

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1074  
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Economic Development  
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### **DIGEST**

Currently, a mortgage broker and a loan officer may operate in the state without licensing. S.B. 1074 would require licensing by the Texas Real Estate Commission of mortgage brokers and loan officers, provide fines and penalties, and create the Texas Mortgage Broker Committee as an advisory committee to the commission.

### **PURPOSE**

As proposed, S.B. 1074 requires licensing by the Texas Real Estate Commission of mortgage brokers and loan officers, provides fines and penalties, and creates the Texas Mortgage Broker Committee as an advisory committee to the commission.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Real Estate Commission under SECTION 1 (Sections 8(b), 10, and 17(f), Article 6573d, Title 113A, V.T.C.S. (Mortgage Broker License Act)) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 113A, V.T.C.S., by adding Article 6573d, as follows:

#### Art. 6573d. MORTGAGE BROKERS

Sec. 1. GENERAL PROVISIONS. Authorizes citation as the Mortgage Broker License Act. Prohibits an individual from acting as a mortgage broker without first obtaining a mortgage broker license. Prohibits an individual from acting as a loan officer unless that individual is a licensed mortgage broker. Makes each mortgage broker responsible to the Texas Real Estate Commission (commission) and members of the public for all acts and conduct performed by the broker or loan officer associated with the broker.

Sec. 2. DEFINITIONS. Defines "commission," "disciplinary action," "loan officer," "mortgage applicant," "mortgage banker," "mortgage broker," "mortgage loan," and "person."

Sec. 3. EXEMPTIONS. Sets forth persons to whom this article does not apply.

Sec. 4. APPLICATION FOR A LICENSE. Requires applications to be in writing, under oath, on a prescribed form, accompanied by a \$130 fee and a recovery fee for a mortgage broker license and an \$80 fee and recovery fee for a loan officer license. Provides that application fees are not refundable. Requires the commission to conduct a criminal background check on the applicant. Requires the commission to obtain a criminal history record from the Texas Department of Public Safety and the Federal Bureau of Investigation. Authorizes the commission to obtain a criminal history record from certain other sources. Provides that the information is confidential information, unless the information is public information, and the commission may not release the information.

Sec. 5. QUALIFICATIONS. Requires a person to meet certain qualifications to be eligible to be licensed as a mortgage broker. Authorizes the broker to conduct business as a corporation or other business entity. Requires the broker to notify the commission of any change in name under which the broker conducts activities. Requires a person to meet certain qualifications to be eligible to be licensed as a loan officer.

Sec. 6. FINANCIAL REQUIREMENTS FOR A MORTGAGE BROKER. Requires the broker to maintain a certain amount of net assets or surety bonds. Requires the bond term to coincide with the term of the current license period. Requires the commission to require proof of compliance with this section at time of the application. Defines “net assets.”

Sec. 7. MORTGAGE BROKER RECOVERY FUND. Creates the mortgage broker recovery fund (fund) as a trust fund outside the state treasury held by the Texas Treasury Safekeeping Trust Company and administered by the commission. Requires the fund to be used as provided by this section to benefit aggrieved individuals who suffer actual damages by acts committed by a person who was a licensed broker or officer, but only if the recovery was ordered by a court against the broker or officer. Limits the use of the fund to violations of certain sections in this article. Requires the applicant to pay a renewal fee of \$20. Requires the renewal fee to be credited to the recovery fund. Requires an additional fee of \$10 to be paid , if the recovery fund is less than \$1 million on December 31, 2011. Requires the additional fee to be deposited in the recovery fund, to bring the fund to \$1.7 million. Requires a balance in the recovery fund in excess of \$3.5 million or the total amount of claims paid from the fund during the preceding four years, whichever is greater, to be transferred to the general revenue fund. Requires an action laying a claim to the recovery fund in a judgment to begin by a certain date. Authorizes an aggrieved person to file a verified claim in a court granting a judgment and to apply to the court for an order directing payment from the recovery fund. Requires the court to proceed on the application. Requires the aggrieved person to show certain facts and meet other criteria. Requires a recovery on the judgment to be applied by the creditor first to actual damages. Requires the court to order the commission to pay from the recovery fund, if the court is satisfied the required criteria were met. Authorizes the commission to conduct certain litigation again. Requires the court to reduce proportionately an amount that exceeds the limitations. Authorizes the license of a broker or officer to be revoked by the commissioner on proof that a payment was made from the recovery fund to satisfy a judgment against the licensee. Authorizes the commission to probate an order revoking a license. Provides that no person whose account payment was made from the fund is eligible to receive a new license under this article, until the amount is repaid in full plus other costs. Requires the amount received by the commission to be held in trust for carrying out the purposes of the recovery fund. Authorizes the fund to be invested and reinvested as the Employees Retirement System of Texas is invested, except that no investment may be made that will impair liquidity for a judgment under this section. Requires interest from the fund to be credited to the recovery fund. Authorizes the commission to notify the attorney general of the commission’s desire to take certain action regarding litigation. Requires such action to be only to protect the recovery fund from spurious or unjust claims or to ensure compliance with the requirement for recovery. Makes the commission subrogated to all rights of the judgment creditor to the extent of the paid amount. Requires the creditor to assign certain claim to the judgment to the amount paid by the commission, and that amount has priority for repayment from any subsequent recovery. Requires any amount and interest recovered by the commission to be deposited to the recovery fund. Establishes that failure of an aggrieved person to comply with this section constitutes a waiver of any rights under this section. Sets forth which court orders and claims that may be paid from the recovery fund. Provides that this section does not limit the commission’s authority to take disciplinary action against the broker or officer for violation of this article or a rule of the commission. Provides that repayment by the broker or office does not nullify or modify the effect of any other disciplinary proceeding under this article. Entitles a person who receives payment out of the recovery fund to reasonable attorney’s fees, subject to limitations.

Sec. 8. ISSUANCE OF LICENSE CERTIFICATE. Requires the commission to issue a broker license and officer license to an applicant who has all requirements for application. Authorizes the commission to adopt rules to issue a provisional license to an applicant for certain reasons. Authorizes the commission to revoke a provisional license.

Sec. 9. RENEWALS. Provides that the broker license and the officer license are valid for two-years and may be renewed if certain conditions are met. Authorizes the commission to require brokers and officers to submit requests for renewals on a prescribed form. Authorizes the commission to conduct a background check under Section 4(d) for a license renewal. Provides that a renewal fee is not refundable.

Sec. 10. DENIAL OF APPLICATIONS AND RENEWALS. Requires the commission to promptly give written notice of a refusal to the applicant for the license or the renewing applicant.

Requires the applicant to file an appeal from the ruling and request a time and place for hearing, before the applicant may appeal to a district court. Requires the commission to set certain logistics for the hearing. Authorizes a continuance with the consent of the applicant. Requires the commission to enter an order following the hearing. Makes the commission's ruling final if the applicant does not appeal for a hearing by a certain date. Authorizes the commission to issue a probationary license. Requires the commission to adopt, by rule, terms and conditions for a probationary license.

Sec. 11. CHANGE OF ADDRESS; CHANGE OF ASSOCIATION. Requires a mortgage broker to notify the commission of a new address in writing accompanied with a \$25 fee. Requires the broker to obtain a new license certificate before conducting business at the new location. Authorizes a loan officer to act for an associated mortgage broker. Requires the officer and the broker to notify the commission that the association is terminated, and the broker shall return the officer's license. Makes the officer license inactive. Authorizes the license to be reactivated if a broker files a request with a \$25 fee notifying the commission of the new association, prior to the license's expiration. Provides that the fee is nonrefundable.

Sec. 12. MAINTENANCE AND LOCATION OF OFFICES; DISPLAY OF LICENSE CERTIFICATES. Requires each licensed broker to maintain a physical office in the state. Requires the address of the office to be designated on the license. Requires the broker to apply for additional licenses, one for each additional site. Requires the broker's license, branch office license, and loan officer's license to be prominently displayed in the place of business.

Sec. 13. INVESTIGATION AND INSPECTION OF RECORDS. Requires the commission to investigate certain actions. Requires the commission to send the broker or office a notice of the complaint and the commission's intention to investigate. Prohibits the commission from conducting an undercover or covert investigation and from investigating or initiating other actions on the basis of an anonymous complaint, unless the investigation is expressly authorized by the commission. Permits the commission to authorize a commission employee to file a complaint against a licensee and to conduct certain investigations. Authorizes the commission to order disciplinary action against a licensed broker or licensed officer, if the commission makes certain determinations about the broker or officer. Provides that this article does not prevent certain affiliations or business activity between the broker and other professionals. Requires a licensee to retain each record created or obtained in the normal course of business for at least 25 months.

Sec. 14. FEE ASSESSMENT AND DISCLOSURE. Authorizes the broker to charge and receive certain fees for services in assisting a mortgage applicant to obtain a mortgage. Prohibits the broker or officer from charging and receiving certain fees for locking in an interest rate, under certain circumstances.

Sec. 15. HEARINGS AND JUDICIAL REVIEW. Entitles a person who was denied a license or renewal license or had a license revoked to a hearing before the commission or a hearings officer. Requires the commission to prescribe procedures by which all decisions to suspend, revoke, or refuse a license are made by or appealable to the commission. Requires the commission to prescribe the time and place of the hearing. Requires the hearing to be held in the county of the office or broker, under certain circumstances regarding disciplinary action. Provides that the hearing is governed by Chapter 2001, Government Code. Authorizes the commission to issue certain subpoenas and processes. Grants to certain aggrieved individuals a right to appeal to a district court.

Sec. 16. CIVIL ACTIONS; INJUNCTIVE RELIEF; CRIMINAL PROSECUTIONS. Authorizes a mortgage applicant injured by a violation in this article to certain recovery. Authorizes the commission, the attorney general, or a mortgage applicant to bring an action to enjoin a violation of this article. Makes the remedies of this article an addition to any other remedy of law. Provides that the person claiming an exemption has the burden of proving the exemption. Provides that a person does not violate with respect to certain actions if the person relied on rules of the commission. Considers the broker and office that assists a mortgage applicant to obtain a mortgage loan to have completed the broker's and officer's services for the applicant and owes no additional duties or obligations to the applicant with respect to the loan. Provides that this subsection does not limit or preclude the liability of the broker or officer for certain failures and violations by the broker or officer. Establishes that a person commits an offense if the person acts

as a broker or office without first obtaining the appropriate license. Makes the offense a Class B misdemeanor, excepted repeated offenses are Class B misdemeanors. Provides that the person is additionally liable to an aggrieved person regarding the consequences of the violation. Authorizes the penalty to be recovered in court by the aggrieved person. Authorizes certain public attorneys to maintain an action in the name of the defendant's residence and to maintain an action in the name of this state in the court to abate and temporarily and permanently enjoin the act or practice and to enforce compliance. Provides that the plaintiff is not required to give a bond, and court costs may not be adjudged against the plaintiff. Authorizes the commission to assess certain administrative penalties against a violator. Authorizes certain continuous violations to be considered separate offenses. Authorizes the commission, after an investigation, to assess additional penalties, and to delegate this authority to an employee. Requires the commission to hold a hearing for a person requesting a hearing. Authorizes the commission to find a violation, by order, and assess a penalty. Makes all proceedings subject to Chapter 2001, Government Code. Requires a penalty to be deposited into the recovery fund.

Sec. 17. TEXAS MORTGAGE BROKER COMMITTEE; RULEMAKING POWERS. Creates the Texas Mortgage Broker Committee (broker committee). Requires the broker committee to recommend to the commission certain rules, including regulating and educating mortgage brokers and loan officers and interpreting this article. Sets forth terms for the composition, service by members, and rules for a member's dismissal of the broker committee. Provides that the validity of an action by the broker committee is not affected by the fact that it was taken when a ground for removal of a committee member exists. Requires an administrator to notify the chair of the committee when any ground for removal exists. Requires the commission to adopt procedures rules for the broker committee. Subjects the broker committee to the open meetings law and Chapter 2001, Government Code. Creates duties and responsibilities for the broker committee regarding its assistance in developing rules to regulate and educate the brokers and the officers. Provides that this section does not prohibit the commission from adopting any other rules, if the broker committee fails to adopt rules. Requires the broker committee to submit a report and develop an ad hoc committee regarding a recommendation to not adopt certain rules proposed by the commission. Requires certain members to serve on the ad hoc committee, with at least one public member of the commission. Provides that the broker committee may recommend and the commission may adopt rules to prohibit false, misleading, or deceptive practices by brokers and officers, but may not recommend or adopt any other rules restricting competitive bidding or advertising by brokers and officers. Prohibits the broker committee and the commission from adopting certain rules regarding deceptive practices.

Sec. 18. SECONDARY MARKET TRANSACTIONS. Provides that this article does not prohibit a broker from receiving compensation from a party other than the mortgage applicant for certain transactions on closing a mortgage.

SECTION 2. Amends Section 393.002(a), Finance Code, to provide that this chapter does not apply to a mortgage broker or loan officer licensed under Article 6573d, V.T.C.S. (Mortgage Broker License Act), who is acting within the course and scope of that license.

SECTION 3. Effective date: September 1, 1999.  
Makes certain applications of this Act, prospective to January 1, 2000.

SECTION 4. Emergency clause.