

BILL ANALYSIS

Senate Research Center
76R11237 CLG-F

C.S.S.B. 1074
By: Carona
Economic Development
4/8/1999
Committee Report (Substituted)

DIGEST

Currently, a mortgage broker and a loan officer may operate in the state without licensing. This lack of regulation permits some brokers and officers to arrange a client's financing without a sufficient background or knowledge of the mortgage business. As a result, some customers do not receive quality representation from the mortgage industry. C.S.S.B. 1074 would require the savings and loan commissioner to license mortgage brokers and loan officers, create a mortgage broker advisory committee, and provide fines and penalties.

PURPOSE

As proposed, C.S.S.B. 1074 creates licensing requirements for mortgage brokers.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the savings and loans commissioner in SECTION 2 (Sections 156.102(a)-(d), 156.206(b), 156.208(f), and 156.210(b), Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 11D, Finance Code, by adding Section 11.306, as follows:

Sec. 11.306. MORTGAGE BROKERS. Authorizes the finance commission to review certain rules and actions of the savings and loan commissioner (commissioner), and to direct the savings and loan commissioner to adopt or take other action on any rule under Chapter 156.

SECTION 2. Amends Title 3E, Finance Code by adding Chapter 156, as follows:

CHAPTER 156. MORTGAGE BROKERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 156.001. SHORT TITLE: Mortgage Broker License Act.

Sec. 156.002. DEFINITIONS. Defines "commissioner," "disciplinary action," "finance commission," "fund," "loan officer," "loan processor," "mortgage applicant," "mortgage banker," "mortgage broker," and "mortgage loan."

Sec. 156.003. SECONDARY MARKET TRANSACTIONS. Provides that this chapter does not prohibit a mortgage broker from receiving compensation from certain parties.

Sec. 156.004. AFFILIATED BUSINESS ARRANGEMENTS. Prohibits this chapter from being construed to prevent affiliated or controlled business arrangements or loan origination service by or between mortgage brokers and other professionals, if the broker complies with all applicable laws.

SUBCHAPTER B. ADMINISTRATION PROVISIONS

Sec. 156.101. ADMINISTRATION OF CHAPTER. Requires the commissioner to administer this chapter. Authorizes the commissioner to hire employees, employ a general, counsel and other support staff.

Sec. 156.102. RULEMAKING AUTHORITY. Authorizes the commissioner to adopt and enforce rules necessary for the intent of or to ensure compliance with this chapter, to adopt rules to prohibit deceptive practice by mortgage brokers and loan officers, and to adopt rules regarding books and records that a person must keep. Sets forth rules the commissioner is prohibited from adopting. Require the commissioner to consult with the mortgage broker advisory committee when adopting rules.

Sec. 156.103. POWERS OF COMMISSIONER. Authorizes the commissioner to institute an action to enjoin a violation of this chapter or a rule adopted under this chapter. Provides that it is not necessary to allege or prove that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation. Provides that the commissioner is not required to provide an appeal bond in any action or proceeding to enforce this chapter. Permits the commissioner to authorize specific employees to conduct hearings and make recommendations for final decisions in contested cases.

Sec. 156.104. THE MORTGAGE BROKER ADVISORY COMMITTEE. Creates the mortgage broker advisory committee (advisory committee). Sets forth terms for the composition and service by members. Requires the advisory committee to meet twice per year. Authorizes the commissioner to remove a committee member under certain conditions. Requires the commissioner to fill an unexpired vacancy for the duration of the vacancy. Sets forth the advising duties of the advising committee. Entitles each member to certain per diem allowances and travel reimbursements.

SUBCHAPTER C. MORTGAGE BROKER LICENSE AND LOAN OFFICER LICENSE

Sec. 156.201. LICENSES REQUIRED. Prohibits an individual from acting as a mortgage broker without first obtaining a mortgage broker license, unless exempt under Section 156.202. Prohibits an individual from acting as a loan officer unless that individual is a licensed mortgage broker, except under certain conditions. Makes each mortgage broker responsible to the commissioner and members of the public for all acts and conduct performed by the broker or loan officer associated with the broker.

Sec. 156.202 EXEMPTIONS. Sets forth persons to whom this article does not apply.

Sec. 156.203. APPLICATION FOR A LICENSE; FEES. Requires applications to be in writing, under oath, on a prescribed form, accompanied by certain fees depending on the license. Provides that application fees are not refundable.

Sec. 156.204. 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 the commissioner to require proof of compliance with this section at time of application. Requires a person to meet certain qualifications to be eligible to be licensed as a loan officer.

Sec. 156.205. FINANCIAL REQUIREMENTS FOR A MORTGAGE BROKER. Defines “net assets.” 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.

Sec. 156.206. CRIMINAL BACKGROUND CHECK. Requires the commissioner to conduct a criminal background check upon receiving an application. Provides that the commissioner shall obtain criminal history record information on the applicant from the Department of Public Safety, and may require, by rule, for the applicant to submit information and fingerprints to obtain background information from the Federal Bureau of Investigation, and may obtain criminal history information from any court or certain other agencies. Provides that the commissioner must keep the obtained information confidential, and must not disclose the information except under certain circumstances.

Sec. 156.207. ISSUANCE OF LICENSE CERTIFICATE; PROVISIONAL LICENSE. Requires the commissioner to issue a license certificate or loan office license to an applicant who

meets all the conditions for application. Authorizes the commissioner to administer a provision license to an applicant who will experience delay in processing the application. Authorizes the commissioner to revoke the license on certain grounds.

Sec. 156.208. 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 commissioner to require brokers and officers to submit requests for renewals on a prescribed form. Authorizes the commissioner to conduct a background check under Section 156.206 for a license renewal. Provides that a renewal fee is not refundable. Authorizes the commissioner to adopt, by rule, a system for expiring licenses. Sets forth methods for adjusting expiration dates on licenses according to the rules set by the commissioner.

Sec. 156.209. DENIAL OF APPLICATIONS AND RENEWALS. Requires the commissioner 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 hearings officer to set certain logistics for the hearing. Authorizes a continuance with the consent of the applicant. Requires the commissioner to enter an order following the hearing. Makes the commissioner's ruling final if the applicant does not appeal for a hearing by a certain date. Authorizes the commissioner to issue a probationary license.

Sec. 156.210. PROBATIONARY LICENSE. Authorizes the commissioner to issue a probationary license. Requires the commissioner to adopt, by rule, terms and conditions for a probationary license.

Sec. 156.211. CHANGE OF ADDRESS OR SPONSORSHIP; MODIFICATION OF LICENSE. Requires a mortgage broker to notify the commissioner 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 only for the sponsoring mortgage broker. Authorizes the officer to be sponsored by more than one broker. Requires the officer and the broker to notify the commissioner 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 commissioner of the new association and the broker's responsibility. Makes the broker responsible for the officer. Provides that the fee is nonrefundable.

Sec. 156.212. 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.

SUBCHAPTER D. LICENSE REVOCATION AND SUSPENSION AND OTHER ACTIONS AGAINST LICENSE HOLDER

Sec. 156.301. COMPLAINTS AND INVESTIGATIONS. Requires the commissioner to investigate certain actions. Requires the commissioner to send the broker or office a notice of the complaint and the commissioner's intention to investigate. Prohibits the commissioner 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 commissioner. Permits the commissioner to authorize a commissioner employee to file a complaint against a licensee and to conduct certain investigations.

Sec. 156.302. ADMINISTRATIVE PENALTY. Authorizes the commissioner to impose an administrative penalty on a licensed person who performs certain violations. Authorizes certain continuous violations to be considered separate offenses. Authorizes the enforcement to be stayed during a judicial review, if the person pays the penalty to the clerk or files a supersedeas bond. Authorizes a person unable to pay the bond to file a stay by filing a certain affidavit. Authorizes the attorney general to sue to collect the penalty. Provides that a proceeding to impose the penalty is considered a contested case under Chapter 2001, Government Code.

Sec. 156.303. DISCIPLINARY ACTION; CEASE AND DESIST ORDER. Authorizes the commissioner to order disciplinary action against a licensed broker or licensed officer, if the commissioner makes certain determinations about the broker or officer. Authorizes the commissioner to issue an order to cease and desist from an action that is a violation of this section. Requires the order to contain a reasonably detailed statement of the facts. Requires the commissioner to give and set notice of a hearing, if the person requests the hearing. Authorizes the commissioner to find a violation has or has not occurred. Authorizes the commissioner to impose certain penalties. Authorizes the commissioner to institute an injunctive relief and to collect the administrative penalty. Provides that bond is not required regarding the injunctive relief. Requires the penalty to be deposited in the fund.

Sec. 156.304. 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.

SUBCHAPTER E. HEARINGS; JUDICIAL REVIEW; CIVIL ACTIONS; UNLICENSED ACTIVITY

Sec. 156.401. HEARINGS AND JUDICIAL REVIEW. Authorizes the commissioner to employ an enforcement staff to investigate and prosecute complaints made against persons licensed under this chapter. Authorizes a commissioner to employ a hearings officer to conduct hearings under this section. Entitles a person who was denied a license or renewal license or had a license revoked to a hearing before the commissioner or a hearings officer. Requires the commissioner to prescribe procedures by which all decisions to suspend, revoke, or refuse a license are made by or appealable to the commissioner. Requires the commissioner to prescribe the time and place of the hearing. Makes the hearing subject to Chapter 2001, Government Code. Authorizes the commissioner or the hearings officer to issue subpoenas. Authorizes the processes to extend throughout the state and to be served by any designated person. Grants to certain aggrieved individuals a right to appeal to a district court. Makes the appeal subject to Chapter 2001, Government Code.

Sec. 156.402. CIVIL ACTIONS; INJUNCTIVE RELIEF. Authorizes a mortgage applicant injured by a violation in this article to certain recovery. Authorizes the commissioner, 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.

Sec. 156.403. BURDEN OF PROOF TO ESTABLISH AN EXEMPTION. Provides that the person claiming an exemption has the burden of proving the exemption.

Sec. 156.404. RELIANCE ON WRITTEN NOTICES FROM COMMISSIONER. Provides that a person does not violate, with respect to certain actions of this chapter, if the person relied on rules of the commissioner.

Sec. 156.405. COMPLETION OF MORTGAGE BROKER SERVICES. Considers the broker and officer 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 section 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 officer without first obtaining the appropriate license.

Sec. 156.406. UNLICENSED ACTIVITY. Provides that a person who acts as a broker or officer without first obtaining the required license commits an offense. Makes the offense a Class B misdemeanor, except that a repeated offense is a Class B misdemeanor. Authorizes the commissioner to issue a cease and desist order upon an individual violating this chapter. Requires the order to contain a reasonably detailed statement of the facts. Requires the commissioner to give and set notice of a hearing, if the person requests the hearing. Authorizes the commissioner to find whether a violation has occurred or not occurred. Makes the hearing subject to Chapter 2001, Government Code. Provides that an order is final and cannot be appealed, if a hearing was not set by a certain date. Requires a penalty to be deposited into the recovery fund. Authorizes the commissioner to impose certain administrative penalties. Authorizes the commissioner to

institute in district court a suit for injunctive relief and to collect the administrative penalty. Provides that a bond is not required of the commissioner with respect to injunctive relief granted under this section. Requires the penalty to be deposited into the fund.

SUBCHAPTER F. MORTGAGE BROKER RECOVERY FUND

Sec. 156.501. MORTGAGE BROKER RECOVERY FUND. Requires the commissioner to establish and maintain a mortgage broker recovery fund (fund). Requires the deposits to be held in trust for carrying out the purposes of the fund. Requires the fund to be issued to benefit aggrieved individuals who suffer actual damages by certain acts committed by a person who was a licensed broker or officer. 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.

Sec. 156.502. FUNDING. Requires the applicant to pay a renewal fee of \$20. Requires the renewal fee to be deposited in the fund. Requires an additional fee of \$10 to be paid , if the recovery fund is less than \$500,000 at the end of 2010. Requires the additional fee to be deposited in the recovery fund, to bring the fund to \$1 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.

Sec. 156.503. STATUTE OF LIMITATIONS. Requires an action laying a claim to the recovery fund in a judgment to begin by a certain date.

Sec. 156.504. PROCEDURE FOR RECOVERY. 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, subject to Section 156.503. 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 commissioner to pay from the recovery fund, if the court is satisfied the required criteria were met. Authorizes the commissioner to conduct certain litigation again. Authorizes the commissioner to notify the attorney general of the commissioner's desire to conduct certain legal activities. Requires the commissioner and attorney general to act only to protect the fund from spurious or unjust claims or to ensure compliance with the requirements for recovery. Authorizes the commissioner to relitigate certain material and relevant issues in the hearing. Requires the court to reduce proportionately an amount that exceeds the limitations.

Sec. 156.505. RECOVERY LIMITS. Entitles a person who receives payment out of the recovery fund to reasonable attorney's fees and other costs, subject to limitations. Authorizes a payment only pursuant to a court order and only for certain payments.

Sec. 156.506. REVOCATION OF LICENSE FOR PAYMENT FROM FUND. Authorizes the commissioner to revoke the license of a broker or officer on proof that a payment was made from the recovery fund to satisfy a judgment against the licensee. Authorizes the commissioner 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. Provides that this section does not limit the commissioner's authority to take disciplinary action against the broker or officer for violation of this article or a rule of the commissioner. Provides that repayment by the broker or officer does not nullify or modify the effect of any other disciplinary proceeding under this article.

Sec. 156.507. SUBROGATION. Makes the commissioner subrogated to all rights of the judgment creditor to the extent of the paid amount. Requires the judgment creditor to assign certain claim to the judgment to the amount paid by the commissioner, and that amount has priority for repayment from any subsequent recovery. Requires any amount and interest recovered by the commissioner to be deposited to the recovery fund.

Sec. 156.508. FAILURE TO COMPLY WITH SUBCHAPTER. Establishes that an aggrieved person's failure to comply with this section constitutes a waiver of any rights under this section.

SECTION 3. Amends Section 393.002(a), Finance Code, to provide that this chapter does not

apply to a mortgage broker or loan officer licensed under Chapter 156, Finance Code, who is acting within the course and scope of that license.

SECTION 4. Effective date: September 1, 1999.
Makes certain applications of this Act, prospective to January 1, 2000.

SECTION 5. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Adds Section 11.306, Chapter 11D, Finance Code, regarding mortgage brokers.

Deletes proposed Article 6573d, Title 113A, V.T.C.S., regarding mortgage brokers.

SECTION 2.

Adds Title 3E, Finance Code, regarding mortgage brokers.

SECTION 3.

Amends Section 393.002(a), Finance Code, to change to whom this chapter does not apply.