

BILL ANALYSIS

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S.B. 1167
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

While not impacted as dramatically as some states, Texas has not been immune from the national economic downturn and the associated increase in residential home foreclosures. Persons with higher interest rate "subprime" mortgages are especially at risk of foreclosure when they suffer a personal financial setback.

Also, while mortgage brokers are required to provide loan applicants with a form explaining their relationship to the applicant as that of an independent contractor, rather than an agent, many borrowers may still perceive the broker as acting in their best interest.

This bill clarifies the relationship between the broker and the applicant by setting forth the duties of the broker. This includes practices and duties, as well as restrictions and prohibited practice. Additionally, because Texas' current statutory definition of a "high-cost home loan" contemplates an interest rate so high as to likely apply to only a small number of loans, the bill creates a new category of "subprime" loans. The bill defines these loans and also sets forth specific provisions for them.

As proposed, S.B. 1167 amends current law relating to the regulation of certain lending and loan origination practices in connection with home loans.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Finance Commission of Texas is modified in SECTION 1 (Section 156.216, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 156.002, Finance Code, by adding Subdivision (12), to define "subprime home loan."

SECTION 2. Amends Subchapter C, Chapter 156, Finance Code, by adding Sections 156.216-156.218, as follows:

Sec. 156.216. MORTGAGE BROKER DUTIES. (a) Requires a mortgage broker, in connection with the origination of a mortgage loan, to act in the applicant's interest; act with reasonable care, skill, and diligence; act in good faith and engage in fair dealing; clearly disclose to the applicant, not later than three business days after receipt of the loan application, all material information, as defined by the Finance Commission of Texas rule, that might reasonably affect the rights, interests, or ability of the applicant to receive the applicant's intended benefit from the loan; and make a reasonable effort to present the applicant with a range of loan products for which the applicant likely qualifies and that are appropriate to the applicant's existing circumstances, based on information known to or obtained in good faith by the broker.

(b) Requires a mortgage broker, at least 72 hours before the date of closing of a mortgage loan originated by the mortgage broker, to disclose to the borrower the total amount of fees the mortgage broker will receive from any person for loan origination services rendered to the borrower, including the dollar amount of the fees; and the amount of the fees as a stated percentage of the total loan amount.

(c) Requires a mortgage broker to promptly disclose to an applicant each loan product available to the applicant of which the mortgage broker is aware that is projected to cost the applicant less over the projected term of the loan than a loan product recommended to the applicant by the mortgage broker.

(d) Requires a mortgage broker to broker subprime home loans with regard to the applicant's ability to repay the loan. Provides that an applicant's statement of ability to repay a loan is not conclusive evidence of the applicant's ability to repay the loan for purposes of this subsection. Requires a mortgage broker to evaluate other reliable, objective evidence of affordability and ability to repay. Requires that the determination of whether an applicant is reasonably able to repay a loan include a reasonable verification of all sources of income by tax returns, payroll receipts, or bank records.

(e) Provides that a mortgage broker who violates Subsection (a) or (b) is liable to the aggrieved applicant or borrower for actual damages caused by the violation; reasonable attorney's fees; and court costs.

Sec. 156.217. **RESTRICTION ON CHARGE BY MORTGAGE BROKER FOR SUBPRIME HOME LOANS.** (a) Authorizes a mortgage broker to charge or collect a fee for loan origination services in connection with a subprime home loan only if the applicant or borrower receives the services and the amount of the fee is reasonably related to the value of the services actually rendered.

(b) Requires that the amount by which a fee received by the mortgage broker for originating a subprime home loan exceeds the amount disclosed under Section 156.216(b) be credited to the borrower to pay for loan costs, including closing costs.

Sec. 156.218. **PROHIBITED PRACTICE.** Prohibits a mortgage broker from recommending or making a mortgage loan that contains a provision for a prepayment penalty.

SECTION 3. Amends the heading to Subchapter C, Chapter 343, Finance Code, to read as follows:

SUBCHAPTER C. SUBPRIME AND HIGH-COST HOME LOANS

SECTION 4. Amends Section 343.201, Finance Code, by amending Subdivision (1) and adding Subdivisions (1-a) and (3) to define "average prime offer rate," "high-cost home loan," and "subprime home loan."

SECTION 5. Amends Sections 343.203 and 343.205, Finance Code, as follows:

Sec. 343.203. **NEGATIVE AMORTIZATION.** Prohibits a high-cost or subprime home loan from providing for a payment schedule with regular periodic payments that cause the principal balance to increase, except that this section does not prohibit negative amortization as a consequence of a temporary forbearance, bridge loan, or restructure sought by the borrower.

Sec. 343.205. **PREPAYMENT PENALTIES PROHIBITED.** Makes a conforming change.

SECTION 6. Amends Subchapter C, Chapter 343, Finance Code, by adding Sections 343.207-343.211, as follows:

Sec. 343.207. **NET BENEFIT REQUIRED FOR SUBPRIME HOME LOANS.** Prohibits a lender from making a subprime home loan to a borrower that refinances an existing home loan if the new loan does not have a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and

refinanced loans and the borrower's stated loan objectives, repayment ability, current and expected income, and current obligations.

Sec. 343.208. RESTRICTION ON INTRODUCTORY RATE OF SUBPRIME HOME LOAN. Prohibits a lender from making a subprime home loan that has an initial or introductory interest rate with a term of less than six months.

Sec. 343.209. DETERMINATION OF BORROWER'S ABILITY TO REPAY SUBPRIME HOME LOAN. Requires a lender to make a subprime home loan with regard to the borrower's ability to repay the loan. Provides that a borrower's statement of ability to repay a loan is not conclusive evidence of the borrower's ability to repay the loan for purposes of this section. Requires a lender to evaluate other reliable, objective evidence of affordability and ability to repay. Requires that the determination of whether a borrower is reasonably able to repay a loan include a reasonable verification of all sources of income by tax returns, payroll receipts, or bank records.

Sec. 343.210. DISCLOSURE OF PROPERTY TAXES AND PROPERTY INSURANCE FOR SUBPRIME HOME LOANS REQUIRED. Requires the lender, with respect to a subprime home loan, the first time a lender informs a borrower about the estimated or actual periodic loan payment amount, to inform the borrower that an additional amount will be due for property taxes and property insurance and disclose to the borrower as soon as practicable the estimated amount of the initial periodic payment for property taxes and property insurance.

Sec. 343.211. CERTAIN PROVISIONS IN SUBPRIME HOME LOAN AGREEMENT VOID. Provides that a provision of a subprime home loan agreement that violates Section 343.205 or 343.208 is void.

SECTION 7. Amends Chapter 51, Property Code, by adding Section 51.010, as follows:

Sec. 51.010. VIOLATION OF SUBPRIME UNDERWRITING STANDARDS AS DEFENSE AGAINST FORECLOSURE; COUNTERCLAIM; INJUNCTION. (a) Provides that this section applies only to the foreclosure of a lien on an interest in real property that secures a "subprime home loan," as defined by Section 343.201, Finance Code.

(b) Authorizes a debtor against whom a mortgagee files an action to foreclose the mortgagee's lien on the debtor's interest in real property assert against the mortgagee, as a defense to the mortgagee's right to payment of the debt secured by the lien or as a counterclaim, that the mortgagee or a person who assigned the security interest held by the mortgagee violated Section 343.203, 343.205, 343.207, or 343.208, Finance Code, with respect to the loan secured by the lien.

(c) Authorizes a debtor who receives a notice of default or notice of sale under Section 51.002 (Sale of Real Property Under Contract Lien) from a mortgagee with respect to a loan secured by a lien on the debtor's interest in real property to file an action against the mortgagee at any time before the property is sold at a foreclosure sale under Section 51.002, asserting that the mortgagee is not entitled to payment of the debt secured by the lien because of the violation of Section 343.203, 343.205, 343.207, or 343.208, Finance Code, with respect to the loan secured by the lien by the mortgagee or a person who assigned the security interest held by the mortgagee. Authorizes a debtor who files an action under this section to seek any other relief provided by law for the alleged violation. Requires the court in which the action is filed to enjoin the sale of the property under Section 51.002 pending a final judgment in the action.

SECTION 8. Makes application of Subchapter C, Chapter 343, Finance Code, as added by this Act, prospective.

SECTION 9. Makes application of Section 51.010, Property Code, as added by this Act, prospective.

SECTION 10: Effective date: January 1, 2010.