

SUBJECT: Registration and other regulation of residential mortgage loan servicers

COMMITTEE: Pensions, Investments, and Financial Services — committee substitute recommended

VOTE: 6 ayes — Truitt, Anchia, Legler, Nash, Orr, Veasey
0 nays
3 absent — C. Anderson, Creighton, Hernandez Luna

SENATE VOTE: On final passage, March 29 — 31-0

WITNESSES: For — John Fleming, Texas Mortgage Bankers Association; (*Registered, but did not testify*: Robert Doggett, Texas Housing Justice League; Celeste Embrey, Texas Bankers Association; Tom Morgan, American Collectors Association of Texas; Paul Nagy, Amrow Resources Corporation)
Against — None
On — Doug Foster, Texas Department of Savings and Mortgage Lending

BACKGROUND: Mortgage bankers, residential mortgage loan originators, and certain other financial businesses are regulated under Finance Code, title 3, subtitle E. Ch. 157 is the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, administered by the Finance Commission and the Texas Department of Savings and Mortgage Lending (SML).

DIGEST: CSSB 17 would add to the Finance Code a new ch. 158, the Residential Mortgage Loan Servicer Registration Act, and it would amend the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act of ch. 157 to add provisions related to mortgage bankers acting as residential mortgage loan servicers. The bill would define “residential mortgage loan servicer” as a person who received scheduled payments from a borrower under the terms of a residential mortgage loan, made the payments of principal and interest to the owner of the loan, and made any other payments required under the servicing agreement.

Registration of residential mortgage loan servicers. The new ch. 158 would require residential mortgage loan servicers to register with the SML commissioner. To apply for registration, an applicant would have to pay a registration fee and file a bond payable to the SML commissioner for the potential recovery of money owed to a consumer. A registrant would have to renew its registration annually and pay an annual renewal fee. The amounts of the registration and renewal fees would be set by the Finance Commission and limited to \$500. The SML commissioner could revoke or refuse to renew a registration if the registrant violated applicable laws or intentionally engaged in fraudulent, deceptive, or dishonest dealings.

A residential mortgage loan servicer would be exempt from registration if it was a federal or state depository institution or subsidiary, a mortgage banker registered under ch. 157, a second-lien servicer regulated under another chapter, a person making a residential loan with personal funds for the sale of owned property, or a commercial loan servicer. Certain third-party debt collectors would be exempt from the registration fee and bond requirements but still would be required to register.

Complaints, investigations, and actions against loan servicers. The new ch. 158 would allow the SML commissioner to investigate consumer complaints against a registrant, impose an investigation fee to cover costs incurred from the investigation, and order a noncompliant registrant to cease and desist and/or pay a consumer for damages. Registrants would have to provide borrowers with a specific disclosure statement of SML contact information for registering complaints.

Ch. 158 would allow the SML commissioner to participate in multi-state mortgage examinations to ensure residential mortgage loan servicers were in compliance with the provisions of the bill and related law. The SML commissioner would be allowed to issue a cease-and-desist order to a nonregistered person who had engaged or was about to engage in an act requiring registration. If that person violated a cease-and-desist order, the SML commissioner could impose an administrative penalty, seek injunctive relief, and order complainant restitution for compensation received.

The bill would give the Finance Commission rulemaking authority to administer and ensure compliance with the new ch. 158, and it would require the Finance Commission to consult with the SML commissioner

when making such rules. The bill would provide for hearings and appeals of certain SML commissioner actions and orders allowed by the chapter.

Provisions for mortgage bankers acting as residential mortgage loan servicers. The bill would amend the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act of ch. 157 to require a mortgage banker to indicate in its registration if it was acting as a residential mortgage loan servicer. These mortgage bankers would have to provide borrowers with the same disclosure statement and SML contact information for complaints that registrants under ch. 158 would have to provide. The bill also would allow the SML commissioner to participate in multistate mortgage examinations to ensure compliance by these mortgage bankers, just as the commissioner would be allowed to ensure compliance by registrants under ch. 158.

The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

Most residential mortgage loan servicing is done by banks, credit unions, savings and loans, or their subsidiaries, which already are regulated under law. However, there are some residential mortgage loan servicers that are not associated with any of these entities. These mortgage servicers currently are unregulated, and there is no state agency designated to receive or resolve complaints from their consumers. CSSB 17 would establish regulation for only those servicers that are not already regulated under law.

Residential mortgage loan servicers perform an important role, collecting and forwarding home mortgage payments from a borrower to the lender. Since the recession began in 2008, however, there have been an increasing number of reports of consumer abuse by these mortgage servicers across the country. In Texas alone, hundreds of complaints per year related to residential mortgage loan servicing are received by the Department of Savings and Mortgage Lending, which does not even possess regulatory authority over mortgage servicing. Those complaints amount to about one-third of all complaints the agency receives annually. Common complaints include the servicer's failing to properly apply or provide statements on the application of payments, failing to recognize the consumer's existing insurance policies, refusing to work with the consumer on loan modification to reduce monthly payments to avoid foreclosure, and even modifying the loan to increase monthly payments. CSSB 17 would hold

these mortgage servicers accountable for their actions, catching the bad actors that currently fall through the cracks of regulation and oversight.

The regulations that CSSB 17 would establish would be limited, reasonable, and justified, given the volume and seriousness of the complaints generated by residential mortgage loan servicers. The SML commissioner could not investigate a servicer unless there was a consumer complaint lodged against that servicer. Servicers that already were regulated as another financial entity would be exempt from registration. Certain debt collectors would be exempt from registration fee and bond requirements, and certain smaller servicing companies would be subject to a reduced bond requirement. Appeals of SML commissioner actions would be possible. These limits and exemptions reflect feedback provided during the bill hearing process, and multiple committee substitutes have fine-tuned the regulations that CSSB 17 would establish.

**OPPONENTS
SAY:**

CSSB 17 would extend state government regulation over an industry composed mostly of businesses that already are regulated under law. New regulation is not necessary because the free market naturally will weed out the handful of bad actors as consumers identify and avoid them.

NOTES:

The House committee substitute differs from the Senate-passed version of the bill by providing exceptions to the registration fee and bond requirements for certain third-party debt collectors.