

By: Deshotel

H.B. No. 3472

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the investment and use of excess residential mortgage
3 loan originator recovery fund fees and to the creation of the
4 mortgage grant fund; changing a fee.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 13.016, Finance Code, is amended to read
7 as follows:

8 Sec. 13.016. RECOVERY FUND. (a) Except as provided by
9 Subchapter G, Chapter 156, the ~~[The]~~ savings and mortgage lending
10 commissioner shall establish, administer, and maintain one
11 recovery fund for the purposes of Chapters 156 and 157. The
12 recovery fund shall be administered and maintained under Subchapter
13 F, Chapter 156.

14 (b) The savings and mortgage lending commissioner's
15 authority under this section includes the authority to~~[+~~

16 ~~[(1) set fee amounts under Chapters 156 and 157 for~~
17 ~~deposit in the recovery fund, and~~

18 ~~[(2)]~~ enforce disciplinary action as provided by
19 Chapters 156 and 157 for a person's failure to comply with the
20 applicable provisions of those chapters relating to the recovery
21 fund and with applicable rules adopted under those chapters.

22 SECTION 2. Sections 156.501(b) and (c), Finance Code, are
23 amended to read as follows:

24 (b) Subject to this subsection and Section 156.502(b), the

1 recovery fund shall be used to reimburse residential mortgage loan
 2 applicants for actual damages incurred because of acts committed by
 3 a residential mortgage loan originator who was licensed under
 4 Chapter 157 when the act was committed. The use of the fund is
 5 limited to reimbursement for out-of-pocket losses caused by an act
 6 by a residential mortgage loan originator licensed under Chapter
 7 157 that constitutes a violation of Section 157.024(a)(2), (3),
 8 (5), (7), (8), (9), (10), (13), (16), (17), or (18) or 156.304(b).

9 (c) Amounts in the recovery fund may be invested and
 10 reinvested in accordance with Chapter 2256, Government Code, and
 11 under the prudent person standard described in Section 11b, Article
 12 VII, Texas Constitution [~~in the same manner as funds of the~~
 13 ~~Employees Retirement System of Texas~~], and the interest from these
 14 investments shall be deposited to the credit of the fund. An
 15 investment may not be made under this subsection if the investment
 16 will impair the necessary liquidity required to satisfy claims
 17 [~~judgment payments~~] awarded under this subchapter.

18 SECTION 3. Section 156.502, Finance Code, is amended to
 19 read as follows:

20 Sec. 156.502. FUNDING. (a) On an application for an
 21 original license [~~or for renewal of a license~~] issued under Chapter
 22 157, the applicant, in addition to paying the original application
 23 fee [~~or renewal fee~~], shall pay a fee in the [~~an~~] amount of
 24 [~~determined by the commissioner, not to exceed~~] \$20. The fee shall
 25 be deposited in the recovery fund.

26 (a-1) All or any portion of the amount of a penalty that is
 27 collected by the commissioner under Sections 156.302, 156.303,

1 157.023, 157.024, 157.031, 158.105, and 180.202, as determined by
2 the commissioner, may be deposited to the credit of the recovery
3 fund at the end of each fiscal year.

4 (b) If the balance remaining in the recovery fund at the end
5 of a calendar year is more than \$3.5 million, the amount of money in
6 excess of that amount shall be remitted by the commissioner to the
7 comptroller for deposit in the mortgage grant fund established
8 under Subchapter G [~~available to the commissioner to offset the~~
9 ~~expenses of participating in and sharing information with the~~
10 ~~Nationwide Mortgage Licensing System and Registry in accordance~~
11 ~~with Chapter 180]~~.

12 SECTION 4. Chapter 156, Finance Code, is amended by adding
13 Subchapter G to read as follows:

14 SUBCHAPTER G. MORTGAGE GRANT FUND

15 Sec. 156.551. MORTGAGE GRANT FUND. (a) The commissioner
16 shall establish, administer, and maintain a mortgage grant fund as
17 provided by this subchapter. The amounts received by the
18 commissioner for deposit in the fund shall be held by the
19 commissioner in trust for carrying out the purposes of the fund.

20 (b) All or any portion of the amount of a penalty that is
21 collected by the commissioner under Sections 156.302, 156.303,
22 157.023, 157.024, 157.031, 158.105, and 180.202, as determined by
23 the commissioner, may be deposited to the credit of the mortgage
24 grant fund at the end of each fiscal year.

25 Sec. 156.552. FUNDING. The mortgage grant fund consists
26 of:

- 27 (1) penalties collected by the commissioner and

1 deposited to the credit of the fund in accordance with Section
2 156.551(b); and

3 (2) excess amounts transferred from the recovery fund
4 under Section 156.502(b).

5 Sec. 156.553. MANAGEMENT OF FUND. (a) The commissioner, as
6 manager of the mortgage grant fund, shall:

7 (1) subject to Subsection (b), invest and reinvest the
8 assets of the fund;

9 (2) make disbursements from the fund in accordance
10 with Section 156.554;

11 (3) advise the finance commission regarding the fund;

12 (4) maintain books and records for the fund as
13 required by the finance commission; and

14 (5) appear at hearings or judicial proceedings related
15 to the fund.

16 (b) Amounts in the mortgage grant fund may be invested and
17 reinvested in accordance with Chapter 2256, Government Code, and
18 under the prudent person standard described in Section 11b, Article
19 VII, Texas Constitution.

20 Sec. 156.554. DISBURSEMENT FROM FUND. (a) The
21 commissioner shall approve each disbursement from the mortgage
22 grant fund, which must be for a purpose authorized by Subsection
23 (b).

24 (b) The commissioner:

25 (1) to the extent the commissioner determines the fund
26 has sufficient assets available, shall provide a grant in an amount
27 of not less than \$100,000 each year to an auxiliary mortgage loan

1 activity company or another statewide nonprofit organization that
2 supports organizations described by Section 156.202(a-1)(1) for
3 the purposes of:

4 (A) providing statewide training and technical
5 assistance to entities described by Section 156.202(a-1);

6 (B) servicing third-party mortgage loans;

7 (C) providing financial education to consumers
8 that relates to mortgage loans; and

9 (D) administering disaster repair programs and
10 preparedness resources for consumers with mortgage loans;

11 (2) shall make disbursements from the fund to pay
12 claims made under Section 156.555 that meet the requirements for
13 payment under that section; and

14 (3) may make disbursements from the fund to:

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

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

24 Sec. 156.555. PAYMENT OF CLAIMS FOR FRAUDULENT UNLICENSED
25 ACTIVITY. (a) A residential mortgage loan applicant may make a
26 claim on and receive payment from the mortgage grant fund for the
27 recovery of the applicant's actual, out-of-pocket damages incurred

1 because of fraud committed by an individual who acted as a
2 residential mortgage loan originator but who did not hold the
3 required license issued under Chapter 157 at the time the
4 individual committed the fraudulent act.

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

9 (c) Payments made from the mortgage grant fund to a
10 residential mortgage loan applicant under this section are subject
11 to the limits provided by Section 156.505.

12 Sec. 156.556. RULES. The finance commission shall adopt
13 rules to administer this subchapter, including rules governing
14 implementation of Section 156.554 that:

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

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

19 SECTION 5. Section 157.013(b), Finance Code, is amended to
20 read as follows:

21 (b) An application for a residential mortgage loan
22 originator license must be accompanied by:

23 (1) an application fee in an amount determined by the
24 commissioner, not to exceed \$500; and

25 (2) for an original license, a recovery fund fee in the
26 [an] amount of [determined by the commissioner, not to exceed] \$20.

27 SECTION 6. Sections 156.501(d) and (f), Finance Code, are

1 repealed.

2 SECTION 7. Section [156.501\(c\)](#), Finance Code, as amended by
3 this Act, applies only to an investment made on or after the
4 effective date of this Act. An investment made before the effective
5 date of this Act is governed by the law as it existed immediately
6 before that date, and that law is continued in effect for that
7 purpose.

8 SECTION 8. This Act takes effect September 1, 2021.