

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3617
By: Anchia (Zaffirini)
Business & Commerce
5/20/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The COVID-19 pandemic has forced many industries to rely on their employees to complete their work from home, including the mortgage banking industry. It has been suggested that current law needs to be updated to reflect our nation's mobile workforce and the changes that have occurred with new remote technologies used by this industry. Current law requires mortgage bank loan originators licensed by the Department of Savings and Mortgage Lending to maintain a physical location in Texas. Reflecting the pandemic's impact on our economy, H.B. 3617 would eliminate requirements for certain mortgage loan companies to maintain a physical office in Texas.

(Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 3617 amends current law relating to certain qualifications and requirements for residential mortgage loan companies, the investment and use of excess residential mortgage loan originator recovery fund fees, and the creation of the mortgage grant fund, and changes a fee.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 7 (Section 156.556, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 13.016, Finance Code, as follows:

Sec. 13.016. RECOVERY FUND. (a) Creates an exception as provided by Subchapter G, Chapter 156 (Residential Mortgage Loan Companies), to the requirement that the savings and mortgage lending commissioner (commissioner) establish, administer, and maintain one recovery fund for the purposes of Chapters 156 and 157 (Mortgage Bankers and Residential Mortgage Loan Originators). Makes a nonsubstantive change.

(b) Deletes existing text providing that the commissioner's authority under this section includes the authority to set fee amounts under Chapters 156 and 157 for deposit in the recovery fund. Makes nonsubstantive changes.

SECTION 2. Amends Section 156.2041, Finance Code, to delete existing text requiring an applicant, to be issued a mortgage company license, to maintain a physical office in this state. Makes conforming and nonsubstantive changes.

SECTION 3. Amends Section 156.2042, Finance Code, to delete existing text requiring an applicant, to be issued a credit union subsidiary organization license, to maintain a physical office in this state. Makes nonsubstantive changes.

SECTION 4. Amends Section 156.212, Finance Code, as follows:

Sec. 156.212. MAINTENANCE AND LOCATION OF OFFICES. Deletes existing text requiring each residential mortgage loan company licensed under Chapter 156 to maintain a physical office in this state. Deletes existing text providing that if a residential

mortgage loan company's main office is outside this state, the requirement of Subsection (a) (relating to maintain a physical office in this state) is satisfied if the company has a branch office located in this state. Makes a nonsubstantive change.

SECTION 5. Amends Sections 156.501(b) and (c), Finance Code, as follows:

(b) Requires that the recovery fund, subject to this subsection and Section 156.502(b), rather than subject to this subsection, be used to reimburse residential mortgage loan applicants for actual damages incurred because of acts committed by a residential mortgage loan originator who was licensed under Chapter 157 when the act was committed.

(c) Provides that amounts in the recovery fund are authorized to be invested and reinvested in accordance with Chapter 2256 (Public Funds Investment), Government Code, and under the prudent person standard described in Section 11b (Expanded Investment Authority for Permanent University Fund), Article VII (Education), Texas Constitution, rather than invested and reinvested in the same manner as funds of the Employees Retirement System of Texas, and the interest from these investments is required to be deposited to the credit of the fund. Prohibits an investment from being made under this subsection if the investment will impair the necessary liquidity required to satisfy claims, rather than to satisfy judgment payments, awarded under Subchapter F (Recovery Fund).

SECTION 6. Amends Section 156.502, Finance Code, as follows:

Sec. 156.502. FUNDING. (a) Requires an applicant, on an application for an original license issued under Chapter 157, in addition to paying the original application fee, to pay a fee in the amount of \$20. Deletes existing text requiring an applicant, on an application for renewal of a license issued under Chapter 157, in addition to paying the renewal fee, to pay a fee in an amount determined by the commissioner, not to exceed \$20.

(a-1) Authorizes all or any portion of the amount of a penalty that is collected by the commissioner under Sections 156.302 (Administrative Penalty), 156.303 (Disciplinary Action; Cease and Desist Order), 157.023 (Administrative Penalty), 157.024 (Disciplinary Action; Cease and Desist Order), 157.031 (Unlicensed Activity; Offense), 158.105 (Cease and Desist Order), and 180.202 (Administrative Penalty), as determined by the commissioner, to be deposited to the credit of the recovery fund at the end of each fiscal year.

(b) Requires that if the balance remaining in the recovery fund at the end of a calendar year is more than \$3.5 million, the amount of money in excess of that amount be remitted by the commissioner to the Comptroller of Public Accounts of the State of Texas (comptroller) for deposit in the mortgage grant fund established under Subchapter G, rather than available to the commissioner to offset the expenses of participating in and sharing information with the Nationwide Mortgage Licensing System and Registry in accordance with Chapter 180 (Residential Mortgage Loan Originators).

SECTION 7. Amends Chapter 156, Finance Code, by adding Subchapter G, as follows:

SUBCHAPTER G. MORTGAGE GRANT FUND

Sec. 156.551. MORTGAGE GRANT FUND. (a) Requires the commissioner to establish, administer, and maintain a mortgage grant fund as provided by this subchapter. Requires that the amounts received by the commissioner for deposit in the fund be held by the commissioner in trust for carrying out the purposes of the fund.

(b) Authorizes all or any portion of the amount of a penalty that is collected by the commissioner under Sections 156.302, 156.303, 157.023, 157.024, 157.031,

158.105, and 180.202, as determined by the commissioner, to be deposited to the credit of the mortgage grant fund at the end of each fiscal year.

Sec. 156.552. FUNDING. Provides that the mortgage grant fund consists of penalties collected by the commissioner and deposited to the credit of the fund in accordance with Section 156.551(b) and excess amounts transferred from the recovery fund under Section 156.502(b).

Sec. 156.553. MANAGEMENT OF FUND. (a) Requires the commissioner, as manager of the mortgage grant fund, to:

- (1) subject to Subsection (b), invest and reinvest the assets of the fund;
- (2) make disbursements from the fund in accordance with Section 156.554;
- (3) advise the Finance Commission of Texas (finance commission) regarding the fund;
- (4) maintain books and records for the fund as required by the finance commission; and
- (5) appear at hearings or judicial proceedings related to the fund.

(b) Authorizes amounts in the mortgage grant fund to be invested and reinvested in accordance with Chapter 2256, Government Code, and under the prudent person standard described in Section 11b, Article VII, Texas Constitution.

Sec. 156.554. DISBURSEMENT FROM FUND. (a) Requires the commissioner to approve each disbursement from the mortgage grant fund, which is required to be for a purpose authorized by Subsection (b).

(b) Provides that the commissioner:

(1) to the extent the commissioner determines the fund has sufficient assets available, is required to provide a grant in an amount of not less than \$100,000 each year to an auxiliary mortgage loan activity company or another statewide nonprofit organization that supports organizations described by Section 156.202 (a-1) (1) for the purposes of:

- (A) providing statewide training and technical assistance to entities described by Section 156.202 (a-1);
- (B) servicing third-party mortgage loans;
- (C) providing financial education to consumers that relates to mortgage loans; and
- (D) administering disaster repair programs and preparedness resources for consumers with mortgage loans;

(2) is required to make disbursements from the fund to pay claims made under Section 156.555 that meet the requirements for payment under that section; and

(3) is authorized to make disbursements from the fund to:

- (A) provide support for statewide financial education, activities, and programs specifically related to mortgage loans for consumers, including activities and programs described by Section 393.628(c)

(relating to administration of the Texas Financial Education Endowment); and

(B) if a governor's declaration of a state of disaster under Section 418.014 (Declaration of State of Disaster), Government Code, is in effect, a governmental or nonprofit organization providing mortgage payment assistance for residence homesteads, as defined by Section 11.13 (Residence Homestead), Tax Code, as needed due to the disaster.

Sec. 156.555. PAYMENT OF CLAIMS FOR FRAUDULENT UNLICENSED ACTIVITY. (a) Authorizes a residential mortgage loan applicant to make a claim on and receive payment from the mortgage grant fund for the recovery of the applicant's actual, out-of-pocket damages incurred because of fraud committed by an individual who acted as a residential mortgage loan originator but who did not hold the required license issued under Chapter 157 at the time the individual committed the fraudulent act.

(b) Provides that the eligibility and procedural requirements for a claim made under Section 156.504 and the statute of limitations under Section 156.503 apply to a residential mortgage loan applicant who makes a claim under this section.

(c) Provides that payments made from the mortgage grant fund to a residential mortgage loan applicant under this section are subject to the limits provided by Section 156.505.

Sec. 156.556. RULES. Requires the finance commission to adopt rules to administer this subchapter, including rules governing implementation of Section 156.554 that:

(1) ensure a grant awarded under that section is used for a public purpose described by that section; and

(2) provide a means of recovering money awarded that is not used in compliance with that section.

SECTION 8. Amends Section 157.013(b), Finance Code, to require that an application for a residential mortgage loan originator license be accompanied by certain items, including for an original license, a recovery fund fee in the amount of \$20, rather than a recovery fund fee in an amount determined by the commissioner, not to exceed \$20.

SECTION 9. Repealer: Sections 156.501(d) (relating to authorizing the recovery fund to be used at the discretion of the commissioner for certain purposes) and (f) (relating to entitling the commissioner, as manager of the recovery fund, to certain reimbursement), Finance Code.

SECTION 10. Makes application of Section 156.501(c), Finance Code, as amended by this Act, prospective.

SECTION 11. Effective date: September 1, 2021.