

SUBJECT: Licensing of mortgage brokers and loan officers

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 7 ayes — Averitt, Solomons, Denny, Ehrhardt, Elkins, Pitts, Juan Solis

0 nays

2 absent — Grusendorf, Marchant

SENATE VOTE: On final passage, April 16 — voice vote

WITNESSES: For — Gary Akright; Dennis Schwartz, Texas Association of Mortgage Brokers; Ron Walker, Texas Association of Realtors

Against — Jeff Huffman, Texas Credit Union League; Robert Power, Texas Financial Services Association

On — Bo Gilbert, Independent Insurance Agents of Texas; Karen M. Neeley, Independent Bankers Association of Texas; Jim Pledger, Texas Savings and Loan Department

DIGEST: CSSB 1074 would amend the Finance Code to establish licensing requirements for mortgage brokers, create a mortgage broker advisory committee, and provide fines and penalties.

Mortgage broker and loan officer licenses. CSSB 1074 would prohibit a person from acting in the capacity of, engaging in the business of, or advertising as a mortgage broker without a license, unless exempted by law. The bill would prohibit a person from acting as a loan officer unless the person currently was sponsored by a mortgage broker and acting on that person's behalf, unless exempted by law.

The bill would exempt the following people and entities from licensing requirements:

- banks, savings banks, savings and loan associations, and their affiliates;
- a state or federal credit union;

- an insurance company licensed or authorized to do business in Texas;
- a mortgage banker;
- a nonprofit 501(c)(3) organization;
- employees of the above listed entities, provided they were acting for the benefit of their employer;
- individuals making mortgage loans out of their own funds to a spouse, former spouse, parent, or their children;
- owners of real property making mortgage loans to purchasers of the property; and
- people making occasional mortgage loans out of their own funds who are not licensed by the state to make certain cash advance loans.

Applications for a mortgage broker license would have to be accompanied by a nonrefundable application fee not to exceed \$375, plus an additional fee for the mortgage broker recovery fund (see below). Applications for a loan officer license would have to be accompanied by a nonrefundable application fee not to exceed \$175, plus an additional fee for the recovery fund. Applicants would have to meet education, experience, and financial requirements to obtain a license. The savings and loan commissioner would have to conduct a criminal background check.

Licenses would be valid for two years. They could be renewed on or before the expiration date if the broker or loan officer had not been convicted of a felony directly related to mortgage brokering, had attended 15 hours of continuing education courses, and had paid the proper fee. Renewal fees could not exceed \$375 for mortgage broker licenses and could not exceed \$175 for loan officer licenses, plus an additional fee for the recovery fund. The bill would waive the continuing education requirements for actively licensed real estate brokers, real estate salespeople, and attorneys.

CSSB 1074 would establish a mortgage broker recovery fund to reimburse people to whom a court had awarded actual damages because of certain acts committed by a licensee. The bill would require that all applicants for an original license or a renewal would have to pay a \$20 fee to be deposited in the fund. The bill would establish procedures by which an aggrieved person could seek payment from the fund.

Mortgage brokers would have to display their licenses prominently at their places of business. Mortgage brokers maintaining more than one place of

business would have to obtain additional license certificates and pay a \$50 fee for each branch office. Licensed loan officers would have to display their licenses prominently at the sponsoring mortgage broker's office. A nonrefundable \$25 fee would be required to change the address of a license or to change the sponsorship of a loan officer licensee.

License suspension and revocation. CSSB 1074 would authorize the savings and loan commissioner to investigate complaints against license holders and to order disciplinary action, including suspension and revocation of a license, against a licensee if the commissioner concluded, after a hearing, that the licensee had:

- obtained the license by a fraudulent application;
- published misleading advertising;
- engaged in improper, fraudulent, or dishonest dealings;
- been convicted of fraud;
- failed to use an advance fee for the purpose for which it was paid or received a fee for assisting a mortgage applicant before performing all services for the applicant;
- failed to honor a check issued to the commissioner;
- compensated unlicensed people to act in a capacity requiring a license;
- induced a party to breach a contract or conspired with a person to circumvent the law;
- published an unjustified threat of legal proceedings;
- acted in the dual capacity of mortgage broker (or loan officer) and real estate broker or attorney without the written consent of the applicant;
- discriminated against a prospective borrower;
- refused to cooperate with the commissioner or a representative during an inspection or investigation; or
- otherwise disregarded or violated the law or a rule issued by the commissioner.

The commissioner could impose an administrative penalty not to exceed \$2,500 per day based on the seriousness of the violation, history of previous violations, and an interest in deterring and correcting the violation. The commissioner could issue a cease-and-desist order without notice or hearing if the commissioner had reasonable cause to believe that a licensee had violated the law or was about to violate it. If a licensee violated a cease-and-

desist order, the commissioner could impose an additional administrative penalty not to exceed \$1,000 per day.

The bill would entitle applicants or licensees whose applications or licenses had been denied, revoked, or suspended to a hearing before the commissioner or before a hearings officer employed by the commissioner. The commissioner or hearings officer could issue subpoenas. An individual aggrieved by a ruling, order, or decision of the commissioner would have the right to appeal to district court.

Responsibilities of mortgage brokers. CSSB 1074 would require a mortgage broker to provide a mortgage applicant a disclosure of the nature of the relationship between the applicant and the broker, the duties of the broker, and the means by which the broker would be compensated. The commissioner would have to promulgate a standard disclosure form by rule.

A mortgage broker could not charge or receive a fee before performing all agreed-upon services, except for certain allowable advances. These advance fees would include fees for obtaining a credit report and appraisal of real estate, processing an application, issuing a loan commitment, and paying for automated underwriting, courier services, and, in some cases, to lock in an interest rate. The mortgage broker and loan officer would be considered to have completed their duties once the mortgage proceeds were disbursed to, or on behalf of, the mortgage applicant. They would owe no additional services or obligations to the applicant with respect to the mortgage loan.

The bill would place mortgage brokers and loan officers licensed by the commissioner under procedures to suspend a state-issued license because of failure to pay child support or to comply with a subpoena.

Unlicensed activity and penalties. A person who was not exempt from licensing requirements and who acted as a mortgage broker or loan officer without a license would commit a Class B misdemeanor, punishable by up to 180 days in jail and/or a maximum fine of \$2,000. A second or subsequent conviction for such an offense would be a Class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000. A person who received compensation for unlicensed activities would be liable for damages between one and three times the amount of the compensation received.

Administration. CSSB 1074 would authorize the savings and loan commissioner to adopt and enforce rules necessary to implement and ensure compliance with the act, including rules to prohibit deceptive practices and to require certain records to be kept by licensees. The commission could direct the commissioner to adopt, repeal, or amend any rule or action undertaken to regulate mortgage brokers. The commissioner could institute an action to enjoin a violation of this act.

The bill would create a mortgage broker advisory committee to advise and assist the commissioner. The committee would have advisory capability with respect to rulemaking, forms and applications, implementation, and enforcement aspects of the commissioner's authority to regulate mortgage brokers. The commissioner would have to consult with the advisory committee when proposing these rules.

The committee would have to include six members. Four members appointed by the commissioner would have to be licensed mortgage brokers. Two members appointed by the Texas Real Estate Commission would have to be licensed real estate brokers or salespersons. The appointees would serve staggered three-year terms.

Effective dates. This bill would take effect September 1, 1999. A mortgage broker or loan officer would not have to have a license until January 1, 2000.

SUPPORTERS
SAY:

CSSB 1074 would eliminate a large loophole in the law that allows any person, regardless of background or knowledge, to engage in the business of a mortgage broker. Unscrupulous brokers have taken advantage of many consumers because of a lack of regulation and licensing. Nearly every other state requires mortgage brokers to obtain a state license. Mortgage brokers initiate about half of all home mortgage loans closed in America.

Licensing requirements would assure consumers that mortgage brokers are competent, experienced, and law-abiding individuals. Consumers would know immediately whether people advertising their services as mortgage brokers were licensed because the bill would require the license to be displayed prominently. Mortgage brokers would have to provide written disclosure, in a form approved by the commissioner, detailing the broker's relationship to the mortgage applicant, duties, and the manner by which the broker would be compensated.

The requirements of CSSB 1074 would not inhibit legitimate businesses and mortgage brokers engaged in legal commerce. Legitimate mortgage brokers favor, and have requested, these requirements because they would help stop dishonest practitioners in their midst.

The savings and loan commissioner is the most appropriate official to implement and enforce the bill's provisions. The regulation of mortgage brokers would be a natural extension of the commissioner's responsibilities to regulate savings and loan associations, the portfolios of which are predominantly mortgage loans.

The proposed exemptions of commercial financial institutions, insurance agents, and others would be appropriate because these individuals are regulated and licensed by other state agencies and commissions. Amendments to the bill incorporated in the committee substitute added certain exemptions to assuage the concerns of representatives of the banking, real estate, and insurance industries.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The committee substitute would clarify that entities themselves — banks, savings and loans, insurance companies, etc. — as well as their employees would be exempt from licensing requirements. The substitute added exemptions for 501(c)(3) organizations and for individual investors who occasionally make loans but are not in the business of loan-making. The substitute also added provisions that would allow continuing education courses required for other licenses to be applied toward mortgage brokers' and loan officers' license renewal requirements.