

BILL ANALYSIS

Senate Research Center
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S.B. 1308
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As proposed, S.B. 1308 sets forth the duties and liabilities of various parties in connection with a residential mortgage loan transaction. The bill provides that a person is culpable for knowingly committing mortgage fraud and liable for all losses incurred by any other party to that transaction, unless the other party also participated in commission of the fraud. The bill also establishes and defines liability for title insurance companies, escrow officers, and appraisers.

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. **LIABILITY FOR RESIDENTIAL MORTGAGE FRAUD.** (a) Defines “knowing,” “mortgage lender,” “mortgage lending process,” “mortgage lending process document,” “residential mortgage loan” (loan), and “residential real property.”

(b) Sets forth the actions and circumstances that constitute residential mortgage fraud (fraud).

(c) Provides that a person who commits fraud is liable for all losses, including attorney's fees and collection costs, incurred as a result of the fraud by any other party to a loan, unless the other party also committed fraud in connection with that loan. Provides that the employer or principal of an employee or agent participating in the mortgage lending process and committing the fraud is also liable for all losses incurred by any other party to a loan resulting from the fraud.

SECTION 2. Amends Subchapter F, Chapter 2651, Insurance Code, by adding Section 2651.254, as follows:

Sec. 2651.254. **LIABILITY OF TITLE INSURANCE COMPANIES.** Provides that a title insurance company issuing an insured closing and settlement letter (letter) in accordance with Section 2702.001 (Insured Closing and Settlement Letter: Loans) is liable for losses incurred by any party to a real estate closing transaction resulting from fraud under Section 343.105 (Charges for Collection of Payment Agreement), Finance Code, committed by the title insurance company's title insurance agent or employee in the transaction for which the letter was issued.

SECTION 3. Amends Subchapter A, Chapter 2652, Insurance Code, by adding Section 2652.007, as follows:

Sec. 2652.007. **DUTY AND LIABILITY OF ESCROW OFFICERS.** (a) Requires an escrow officer to close a transaction in accordance with Section 2501.006 (Closing the Transaction) and in compliance with all directions and instructions of the lender, if a loan is involved. Authorizes an escrow officer to execute written lender loan closing

instructions to evidence receipt of and agreement to follow the loan closing instructions and directions of the lender.

(b) Provides that an escrow officer who violates Subsection (a) is liable for all losses incurred by the lender in the transaction as a result of fraud committed by any party under Section 343.105, Finance Code.

SECTION 4. Amends Subchapter D, Chapter 2652, Insurance Code, by adding Section 2652.154, as follows:

Sec. 2652.154. RELATIONSHIP BETWEEN TITLE INSURANCE AGENT AND ESCROW OFFICER. Provides that an escrow officer who is an employee of a title insurance agent or direct operations is an agent for the title insurance agent or direct operations with respect to the closing of a real estate transaction.

SECTION 5. Amends Subchapter I, Chapter 1103, Occupations Code, by adding Section 1103.406, as follows:

Sec. 1103.406. LIABILITY OF APPRAISER. Provides that a person holding a license, certificate, or approval issued under this chapter (Real Estate Appraisers) who does not comply with the requirements of Section 1103.405 (Professional Standards) or issues an appraisal that is materially inaccurate, whether intentionally or by carelessness or negligence in ascertaining the accuracy of the appraisal is liable for all losses, including attorney's fees and collection costs, resulting from the appraiser's action incurred by any person for whom the appraisal was prepared or for whom the appraiser could reasonably have foreseen or knew would use and rely on the appraisal.

SECTION 6. Effective date: upon passage or September 1, 2007.