

BILL ANALYSIS

Senate Research Center
78R11092 ATP-F

C.S.S.B. 252
By: Staples
Business & Commerce
4-8-2003
Committee Report (Substituted)

DIGEST AND PURPOSE

Under the Mortgage Broker License Act (MBLA), a person may not act in the capacity of, engage in the business of, or advertise or hold that person out as engaging in or conducting the business of a mortgage broker in this state unless the person holds an active mortgage broker license. Currently, mortgage bankers are exempt from the MBLA, and not subject to state regulation or oversight. C.S.S.B. 252 creates Chapter 157, Finance Code, establishing and regulating the registration of mortgage bankers.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Finance Commission of Texas in SECTION 1 (Section 157.011, Title 3E, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 3E, Finance Code, by adding Chapter 157, as follows:

CHAPTER 157. REGISTRATION OR MORTGAGE BROKERS

Sec. 157.001. **SHORT TITLE.** Authorizes this chapter to be cited as the Mortgage Banker Registration Act.

Sec. 157.002. **DEFINITIONS.** Defines “commissioner,” “mortgage banker,” and “mortgage loan.”

Sec. 157.003. **REGISTRATION REQUIRED.** (a) Requires a person to register under this chapter before the person is authorized to conduct the business of a mortgage banker in this state, unless the person is exempt under Section 157.004.

(b) Requires a mortgage banker to file certain information with the savings and loan commissioner (commissioner) to register under this chapter.

(c) Provides that an employee of a mortgage banker is not required to register under this chapter.

(d) Prohibits the commissioner from requiring a mortgage banker to provide information other than information contained in the registration statement.

(e) Provides that the registration of a mortgage banker is valid until withdrawn or revoked, and does not require periodic renewal.

Sec. 157.004. **EXEMPTIONS.** Provides that this chapter does not apply to certain financial institutions and persons.

Sec. 157.005. **UPDATE OF REGISTRATION.** Requires a mortgage banker to update information contained in the registration statement not later than the 30th day after the date the information changes.

Sec. 157.006. **REGISTRATION AND ADMINISTRATION FEE.** Authorizes the

commissioner to charge a mortgage banker a reasonable fee, not to exceed \$500 a year, to cover the costs of filing the registration statement and administering this chapter.

Sec. 157.007. DISCLOSURE STATEMENT. Requires a mortgage broker to include certain notice to a mortgage loan applicant with an application for a mortgage loan. Sets forth the required language for the notice.

Sec. 157.008. COMPLAINTS. (a) Requires the commissioner, if the Savings and Loan Department receives a signed written complaint from a person concerning a mortgage banker, to notify the representative designated by the mortgage banker under Section 157.003(b), in writing, of the complaint and provide a copy of the complaint to the representative.

(b) Authorizes the commissioner to request documentary and other evidence considered by the commissioner as necessary to effectively evaluate the complaint, including correspondence, loan documents, and disclosures. Requires a mortgage banker to promptly provide any evidence requested by the commissioner.

(c) Authorizes the commissioner to require the mortgage banker to resolve the complaint or to provide the commissioner with a response to the complaint. Authorizes the commissioner to take specific action to resolve the complaint.

Sec. 157.009. TERMINATION OF REGISTRATION. (a) Authorizes a mortgage banker to withdraw the mortgage banker's registration at any time.

(b) Authorizes the commissioner to revoke the registration of a mortgage banker for failure to pay the registration and administration fee, and failure to cure the default before the 30th day after the date the mortgage banker receives notice of the default from the commissioner.

(c) Authorizes the commissioner to revoke the registration of a mortgage banker if the mortgage banker fails or refuses to comply with the commissioner's written request for a response to a complaint.

(d) Authorizes the commissioner to revoke the registration of a mortgage banker after considering a complaint filed under this chapter, if the commissioner concludes that the mortgage banker has engaged in an intentional course of conduct to violate federal or state law or has engaged in an intentional course of conduct that constitutes improper, fraudulent, or dishonest dealings. Requires the commissioner to recite the basis of the decision in an order revoking the registration.

(e) Provides that if the commissioner proposes to revoke a registration under Subsection (c) or (d), the mortgage banker is entitled to a hearing before the commissioner or a hearings officer, who is required to propose a decision to the commissioner. Requires the commissioner, or hearings officer, to prescribe the time and place of the hearing, which is governed by Chapter 2001 (Administrative Procedure), Government Code.

(f) Entitles a mortgage banker aggrieved by a ruling, order, or decision of the commissioner to appeal to a district court in the county in which the hearing was held. Provides that an appeal under this subsection is governed by Chapter 2001 (Administrative Procedure), Government Code.

Sec. 157.010. REREGISTRATION. (a) Authorizes a mortgage banker whose registration is revoked by the commissioner to register again only after receiving the authorization of the commissioner. Requires the commissioner to authorize the registration if the commissioner concludes that the mortgage banker will comply with

state and federal law and will not engage in improper, fraudulent, or dishonest dealings.

(b) Authorizes a mortgage banker who seeks registration under this section to request, and entitles the banker to, a hearing before the commissioner or a hearings officer, who is required to propose a decision to the commissioner. Provides that the hearing under this subsection is governed by Chapter 2001 (Administrative Procedure), Government Code.

(c) Requires the commissioner, if the commissioner denies authorization for the registration of a mortgage banker under this section, to recite the basis of the decision in an order denying the authorization.

(d) Provides that if the commissioner denies authorization for the reregistration of a mortgage banker under this section, the mortgage banker is entitled to appeal to a district court in Travis County. Provides that an appeal brought under this subsection is governed by Chapter 2001 (Administrative Procedure), Government Code.

Sec. 157.011. RULEMAKING AUTHORITY. (a) Authorizes the Finance Commission to adopt rule to implement or fulfill the purpose of this chapter.

(b) Authorizes the Finance Commission, by rule, to adopt standard forms for, and require the use of the forms by, a mortgage banker which represents that an applicant for a loan is preapproved or has prequalified for a loan.

SECTION 2. Authorizes a person serving as a public member of the Finance Commission of Texas immediately before the effective date of this Act, who is the spouse of a mortgage banker required to register under Chapter 157, Finance Code, as added by this Act, to complete the person's term, notwithstanding Section 11.102(d) (Qualifications of Members), Finance Code.

SECTION 3. Effective date: January 1, 2004.

SUMMARY OF COMMITTEE CHANGES

Differs from the original in the relating clause by relating the bill to the registration of mortgage brokers rather than to certain exemptions from the regulation of mortgage brokers.

Differs from the original in SECTION 1 by creating Chapter 157 rather than amending Chapter 156.002, Finance Code.

Differs from the original in SECTION 2 by making application of this Act prospective, rather than amending Section 156.202, Finance Code.

Differs from the original in SECTION 3 by removing the proposed repealer and redesignating the original SECTION 4 as SECTION 3, and by changing the effective date from September 1, 2003, to January 1, 2004.