

BILL ANALYSIS

Senate Research Center

H.B. 716
By: Solomons et al. (Averitt)
Business & Commerce
4/27/2007
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Fraudulent activities are a rising concern in the residential mortgage arena. The amount of fraud and its costs are unknown at this time because no central organization exists to collect this information. The closest organization is the Financial Crimes Enforcement Network (FinCEN). FinCEN is an agency under the United States Department of the Treasury that collects Suspicious Activity Reports (SARs) from all federally insured financial institutions. According to recent FinCEN statistics, the number of mortgage fraud incidents is increasing and Texas ranks in the top 10 in the nation for mortgage foreclosures.

The effects of mortgage fraud to the residential lending industry range from monetary losses incurred by financial companies to criminal and administrative actions. Consequences to the consumer are higher loan rates and fees, stolen identities, and possibly impaired credit ratings. These losses increase the cost of financing for consumers and increase risks to all participants in the mortgage process.

H.B. 716 requires that each applicant for a home loan be notified of penalties for making false or misleading written statements; requires the reporting of suspected fraudulent activity; establishes a residential mortgage fraud task force; and makes other statutory changes to combat mortgage fraud.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 343, Finance Code, by adding Section 343.105, as follows:

Sec. 343.105. NOTICE OF PENALTIES FOR MAKING FALSE OR MISLEADING WRITTEN STATEMENT. (a) Requires a lender, mortgage banker, or licensed mortgage broker to provide a written notice at closing to each applicant for a home loan.

(b) Requires the notice to be in a certain format and contain certain language.

(c) Requires the loan applicant to verify the information and execute the notice on receipt of the notice.

(d) Provides that the failure of a lender, mortgage banker, or licensed mortgage broker to provide a notice under this section to each applicant for a home loan does not affect the validity or enforceability of the home loan by any holder of the loan.

SECTION 2. Amends Subchapter B, Chapter 402, Government Code, by adding Sections 402.031 and 402.032, as follows:

Sec. 402.031. REPORTING FRAUDULENT ACTIVITIES. (a) Defines "authorized governmental agency" and "fraudulent activity."

(b) Requires a person to report information relating to fraudulent activity to an authorized governmental agency if a person determines or reasonably suspects that fraudulent activity has been committed or is about to be committed. Requires the attorney general to notify each agency with representation on the residential mortgage fraud task force under Section 402.032, if a person reports information relating to fraudulent activity to the attorney general. Prohibits a financial institution or person from notifying any person involved in fraudulent activity that the fraudulent activity has been reported, and prohibits the authorized governmental agency who has any knowledge that such report was made from disclosing to any person involved in the fraudulent activity that the fraudulent activity has been reported if a financial institution or person voluntarily or pursuant to this section reports fraudulent activity to an authorized governmental agency. Prohibits any financial institution or person that makes a voluntary report of any possible violation of law or regulation to an authorized governmental agency from being liable to any person under any law or regulation of the state or the United States for such report.

(c) Provides that this section does not eliminate or diminish any common law or statutory privilege or immunity.

Sec. 402.032. RESIDENTIAL MORTGAGE FRAUD TASK FORCE. (a) Defines "task force."

(b) Requires the office of the attorney general to establish the residential mortgage fraud task force (task force) to form a strategic partnership between certain law enforcement agencies to better enable law enforcement and state agencies to take a proactive stance towards tracking and prosecuting mortgage fraud and the perpetrators of mortgage fraud statewide.

(c) Provides that the task force consists of the certain persons or their appointees.

(d) Authorizes the task force to request assistance from the certain federal agencies.

(e) Requires the task force to focus its efforts in sharing information and resources, and successfully enforcing administrative and criminal actions against perpetrators of mortgage fraud.

(f) Authorizes the agencies of the persons listed in Subsection (c) to share confidential information, or information to which access is otherwise restricted by law, with one or more of the other agencies of the persons listed in Subsection (c) for investigative purposes described by Subsection (b). Provides that confidential information that is shared under this subsection remains confidential and legal restrictions on access to the information apply, except as provided by this subsection.

(g) Requires the task force to submit to certain state officials an annual report on the progress of each agency of the persons listed in Subsection (c) in accomplishing the purposes described by Subsection (b).

(h) Requires the office of the attorney general to oversee the administration of the task force. Requires the attorney general to provide the necessary staff and facilities to assist the task force in performing its duties.

(i) Authorizes the attorney general to solicit and accept certain items on behalf of the state for disbursement to any state agency or local law enforcement agency to aid the task force in the investigation and prosecution of mortgage fraud in this state.

SECTION 3. Amends Section 555.051(a), Government Code, as follows:

(a) Provides that this section applies only to information held by or for the Department of Savings and Mortgage Lending, the Texas Real Estate Commission, the Texas Appraiser Licensing and Certification Board, the Texas Department of Banking, the credit union department, or the Office of Consumer Credit Commissioner that relates to the possible commission of corporate fraud or mortgage fraud by a person who is licensed or otherwise regulated by any of those state agencies. Makes a nonsubstantive change.

SECTION 4. Amends Section 32.32, Penal Code, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

(a) Redefines "credit."

(b) Provides that it is an offense if a person intentionally or knowingly makes a materially false or misleading written statement to obtain a mortgage loan.

(d) Requires certain agencies to assist a prosecuting attorney of the United States or of a county or judicial district of this state, a county or state law enforcement agency of this state, or a federal law enforcement agency in the investigation of an offense under this section involving a mortgage loan.

SECTION 5. Amends Article 12.01, Code of Criminal Procedure, as follows:

Art. 12.01. FELONIES. Authorizes felony indictments to be presented within certain limits, including within seven years from the date of the commission of the offense, an indictment for the offense of a false statement to obtain property or credit or money laundering.

SECTION 6. Provides that the change in law made by this Act to Article 12.01, Code of Criminal Procedure, does not apply to an offense if the prosecution of that offense became barred by limitation before the effective date of this Act. Provides that the prosecution of that offense remains barred as if this Act had not taken effect.

SECTION 7. Provides that to the extent of a conflict, this Act prevails over any other Act of the 80th Legislature, Regular Session, 2007, regardless of the relative dates of enactment.

SECTION 8. Effective date: September 1, 2007.