

## **BILL ANALYSIS**

C.S.H.B. 3367  
By: Burrows  
Investments & Financial Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties assert that the law governing the entities under the regulatory jurisdiction of the Department of Savings and Mortgage Lending and the savings and mortgage lending commissioner needs to be updated, clarified, and made uniform, and the parties further assert that there is a need for changes that will strengthen enforcement of the Residential Mortgage Loan Servicer Registration Act. C.S.H.B. 3367 seeks to implement such changes.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3367 amends the Finance Code to replace references to "articles of incorporation" with references to "certificate of formation" and to update references to the "Texas Business Corporation Act" with references to the "Business Organizations Code" in specified provisions of the Texas Savings and Loan Act and the Texas Savings Bank Act. The bill removes the requirement for the directors of a federal savings and loan association or a state or national bank to execute two copies of the application to convert to a state savings and loan association, includes the entity's managing officer as an alternative executor and signer of such an application, and removes references to the capacity as a subscriber and as an incorporator in which such individuals sign and acknowledge the application and the proposed bylaws. The bill replaces a requirement for the directors or president and secretary of a newly converted savings bank to execute two copies of an application for a certificate of incorporation with a requirement for the directors or managing officer of an applicable financial institution to execute an application to convert to a savings bank and replaces a requirement for each director or president and secretary of a newly converted savings bank to sign and acknowledge an application for a certificate of incorporation in certain capacities with a requirement for each director or managing officer of an applicable financial institution to sign and acknowledge an application to convert to a savings bank and the proposed bylaws. The bill removes the authorization for the Finance Commission of Texas to adopt rules relating to the form, contents, and time of publication of statements of condition under the Texas Savings and Loan Act and under the Texas Savings Bank Act.

C.S.H.B. 3367, effective January 1, 2018, for purposes of the Residential Mortgage Loan Company Licensing and Registration Act, revises the required contents of the disclosure form provided to an applicant for a residential mortgage loan by a residential mortgage loan originator

sponsored by and conducting business for a licensed or registered residential mortgage loan company to require such form to include the name, address, and toll-free telephone number for the Department of Savings and Mortgage Lending and contain information on how to file a complaint or recovery fund claim and to remove the requirement that the form specify the nature of the relationship between the applicant and the originator, the originator's duties to the applicant, and how the originator will be compensated. The bill requires the finance commission to adopt rules to implement such disclosure requirements not later than January 1, 2018, and establishes that such disclosure requirements apply only to an application for a residential mortgage loan that is submitted on or after January 1, 2018.

C.S.H.B. 3367 specifies that the residential mortgage loans for which the applicable borrowers must be provided certain notice regarding mortgage-servicing complaints by a mortgage banker under the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act that indicates in its registration that it acts as a residential mortgage loan servicer and by a registered mortgage loan servicer under the Residential Mortgage Loan Servicer Registration Act are residential mortgage loans secured by a lien on residential real estate located in Texas.

C.S.H.B. 3367 authorizes the savings and mortgage lending commissioner to investigate a registered mortgage loan servicer for reasonable cause at any time to determine whether the servicer is complying with the Residential Mortgage Loan Servicer Registration Act and applicable rules but limits the commissioner's authority to conduct an undercover or covert investigation to an investigation the commissioner, after due consideration of the circumstances, determines is necessary to prevent immediate harm and to carry out the purposes of the act.

C.S.H.B. 3367 authorizes a cease and desist order issued by the savings and mortgage lending commissioner as a result of the commissioner's reasonable-cause belief that a person who is not registered or exempt under the Residential Mortgage Loan Servicer Registration Act has engaged, or is about to engage, in an act or practice for which registration is required under the act to assess an administrative penalty capped at \$1,000 per day for each violation.

#### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3367 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Sections 62.001(a), (b), and (d), Finance Code, are amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 62.002(a), Finance Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Section 62.003, Finance Code, is amended.	SECTION 3. Same as introduced version.
SECTION 4. Sections 62.007(a) and (b), Finance Code, are amended.	SECTION 4. Same as introduced version.
SECTION 5. The heading to Section	SECTION 5. Same as introduced version.

62.010, Finance Code, is amended.

SECTION 6. Section 62.010(a), Finance Code, is amended.

SECTION 7. Section 62.011(a), Finance Code, is amended.

SECTION 8. Section 62.051, Finance Code, is amended.

SECTION 9. Sections 62.053(a) and (e), Finance Code, are amended.

SECTION 10. Section 62.156(c), Finance Code, is amended.

SECTION 11. Sections 62.157(a) and (c), Finance Code, are amended.

SECTION 12. Section 62.252(b), Finance Code, is amended to read as follows:

(b) The directors shall execute [~~two copies of~~] the application required by Section 62.251.

SECTION 13. Section 62.351(c), Finance Code, is amended.

SECTION 14. Section 62.405(c), Finance Code, is amended.

SECTION 15. Section 62.454(b), Finance Code, is amended.

SECTION 16. Section 66.002, Finance Code, is amended.

SECTION 17. Section 66.101, Finance Code, is amended.

SECTION 18. Section 67.001(b), Finance Code, is amended.

SECTION 19. Sections 92.051(a), (b), and (d), Finance Code, are amended.

SECTION 20. Section 92.052(a), Finance

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Sections 62.252(b) and (c), Finance Code, are amended to read as follows:

(b) The directors, or the managing officer, shall execute [~~two copies of~~] the application required by Section 62.251.

(c) Each director, or the managing officer, [~~of the association~~] shall sign and acknowledge the application [~~as a subscriber~~] and the proposed bylaws [~~as an incorporator~~].

SECTION 13. Same as introduced version.

SECTION 14. Same as introduced version.

SECTION 15. Same as introduced version.

SECTION 16. Same as introduced version.

SECTION 17. Same as introduced version.

SECTION 18. Same as introduced version.

SECTION 19. Same as introduced version.

SECTION 20. Same as introduced version.

Code, is amended.

SECTION 21. Section 92.053, Finance Code, is amended.

SECTION 22. Sections 92.058(b) and (c), Finance Code, are amended.

SECTION 23. The heading to Section 92.062, Finance Code, is amended.

SECTION 24. Section 92.062(a), Finance Code, is amended.

SECTION 25. Section 92.063(a), Finance Code, is amended.

SECTION 26. Section 92.101, Finance Code, is amended.

SECTION 27. Sections 92.103(a) and (e), Finance Code, are amended.

SECTION 28. Section 92.152(b), Finance Code, is amended.

SECTION 29. Section 92.158(a), Finance Code, is amended.

SECTION 30. Section 92.209(c), Finance Code, is amended.

SECTION 31. Sections 92.210(a) and (c), Finance Code, are amended.

SECTION 32. Section 92.302(b), Finance Code, is amended to read as follows:

(b) The directors, or the president and secretary, shall execute ~~[two copies of]~~ an application for certificate of incorporation as provided by Subchapter B.

SECTION 33. Section 92.351(c), Finance Code, is amended.

SECTION 34. Section 92.405(c), Finance

SECTION 21. Same as introduced version.

SECTION 22. Same as introduced version.

SECTION 23. Same as introduced version.

SECTION 24. Same as introduced version.

SECTION 25. Same as introduced version.

SECTION 26. Same as introduced version.

SECTION 27. Same as introduced version.

SECTION 28. Same as introduced version.

SECTION 29. Same as introduced version.

SECTION 30. Same as introduced version.

SECTION 31. Same as introduced version.

SECTION 32. Sections 92.302(b) and (c), Finance Code, are amended to read as follows:

(b) The directors, or the managing officer ~~[president and secretary]~~, shall execute the ~~[two copies of an]~~ application required by Section 92.301 ~~[for certificate of incorporation as provided by Subchapter B]~~.

(c) Each director, or the managing officer ~~[president and secretary]~~, shall sign and acknowledge the application ~~[for certificate of incorporation as a subscriber]~~ and ~~[shall sign and acknowledge]~~ the proposed bylaws ~~[as an incorporator]~~.

SECTION 33. Same as introduced version.

SECTION 34. Same as introduced version.

Code, is amended.

SECTION 35. Section 92.454(b), Finance Code, is amended.

SECTION 35. Same as introduced version.

SECTION 36. Section 94.301, Finance Code, is amended.

SECTION 36. Same as introduced version.

SECTION 37. Section 96.002(a), Finance Code, is amended.

SECTION 37. Same as introduced version.

SECTION 38. Section 96.101(a), Finance Code, is amended.

SECTION 38. Same as introduced version.

SECTION 39. Section 97.052, Finance Code, is amended.

SECTION 39. Same as introduced version.

SECTION 40. Section 98.001(b), Finance Code, is.

SECTION 40. Same as introduced version.

SECTION 41. Section 119.101(c), Finance Code, is amended.

SECTION 41. Same as introduced version.

SECTION 42. Section 156.004(a), Finance Code, is amended.

SECTION 42. Same as introduced version.

SECTION 43. Section 157.0021(b), Finance Code, is amended.

SECTION 43. Same as introduced version.

SECTION 44. The heading to Subchapter C, Chapter 158, Finance Code, is amended.

SECTION 44. Same as introduced version.

SECTION 45. Section 158.101, Finance Code, is amended.

SECTION 45. Same as introduced version.

SECTION 46. The heading to Section 158.102, Finance Code, is amended to read as follows:  
Sec. 158.102. INSPECTIONS:  
INVESTIGATIONS [~~INVESTIGATION~~  
~~OF COMPLAINTS~~ ~~AGAINST~~  
~~REGISTRANT~~]; SURCHARGE.

SECTION 46. The heading to Section 158.102, Finance Code, is amended to read as follows:  
Sec. 158.102. INVESTIGATIONS  
~~[INVESTIGATION OF COMPLAINTS~~  
~~AGAINST REGISTRANT]~~; SURCHARGE.

SECTION 47. Section 158.102, Finance Code, is amended by adding Subsections (a-1), (a-2), and (e) to read as follows:  
(a-1) The commissioner may conduct an inspection of a registrant as the commissioner determines necessary to determine whether the registrant is complying with this chapter and applicable rules. The inspection under this subsection may include an inspection of the books, records, documents, operations, and

SECTION 47. Section 158.102, Finance Code, is amended by adding Subsections (a-1) and (e) to read as follows:

facilities of the registrant.

(a-2) For reasonable cause, the commissioner at any time may investigate a registrant to determine whether the registrant is complying with this chapter and applicable rules.

(e) The commissioner may conduct an undercover or covert investigation only if the commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of this chapter.

No equivalent provision.

No equivalent provision.

SECTION 48. Subchapter C, Chapter 158, Finance Code, is amended by adding Section 158.107 to read as follows:

Sec. 158.107. UNREGISTERED ACTIVITY; OFFENSE. (a) An individual who is not exempt under this chapter or other applicable law and who acts as a residential mortgage loan servicer without first obtaining a registration as required under this chapter commits an offense.

(b) An offense under this section is a Class B misdemeanor. A second or subsequent conviction for an offense under this section is a Class A misdemeanor.

SECTION 49. The Finance Commission of Texas shall adopt rules to implement Section 156.004(a), Finance Code, as amended by this Act, not later than January 1, 2018.

SECTION 50. Section 156.004(a), Finance Code, as amended by this Act, applies only to an application for a residential mortgage loan that is submitted on or after January 1,

(a-1) For reasonable cause, the commissioner at any time may investigate a registrant to determine whether the registrant is complying with this chapter and applicable rules.

(e) The commissioner may conduct an undercover or covert investigation only if the commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of this chapter.

SECTION 48. The heading to Section 158.105, Finance Code, is amended to read as follows:

Sec. 158.105. UNREGISTERED ACTIVITY; CEASE AND DESIST ORDER.

SECTION 49. Section 158.105(b), Finance Code, is amended to read as follows:

(b) An order issued under Subsection (a) must contain a reasonably detailed statement of the facts on which the order is made [issued]. The order may assess an administrative penalty in an amount not to exceed \$1,000 per day for each violation.

No equivalent provision.

SECTION 50. Same as introduced version.

SECTION 51. Same as introduced version.

2018. An application for a residential mortgage loan that is submitted before January 1, 2018, is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

SECTION 51. Section 157.0021(b), Finance Code, as amended by this Act, and Section 158.101, Finance Code, as amended by this Act, apply only to a residential mortgage loan that is made on or after the effective date of this Act. A residential mortgage loan that is made before the effective date of this Act is governed by the law in effect on the date the residential mortgage loan was made, and the former law is continued in effect for that purpose.

No equivalent provision.

SECTION 52. (a) Except as otherwise provided by this section, this Act takes effect September 1, 2017.

(b) Section 156.004(a), Finance Code, as amended by this Act, takes effect January 1, 2018.

SECTION 52. Same as introduced version.

SECTION 53. Section 158.105(b), Finance Code, as amended by this Act, applies only to a violation committed on or after September 1, 2017. A violation committed before September 1, 2017, is governed by the law in effect on the date the violation was committed, and the former law is continued in effect for that purpose. For purposes of this section, a violation was committed before September 1, 2017, if any element of the violation occurred before that date.

SECTION 54. Same as introduced version.