bond is not required of the commissioner with respect to injunctive relief granted under these provisions.

S.B. 1994 establishes that its provisions relating to wrap mortgage loan financing do not apply to a wrap mortgage loan made by or on behalf of an owner of residential real estate on which a dwelling has not been constructed to a purchaser of that residential real estate under certain conditions. The bill exempts the following persons from the application of such provisions: a

federally insured bank, savings bank, savings and loan association, Farm Credit System Institution, or credit union; a subsidiary of such an entity; an authorized lender licensed under statutory provisions governing consumer loans; the state, an instrumentality of the state, or an employee of such an entity who is acting within the scope of the person's employment; and an owner of residential real estate under certain conditions.

EFFECTIVE DATE

September 1, 2017.