

## **BILL ANALYSIS**

Senate Research Center

S.B. 830  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 830 ensures that homebuyers who finance through a non-federally related lender receive annual statements from their lender which include basic information about the status of their loan.

Some Texas families, instead of going through traditional banks or credit unions, choose to finance their homes through small lenders who self-finance the mortgage. Many of these non-federally related lenders do not provide the most basic information to borrowers, including the amount paid in the previous year that went to principal and interest, or the amount remaining on the loan. Without proof of payment, conflicts could easily emerge between lender and borrower over payments paid or not paid. In the serious case of a lender perpetrating some mortgage fraud, the borrower may have no proof of their loss of mortgage payments.

S.B. 830 requires that non-federally related lenders provide annual statements to the borrower containing the amount of each payment received, how each payment was to either principal or interest, any fee or other charge assessed against the borrower, and the outstanding balance of the borrower's principal. A borrower injured by violation of the bill's provisions may obtain an order from a court requiring compliance and recover actual damages and \$100 for each violation plus attorney's fees. (Original Author's / Sponsor's Statement of Intent)

S.B. 830 amends current law relating to the provision of accounting statements by mortgage servicers for certain loans secured by a lien on residential real property.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 5, Finance Code, by adding Chapter 397, as follows:

#### **CHAPTER 397. ACCOUNTING STATEMENTS FOR CERTAIN HOME LOANS REQUIRED**

Sec. 397.001. DEFINITION. Defines "mortgage servicer."

Sec. 397.002. APPLICABILITY OF CHAPTER. Provides that this chapter applies only to a loan secured by a first or subordinate lien on residential real property that is not a federally related mortgage loan, as defined by 12 U.S.C. Section 2602; a loan that is made by a credit union regulated by the Texas Credit Union Department; a loan that is primarily for business, commercial, or agricultural purposes, or for temporary financing, such as a construction loan, as referred to under 12 U.S.C. Section 2602; or a loan that is directly financed and serviced by a relative within the second degree of consanguinity or affinity of the borrower.

Sec. 397.003. ANNUAL ACCOUNTING STATEMENT. (a) Requires a mortgage servicer to provide to the borrower an annual statement in January of each year for the

term of the loan. Requires that the statement be provided by mail, postmarked on or before January 31, and sent to the borrower at the borrower's last known address.

(b) Requires that the required statement clearly and conspicuously state the amount of each payment that was received by the mortgage servicer as payment toward the loan during the preceding calendar year, how each described payment was applied to the borrower's account, including information showing the amount of each payment that was applied to certain amounts, and the outstanding balance of the borrower's principal obligation under the loan.

Sec. 397.004. RECOURSE OF BORROWER FOR MORTGAGE SERVICER'S FAILURE TO TIMELY PROVIDE STATEMENT; LIABILITY OF MORTGAGE SERVICER. (a) Authorizes a borrower, if the borrower does not receive an annual statement within the time prescribed by Section 397.003(a), to request the statement from the mortgage servicer by sending a request to that effect to the mortgage servicer by certified mail, return receipt requested.

(b) Provides that, except as provided by Subsection (c), if, after receiving a request under Subsection (a), the mortgage servicer fails to provide the statement to the borrower on or before the 25th day after the date the mortgage servicer receives the request:

(1) the borrower is not liable for any fees, penalties, or late charges, or any other amounts except for any principal and interest that may be due for the preceding calendar year; and

(2) if the mortgagee is not the mortgage servicer, the mortgage servicer is liable for paying the mortgagee certain amounts or fees.

(c) Provides that Subsection (b) does not apply if, before the borrower requests an annual statement under this section, the mortgage servicer sends a default notice to the borrower at the borrower's last known address by certified mail, return receipt requested.

SECTION 2. Effective date: September 1, 2017.