

BILL ANALYSIS

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S.B. 1916
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Prior to 1999, the Department of Savings and Mortgage Lending (SML) had regulatory authority solely over thrift depository institutions comprised of savings and loan associations and state savings banks as found, respectively, in Subtitle B and Subtitle C, Title 3, Finance Code. In 1999, with the passage of the Mortgage Broker License Act, Chapter 156, Finance Code, SML's regulatory oversight expanded by providing for the licensing and examination of what were then known as mortgage brokers and loan officers, and the processing of consumer complaints. Prior to this date, mortgage brokers and loan officers were not required to be licensed in order to operate in this state. The 78th Legislature subsequently enacted the Mortgage Banker Registration Act, Chapter 157, Finance Code, requiring the registration of mortgage banker companies conducting business in this state.

In 2008, following the United States housing crisis, Congress passed the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), which all states were required to adopt to comply with federal law. Accordingly, the 81st Legislature enacted the Texas version of the SAFE Act, Chapter 180, Finance Code, to ensure adequate consumer protection in the residential mortgage lending industry.

In 2011, the 82nd Legislature enacted the Residential Mortgage Loan Servicer Registration Act, Chapter 158, Finance Code, requiring the registration of non-depository third party residential mortgage loan servicers as a response to increased concerns over mortgage servicing complaints and issues with foreclosures around the country.

There are several areas in Subtitles B and C, Title 3 and Chapters 156, 157, and 158, Finance Code, that require modification and updates to outdated terminology, disclosure requirements, and to the regulation of residential mortgage loan servicers.

S.B. 1916 amends the Finance Code by replacing the outdated term "articles of incorporation" with the term "certificate of formation" for uniformity with other applicable state law.

S.B. 1916 amends the rulemaking authority of the Finance Commission of Texas (finance commission) as it relates to savings and loan associations and savings banks to eliminate the need for the finance commission to adopt rules relating to the form, contents, and time of publication of statements of condition because the publication of statements of condition is no longer required.

S.B. 1916 amends the content of the disclosure that a residential mortgage loan originator must provide to a residential mortgage loan applicant under Chapter 156, Finance Code, to create uniformity in the disclosures provided to applicants between the loan originators sponsored by a residential mortgage loan company and loan originators sponsored by a mortgage banker.

S.B. 1916 amends the content of the disclosures that a mortgage banker and residential mortgage loan servicer must provide to a borrower under Chapter 157 and 158, Finance Code, to clarify that the disclosures only apply to real property located in this state.

S.B. 1916 amends current law relating to the regulation of residential mortgage loan servicers, by providing that the commissioner may conduct an investigation of a registrant upon reasonable cause, to determine whether the registrant is complying with Chapter 158, Finance Code. It

further provides for the assessment of an administrative penalty for unregistered activity in order to enforce compliance with Chapter 158, Finance Code.

As proposed, S.B. 1916 amends current law relating to savings and loan associations, savings banks, residential mortgage loan originators and servicers, and other persons or entities under the regulatory jurisdiction of the Department of Savings and Mortgage Lending and the savings and mortgage lending commissioner; creating an offense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Finance Commission (finance Commission) in SECTION 49 of this bill.

Rulemaking authority previously granted to the finance commission is modified in SECTION 16 (Section 66.002, Finance Code) and SECTION 37 (Section 96.002, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 62.001(a), (b), and (d), Finance Code, as follows:

(a) Authorizes five or more residents of this state to apply to form and incorporate, rather than to apply to incorporate, as association by certain means.

(b) Requires an application to contain certain information, including two copies of the association's certificate of formation, rather than the association's articles of incorporation.

(d) Makes a conforming change.

SECTION 2. Amends Section 62.002(a), Finance Code, to require a capital stock association's certificate of formation, rather than articles of incorporation, to include a certain statement.

SECTION 3. Amends Section 62.003, Finance Code, as follows:

Sec. 62.003. ADDITIONAL INCORPORATION REQUIREMENTS FOR MUTUAL ASSOCIATION. Requires a mutual association's certificate of formation, rather than articles of incorporation, to include a certain statement.

(b) Makes a conforming change.

SECTION 4. Amends Sections 62.007(a) and (b), Finance Code, as follows:

(a) Authorizes the savings and mortgage lending commissioner (commissioner) to approve an application to incorporate only if the commissioner finds that certain information of each person named in the certificate of formation, rather than articles of incorporation, command certain confidence and warrant certain belief.

(b) Makes conforming changes.

SECTION 5. Amends the heading to Section 62.010, Finance Code, to read as follows:

Sec. 62.010. AMENDMENT OF CERTIFICATE OF FORMATION OR BYLAWS.

SECTION 6. Amends Section 62.010(a), Finance Code, to authorize an association to amend its certificate of formation, rather than articles of incorporation, or bylaws by certain means.

SECTION 7. Amends Section 62.011(a), Finance Code, to authorize an association, under certain requirements, to establish an office other than the principal office stated in the association's certificate of formation, rather than articles of incorporation.

SECTION 8. Amends Section 62.051, Finance Code, to authorize a person to apply to form and incorporate, rather than to apply to incorporate, an association for certain purposes.

SECTION 9. Amends Sections 62.053(a) and (e), Finance Code, as follows:

(a) Requires the commissioner to approve an application under this subchapter (Incorporation to Reorganize or Merge) if the commissioner finds that the business of the association that is to be reorganized or merged can be effectively continued under the certificate of formation, rather than articles of incorporation.

(e) Provides that, in a merger, a shareholder of a capital stock association has the same dissenter's rights as a shareholder of a domestic business corporation under the Business Organizations Code, rather than under the Texas Business Corporation Act.

SECTION 10. Amends Section 62.156(c), Finance Code, to authorize an association to retire or redeem preferred stock in certain manners, including the manner provided by the certificate of formation, rather than the articles of incorporation.

SECTION 11. Amends Sections 62.157(a) and (c), Finance Code, as follows:

(a) Authorizes the certificate of formation, rather than articles of incorporation, to make certain authorizations and determinations.

(c) Makes conforming changes.

SECTION 12. Amends Section 62.252(b), Finance Code, to require the directors to execute the application required by Section 62.251 (Application to Convert), rather than to execute two copies of the application required by Section 62.251.

SECTION 13. Amends Section 62.351(c), Finance Code, to provide that a shareholder of a capital stock association has the same dissenter's rights as a shareholder of a domestic corporation under the Business Organizations Code, rather than the Texas Business Corporation Act.

SECTION 14. Amends Section 62.405(c), Finance Code, to require a surviving association that is a domestic association to operate under certain documents, including the certificate of formation and bylaws of a certain association, rather than the articles and bylaws of a certain association.

SECTION 15. Amends Section 62.454(b), Finance Code, to provide that after the merger takes effect, the association's certificate of formation is, rather than the association's articles of incorporation are, considered amended to the extent that a change is stated in the plan of merger.

SECTION 16. Amends Section 66.002, Finance Code, to delete existing text authorizing the Finance Commission of Texas (finance commission) to adopt rules relating to the form, contents, and time of publication of statements of conditions and make a nonsubstantive change.

SECTION 17. Amends Section 66.101, Finance Code, to authorize the commissioner to intervene in the affairs of an association if the association or a certain person takes certain actions, including that the person violates or is about to violate the association's certificate of formation, rather than articles of incorporation.

SECTION 18. Amends Section 67.001(b), Finance Code, to provides that Subsection (a) (relating to prohibiting certain people from doing business as a savings and loan association or maintaining an office in Texas for doing business) does not prohibit activity that is not considered to be transacting business in this state under Section 9.251 (Activities Not Constituting Transacting Business in this State), Business Organizations Code, rather than Section B, Article 8.01, Texas Business Corporation Act.

SECTION 19. Amends Sections 92.051(a), (b), and (d), Finance Code, as follows:

(a) Authorizes five or more adult residents of this state to apply to form and incorporate, rather than apply to incorporate, a savings bank by submitting certain applications and fees to the commissioner.

(b) Requires an application to contain certain information, including two copies of the savings bank's certificate of formation, rather than articles of incorporation.

(d) Makes a conforming change.

SECTION 20. Amends Section 92.052(a), Finance Code, to require a capital stock savings bank's certificate of formation, rather than articles of incorporation, to include a certain statement.

SECTION 21. Amends Section 92.053, Finance Code, as follows:

Sec. 92.053. ADDITIONAL REQUIREMENTS FOR MUTUAL SAVINGS BANK. (a) Requires a mutual savings bank's certificate of formation, rather than articles of incorporation, to include a certain statement.

(b) Makes a conforming change.

SECTION 22. Amends Sections 92.058(b) and (c), Finance Code, as follows:

(b) Authorizes the commissioner to approve an application only if certain information of each person named in the certificate of formation, rather than articles of incorporation, command certain confidence and warrant certain belief.

(c) Makes conforming changes.

SECTION 23. Amends the heading to Section 92.062, Finance Code, to read as follows:

Sec. 92.062. AMENDMENT OF CERTIFICATE OF FORMATION OR BYLAWS.

SECTION 24. Amends Section 92.062(a), Finance Code, to authorize a savings bank to amend its certificate of formation, rather than articles of incorporation, or bylaws by certain means.

SECTION 25. Amends Section 92.063(a), Finance Code, to authorize a savings bank, if certain requirements are met, to establish an office other than the principal office state in the savings bank's certificate of formation, rather than articles of incorporation.

SECTION 26. Amends Section 92.101, Finance Code, to authorize a person to apply to form and incorporate, rather than apply to incorporate, a savings bank for certain purposes.

SECTION 27. Amends Sections 92.103(a) and (e), Finance Code, as follows:

(a) Requires the commissioner to approve an application under this subchapter if the commissioner finds that the business of the financial institution that is to be reorganized or merged can be effectively continued under the certificate of formation, rather than articles of incorporation.

(e) Makes a conforming change.

SECTION 28. Amends Section 92.152(b), Finance Code, to authorize the directors to be elected for staggered terms of longer than one year as provided by the savings bank's bylaws or certificate of formation, rather than articles of incorporation.

SECTION 29. Amends Section 92.158(a), Finance Code, to provide that the voting rights of a person entitled to vote at an annual or special meeting of a savings bank are the same as those of

a shareholder of a domestic business corporation under the Business Organizations Code, rather than the Texas Business Corporation Act.

SECTION 30. Amends Section 92.209(c), Finance Code, to authorize a savings bank to retire or redeem preferred stock in the manner provided by the certificate of formation, rather than the manner provided by the articles of incorporation.

SECTION 31. Amends Sections 92.210(a) and (c), Finance Code, as follows:

(a) Authorizes the certificate of formation, rather than the articles of incorporation, to make certain authorizations and determinations.

(c) Makes conforming changes.

SECTION 32. Amends Section 92.302(b) Finance Code, to require the directors, or the president and secretary, to execute an application, rather than two copies of an application, for certificate of incorporation as provided by Subchapter B (Incorporation in General).

SECTION 33. Amends Section 92.351(c), Finance Code to provide that a shareholder of a capital stock savings bank has the same dissenter's rights as a shareholder of a domestic corporation under the Business Organizations Code, rather than the Texas Business Corporation Act.

SECTION 34. Amends Section 92.405(c), Finance Code, to require a surviving savings bank that is a domestic savings bank to operate under certain documents, including the certificate of formation, rather than the articles and bylaws of a certain savings bank.

SECTION 35. Amends Section 92.454(b), Finance Code, to provide that after the merger takes effect, the savings bank's certificate of formation is, rather than the savings bank's articles of incorporation are, considered amended to the extent that a change is stated in the plan of merger.

SECTION 36. Amends Section 94.301, Finance Code, to authorize a savings bank to invest in a certain subsidiary, with the prior approval, rather than prior consent, of the commissioner and subject to certain rules.

SECTION 37. Amends Section 96.002(a), Finance Code, to delete existing text authorizing the finance commission to adopt a rule relating to the form, content, and time of publication of statements of condition.

SECTION 38. Amends Section 96.101(a), Finance Code, to authorize the commissioner to intervene in the affairs of the savings bank if the savings bank or a certain person takes certain actions, including that the person violates or is about to violate the savings bank's certificate of formation, rather than articles of incorporation.

SECTION 39. Amends Section 97.052, Finance Code, to require the application for approval of reorganization to contain certain documents, including two copies of the proposed certificate of formation, rather than articles of incorporation, of the subsidiary savings bank acknowledged by the incorporators of the subsidiary savings bank.

SECTION 40. Amends Section 98.001(b), Finance Code, to provide that Subsection (a) (relating to prohibiting certain individuals from doing business as a savings bank or maintaining an office in Texas for certain purposes) does not prohibit activity that is not considered to be transacting business in this state under Section 9.251, Business Organizations Code, rather than Section B, Article 8.01, Texas Business Corporation Act.

SECTION 41. Amends Section 119.101(c), Finance Code, to provide that a stockholder of a capital stock savings bank has the same right to examine the relevant books and records of a savings bank as a shareholder of a business corporation under the Business Organizations Code, rather than the Texas Business Corporation Act.

SECTION 42. Amends Section 156.004(a), Finance Code, as follows:

(a) Requires the residential mortgage loan originator to provide to the applicant a disclosure form at the time a residential mortgage loan applicant, rather than an applicant, submits a certain application to an originator. Requires the form to include certain information. Deletes existing text requiring the residential mortgage loan originator to provide to the applicant a disclosure that specifies certain information.

SECTION 43. Amends Section 157.0021(b), Finance Code, to require a certain mortgage banker to provide to the borrower of each residential mortgage loan that it services and that is secured by a lien on residential real estate located in this state a certain notice not later than a certain day. Sets forth the content of the notice.

SECTION 44. Amends the heading to Subchapter C, Chapter 158, Finance Code, to read as follows:

**SUBCHAPTER C. INVESTIGATIONS; COMPLAINTS AND ACTIONS AGAINST
REGISTRANT**

SECTION 45. Amends Section 158.101, Finance Code, as follows:

Sec. 158.101. DISCLOSURE STATEMENT. Requires a registrant to provide to the borrower of each residential mortgage loan that it services and that is secured by a lien on residential real estate located in this state a certain notice not later than a certain day. Sets forth the content of the notice.

SECTION 46. Amends the heading to Section 158.102, Finance Code, to read as follows:

Sec. 158.102. INSPECTIONS; INVESTIGATIONS; SURCHARGE.

SECTION 47. Amends Section 158.102, Finance Code, by adding Subsections (a-1), (a-2), and (e), as follows:

(a-1) Authorizes the commissioner to conduct an inspection of a registrant as the commissioner determines necessary to determine whether the registrant is complying with this chapter and applicable rules. Authorizes the inspection under this subsection to include an inspection of the books, records, documents, operations, and facilities of the registrant.

(a-2) Authorizes the commissioner at any time to, for reasonable cause, investigate a registrant to determine whether the registrant is complying with this chapter (Residential Mortgage Loan Servicers) and applicable rules.

(e) Authorizes the commissioner to 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. Amends Subchapter C, Chapter 158, Finance Code, by adding Section 158.107, as follows:

Sec. 158.107. UNREGISTERED ACTIVITY; OFFENSE. (a) Provides that 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) Provides that an offense under this section is a Class B misdemeanor. Provides that a second or subsequent conviction for an offense under this section is a Class A misdemeanor.

SECTION 49. Requires the finance commission to adopt rules to implement Section 156.004(a), Finance Code, as amended by this Act, not later than January 1, 2018.

SECTION 50. Makes application of Section 156.004(a), Finance Code, as amended by this Act, prospective to January 1, 2018.

SECTION 51. Makes application of Section 157.0021(b), Finance Code, as amended by this Act, and Section 158.101, Finance Code, as amended by this Act, prospective.

SECTION 52. (a) Effective date, except as otherwise provided by this section: September 1, 2017.

(b) Effective date, Section 156.004(a), Finance Code, as amended by this Act: January 1, 2018.