

- SUBJECT:** Requiring use of standard forms by mortgage brokers
- COMMITTEE:** Financial Institutions — committee substitute recommended
- VOTE:** 8 ayes — Averitt, Solomons, Denny, Grusendorf, Hopson, Marchant, Menendez, and Wise
- 0 nays
- 1 absent — Pitts
- WITNESSES:** For — Russ Chase and Jim Pair, Texas Association of Mortgage Brokers; Dennis Patillo, Texas Association of Realtors; *Registered but did not testify:* Bill Stinson, Texas Association of Realtors
- Against — None
- On — Jim Pledger, Texas Savings and Loan Department; Larry Temple, Texas Mortgage Bankers Association
- BACKGROUND:** The Mortgage Broker Licensing Act, administered by the Texas Savings and Loan Department, sets out the requirements, including licensing, for doing business as a mortgage broker or loan officer in Texas. The act allows the department to investigate licensees only if the commissioner has reasonable cause to do so based on a signed written complaint.
- DIGEST:** CSHB 1493 would require the savings and loan commissioner to adopt one or more forms for mortgage brokers to use in notifying potential borrowers that they were pre-approved or prequalified for a loan. The commissioner also would have to adopt rules requiring mortgage brokers to use the forms that the commissioner created.
- The commissioner would have to order a criminal history check by the Federal Bureau of Investigation on all applicants for a mortgage broker license and would have to issue a provisional license in the event that the background check was not received within 60 days. If the background check was not received within 180 days and the applicant otherwise was eligible,

the commissioner would have to issue a license. The commissioner would have to adopt rules to administer these provisions.

CSHB 1493 would require licensed mortgage brokers to submit annual reports to the department. The report would have to include data on loan origination in Texas for the broker and each loan officer sponsored by the broker, plus any other information the commissioner required. Trade information contained in such reports would be confidential, and the department could not disclose it.

The bill would modify the commissioner's investigative authority to allow an investigation if the commissioner decided one was necessary to determine whether the licensee had complied with the Finance Code and Finance Commission rules. The commissioner could inspect any books, documents, records, operations, or facilities of a licensee. Information obtained in an inspection or investigation would be confidential, except where law allowed or required sharing or where information about criminal activity was shared with law enforcement.

The bill would take effect September 1, 2001. The commissioner would have to adopt the standard forms and related rules by January 1, 2002.

**SUPPORTERS
SAY:**

By requiring mortgage brokers and their loan officers to use standardized forms, CSHB 1493 would protect home buyers and sellers and the mortgage brokers themselves.

Currently, Texas' 10,000+ mortgage brokers and loan officers all use their own forms to communicate with potential borrowers as to whether they qualify for loans, for how much, and whether the mortgage broker is obligated to lend a particular amount on particular terms. As a result, misunderstandings often occur as to whether the mortgage broker has committed to lend the money or simply is indicating that, if the borrower's application is accurate and the credit report is good, the broker could lend a particular amount. Such misunderstandings can cause home buyers to misrepresent to sellers the status of their loan applications. CSHB 1493 would remedy these problems by requiring standardized forms, the meaning of which would be clear to everyone involved.

Standardized forms also would simplify investigations of mortgage brokers by the Savings and Loan Department. The department often checks whether a broker's or loan officer's commitment letters are drafted properly. Requiring standardized language in those letters would expedite that process.

The bill also would give the Savings and Loan Department needed authority to take the initiative to investigate mortgage brokers when the commissioner believes there is a problem. The department now can investigate only in response to a complaint. However, the bill would balance the interests of mortgage brokers and the public by specifying the kinds of documents and records to which the commissioner could have access and by not authorizing routine inspections, but only those that the commissioner determined were necessary. To further the discovery of problems with licensees, the bill would require mortgage brokers to file annual reports with the commissioner.

Finally, the bill would make FBI background checks mandatory instead of optional. Because of its backlog of requests, the FBI will perform the checks only for state agencies that require them.

OPPONENTS
SAY:

CSHB 1493 would not specifically require standardized forms for commitment letters, communications in which a mortgage broker promises that one of its lenders will make the consumer a loan on specified terms. The bill should require such communications to be standardized to protect all parties to the transactions.

NOTES:

All provisions of CSHB 1493 except the requirement that the commissioner create forms for and require their use by mortgage brokers are substantially the same as provisions in the Savings and Loan Department's sunset bill, HB 1636 by McCall, et al., which passed the House on April 18 by nonrecord vote and has been referred to the Senate Business and Commerce Committee.

The committee substitute deleted changes that the original bill would have made to the Finance Code definition of an "affiliate" and provisions for inspecting affiliates of a mortgage broker. The substitute also altered the

original to eliminate a provision allowing the commissioner to conduct “routine” inspections of mortgage brokers.