HOUSE RESEARCH ORGANIZATION bill analysis | 4/27/2009 | HB 2779 Truitt (CSHB 2779 by Anderson)

SUBJECT: Revising mortgage banker licensing and regulation for SAFE Act rules

COMMITTEE: Pensions, Investments and Financial Services — committee substitute recommended

VOTE: 6 ayes — Truitt, Anderson, Hernandez, Hopson, Parker, Veasey

0 nays

3 absent — Anchia, Flynn, Woolley

WITNESSES: For — Larry Temple, Texas Mortgage Bankers Association; (*Registered, but did not testify:* Everett Ives, Texas Association of Mortgage Brokers)

Against — None

On — (*Registered, but did not testify:* Jane Black, Sandy Weller, Texas Department of Savings and Mortgage Lending)

BACKGROUND: The 78th Legislature in 2003 enacted SB 252 by Staples, which established the Mortgage Banker Registration Act. Currently, mortgage bankers in Texas are required to register certain information with the Texas Department of Savings and Mortgage Lending (DSML) but are not required to be state-licensed, as they are regulated at the federal level by Fannie Mae, Freddie Mac, Ginnie Mae, and the Department of Housing and Urban Development.

The federal Housing and Economic Recovery Act of 2008 is designed to assist with the recovery and revitalization of the nation's residential housing market. The act includes the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), which seeks to enhance consumer protection and reduce fraud by encouraging states to establish minimum standards for the licensing and registration of state-licensed mortgage loan originators.

Under the SAFE Act, all originators of residential mortgage loans must annually maintain a license and registration as a state-licensed residential loan originator and be enrolled in the National Mortgage Licensing System and Registry, a nationwide licensing and supervisory database providing uniform license applications and reporting requirements for residential mortgage loan originators.

Texas must meet the requirements in the SAFE Act by July 31, 2010, to prevent the U.S. Department of Housing and Urban Development from implementing and administering its own mortgage licensing system.

Finance Code, ch. 157 contains provisions for registering mortgage banks with DSML.

DIGEST:

CSHB 2779 would amend Finance Code, ch. 157 to require employees of mortgage bankers who are residential mortgage loan originators to be licensed and enrolled in the Nationwide Mortgage Licensing System and Registry (NMLSR). The bill also would amend Finance Code, sec. 341.103 to allow the savings and mortgage lending commissioner to enforce the regulation of mortgage banker residential mortgage loan originators. The bill includes provisions for application and renewal of a license, enforcement and disciplinary authority of the Department of Savings and Mortgage Loans (DSML), and rights of a mortgage banker residential mortgage loan originator.

To enable Texas to participate in NMLSR, comply with the Texas Secure and Fair Enforcement for Mortgage Licensing Act, and ensure mortgage banker employees enroll with the NMLSR, the Finance Commission could waive or modify, in part or whole, any requirement related to mortgage bankers.

License requirement. An employee of a mortgage banker originating residential mortgage loans would be required to be annually licensed with DSML, be enrolled with NMLSR, and comply with and meet other applicable requirements and qualifications. The issued license would have a unique identifier issued by the NMLSR.

The net worth of a mortgage banker would constitute the net worth requirement for their licensed residential mortgage loan originator employee in lieu of the surety bond or recovery fund fee that would otherwise be required.

License application. An application for a residential mortgage loan originator license would have to be in writing, under oath, in the form prescribed by DSML, and accompanied by a non-refundable and nontransferrable application fee of no more than $500, as determined by DSML.

License renewal. A residential mortgage loan originator license would be valid for one year and could be renewed on or before its expiration date of December 31 of each year. A renewal license application would be issued by DSML if the application met the established requirements.

DSML would issue a notice to license holders 60 days before their license would expire. A person whose residential mortgage loan originator license had expired could not engage in mortgage origination activities until the license is renewed.

Renewal applicants who did not renew before the deadline but were otherwise eligible to renew a license could renew their license by paying DSML a reinstatement fee of 150 percent of the required renewal fee, if done before March 1. A license holder who had let a license expire and did not renew before March 1 would be required to obtain a new license.

Denial of a license. DSML could deny a renewal application on the same grounds under which it would have been originally denied. DSML could reject a renewal application if the applicant:

- was in violation of any related law, rule, or issued order;
- was in default in the payment of an administrative penalty, fee, or charge owed associated with a residential mortgage loan originator license;
- was in default on a student loan administered by the Texas Guaranteed Student Loan Corporation; or,
- would not have been granted a current license if certain information had been available at the time the license was granted.

DSML would provide prompt written notice to an applicant if denied. The bill includes provisions for an applicant to appeal a determination by DSML. An applicant whose license application had been denied would not be eligible to be licensed for two years after the denial became final, unless DSML shortened the period based on specific circumstances of the application.

Call report requirements. Each mortgage banker would have to file with DSML an annual call report — a statement of condition and operations including financial statement and production activity volumes. Information contained in the call report related to the residential mortgage loan origination volume or other trade information would be confidential and could not be disclosed by DSML.

Completion of origination services. Once mortgage proceeds to or on behalf of the residential mortgage loan applicant have been disbursed, the residential mortgage loan originator who assisted the applicant in obtaining the loan would have completed his or her service as a loan originator and would not have any additional duties or obligations to the applicant with respect to the loan. This would not limit or preclude liability of a residential mortgage loan originator for failing to comply with a law or rule related to residential mortgage loan origination, any other state or federal law, or a duty related to an agreement with a residential mortgage loan applicant.

Inspection and investigation authority. The bill outlines provisions for DSML inspection or investigation of licensed residential mortgage loan originators and their related actions and records as well as provisions for the issuance and enforcement of a subpoena for a deposition and/or documents. The Finance Commission by rule would promulgate guidelines to govern an inspection or investigation, including rules to determine what information and records of a license holder DSML could demand during an inspection or an investigation and what would constitute reasonable cause for an investigation.

Information obtained by DSML during an inspection or investigation would be confidential unless disclosure was permitted or required by law. DSML could share information gathered during the investigation or inspection with any state or federal agency only with valid reason for doing so.

Administrative penalty and disciplinary actions. DSML could, after providing notice and opportunity for a hearing, impose an administrative penalty on a licensed residential mortgage loan originator who violated related law, rule, or order. A penalty, not exceeding $2,500, could be assessed for each violation and for each day a violation continued. The penalty amount would be based on:

- the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

- history of previous violations;
- amount necessary to deter a future violation;
- efforts to correct the violation; and
- other matters that may require justice.

The bill would provide for an administrative penalty, which could be appealed under existing administrative procedure provisions in the Government Code.

The bill also would authorize DSML to order disciplinary action against a residential mortgage loan originator license holder if, after notice and opportunity for a hearing, it determined that the license holder violated certain provisions, including that the person:

- obtained a license by fraudulent means or made a material misrepresentation in a license application;
- while originating residential mortgage loans, engaged in improper, fraudulent, or dishonest conduct; or,
- entered a no-contest plea to or was convicted of a criminal offense that was a felony or involved fraud or moral turpitude in a state or federal court.

DSML could issue a cease and desist order, without notice and hearing, if it had reasonable cause to believe that a licensed residential mortgage loan originator had violated or would soon violate the law. The bill would provide for how the order would be administered by DSML.

The bill contains provisions for enforcement of administrative penalty or disciplinary action, including how and when a license could be revoked. The bill also contains provisions on appealing a penalty or disciplinary action, including outlining a process for appeals, hearings, and judicial review.

A residential mortgage loan applicant injured by a residential mortgage loan originator license holder violating the law could bring an action for recovery of actual damages and reasonable attorney's fees and court costs.

Unlicensed activity. A person acting as a residential mortgage loan originator without a required license who was not otherwise exempted would commit a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) on the first conviction. A second or subsequent conviction for an offense would be a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

Other provisions. Mortgage bankers would file with DSML, in addition to existing requirements, a list of employees of the mortgage banker who were residential mortgage loan originators, which would have to be promptly updated when a change occurred.

A licensed residential mortgage loan originator would have to notify DSML of name or address changes within 10 days of the change.

DSML could issue probationary and provisional licenses through rules established by the Finance Commission.

The bill would change references from mortgage loan to residential mortgage loan and add definitions of residential loan originators and disciplinary action.

A residential mortgage loan originator would not have to comply with the licensing requirements until July 31, 2010, or a subsequent date approved by the Secretary of the U.S. Department of Housing and Urban Development, whichever was later.

The bill would take effect on April 1, 2010, only if HB 10 by Solomons, regulation of residential mortgage loan originators, also was enacted and became law.

SUPPORTERS SAY:

Under the federal SAFE Act, all residential mortgage loan originators are required to be state-licensed and enrolled in the National Mortgage Licensing System and Registry. CSHB 2779 simply would provide the regulatory structure for the Texas Department of Savings and Mortgage Lending (DSML) to administer these new federal requirements for residential mortgage loan originators who are employees of a mortgage banker. The minimum requirements in the SAFE Act must be met by July 31, 2010, to keep the U.S. Department of Housing and Urban Development from implementing and administering a mortgage licensing system for the state. The bill also would enact necessary provisions, patterned after existing provisions in the Texas Mortgage Broker License Act, for DSML to exercise its enforcement and disciplinary authority over mortgage bank employees who are residential mortgage loan originators and would outline the rights of license holders.

OPPONENTS SAY:

CSHB 2779 would be strengthened by codifying in statute additional minimum requirements of the federal SAFE Act, such as education and financial requirements, for the licensing and registration of residential mortgage loan originators. This would provide long-term clarity and eliminate possible subjective interpretation in the future.

NOTES:

CSHB 2779, along with HB 2774 by Truitt, concerning regulation of mortgage brokers, are companions to HB 10 by Solomons, which would enact federal requirements under the SAFE Act. HB 10 is on today's Major State Calendar, and HB 2774 was postponed from Thursday's General State Calendar until today.

The committee substitute added the definition for residential mortgage loan origination and removed the definition for loan processor or underwriter. It added that a mortgage banker would promptly update any changes in the list of employees who were residential mortgage loan originators in the statement filed with DSML, rather than the banker continuously updating the statement. Additionally, the committee substitute added the provision regarding when an individual would comply with the license requirements and the contingent provision that the bill would not be enacted unless HB 10 also was enacted and became law.

The companion bill, SB 2142 by Wentworth, has been referred to the Senate Business and Commerce Committee.