

By: Carona

S.B. No. 1577

Substitute the following for S.B. No. 1577:

By: Flynn

C.S.S.B. No. 1577

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the effect of a criminal conviction on licensing and  
3 regulation of a mortgage broker or loan officer.

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

5 SECTION 1. Section 156.204, Finance Code, is amended by  
6 amending Subsections (a) and (c) and adding Subsection (d) to read  
7 as follows:

8 (a) To be eligible to be licensed as a mortgage broker a  
9 person must:

10 (1) be an individual who is at least 18 years of age;

11 (2) be a citizen of the United States or a lawfully  
12 admitted alien;

13 (3) maintain a physical office in this state and  
14 designate that office in the application;

15 (4) provide the commissioner with satisfactory  
16 evidence that the applicant satisfies one of the following:

17 (A) the person has received a bachelor's degree  
18 in an area relating to finance, banking, or business administration  
19 from an accredited college or university and has 18 months of  
20 experience in the mortgage or lending field as evidenced by  
21 documentary proof of full-time employment as a mortgage broker or  
22 loan officer with a mortgage broker or a person exempt under Section  
23 156.202;

24 (B) the person is licensed in this state as:

1 (i) an active real estate broker under The  
2 Real Estate License Act (Article 6573a, Vernon's Texas Civil  
3 Statutes);

4 (ii) an active attorney; or

5 (iii) a local recording agent or insurance  
6 solicitor or agent for a legal reserve life insurance company under  
7 Chapter 21, Insurance Code, or holds an equivalent license under  
8 Chapter 21, Insurance Code; or

9 (C) the person has three years of experience in  
10 the mortgage lending field as evidenced by documentary proof of  
11 full-time employment as a loan officer with a mortgage broker or a  
12 person exempt under Section 156.202;

13 (5) demonstrate evidence of compliance with the  
14 financial requirements of this chapter; ~~and~~

15 (6) not have been convicted of a criminal offense that  
16 the commissioner determines directly relates to the occupation of a  
17 mortgage broker as provided by ~~under~~ Chapter 53, Occupations  
18 Code;

19 (7) satisfy the commissioner as to the individual's  
20 good moral character, including the individual's honesty,  
21 trustworthiness, and integrity; and

22 (8) not be in violation of this chapter, a rule adopted  
23 under this chapter, or any order previously issued to the  
24 individual by the commissioner.

25 (c) To be eligible to be licensed as a loan officer a person  
26 must:

27 (1) be an individual who is at least 18 years of age;

1           (2) be a citizen of the United States or a lawfully  
2 admitted alien;

3           (3) designate in the application the name of the  
4 mortgage broker sponsoring the loan officer;

5           (4) provide the commissioner with satisfactory  
6 evidence that the applicant satisfies one of the following:

7                   (A) the person meets one of the requirements  
8 described by Subsection (a)(4);

9                   (B) the person has successfully completed 15  
10 hours of education courses approved by the commissioner under this  
11 section;

12                   (C) the person has 18 months of experience as a  
13 loan officer as evidenced by documentary proof of full-time  
14 employment as a loan officer with a mortgage broker or a person  
15 exempt under Section 156.202; or

16                   (D) for applications received prior to January 1,  
17 2000, the mortgage broker that will sponsor the applicant provides  
18 a certification under oath that the applicant has been provided  
19 necessary and appropriate education and training regarding all  
20 applicable state and federal law and regulations relating to  
21 mortgage loans; ~~and~~

22           (5) not have been convicted of a criminal offense that  
23 the commissioner determines directly relates to the occupation of a  
24 loan officer as provided by ~~under~~ Chapter 53, Occupations Code;

25           (6) satisfy the commissioner as to the individual's  
26 good moral character, including the individual's honesty,  
27 trustworthiness, and integrity; and

1           (7) not be in violation of this chapter, a rule adopted  
2 under this chapter, or any order previously issued to the  
3 individual by the commissioner.

4           (d) For the purposes of Subsections (a)(6) and (c)(5), a  
5 person is considered convicted if a sentence is imposed on the  
6 person, the person receives community supervision, including  
7 deferred adjudication community supervision, or the court defers  
8 final disposition of the person's case.

9           SECTION 2. Section 156.208, Finance Code, is amended by  
10 amending Subsections (a) and (b) and adding Subsection (h) to read  
11 as follows:

12           (a) A mortgage broker license issued under this chapter is  
13 valid for two years and may be renewed on or before its expiration  
14 date if the mortgage broker:

15               (1) pays to the commissioner a renewal fee in an amount  
16 determined by the commissioner not to exceed \$375 and a recovery  
17 fund fee provided by Section 156.502;

18               (2) has not been convicted of a criminal offense  
19 [~~felony~~] the commissioner determines is directly related to the  
20 occupation of a mortgage broker as provided by [~~under~~] Chapter 53,  
21 Occupations Code; and

22               (3) provides the commissioner with satisfactory  
23 evidence that the mortgage broker:

24                       (A) has attended, during the term of the current  
25 license, 15 hours of continuing education courses that the  
26 commissioner, in accordance with the rules adopted by the finance  
27 commission under this section, has approved as continuing education

1 courses; or

2 (B) maintains an active license in this state as:

3 (i) a real estate broker;

4 (ii) a real estate salesperson;

5 (iii) an attorney; or

6 (iv) a local recording agent or insurance  
7 solicitor or agent for a legal reserve life insurance company under  
8 Chapter 21, Insurance Code, or an equivalent license under Chapter  
9 21, Insurance Code.

10 (b) A loan officer license issued under this chapter is  
11 valid for two years and may be renewed on or before its expiration  
12 date if the loan officer:

13 (1) pays to the commissioner a renewal fee in an amount  
14 determined by the commissioner not to exceed \$175 and a recovery  
15 fund fee provided by Section 156.502;

16 (2) has not been convicted of a criminal offense  
17 [~~felony~~] the commissioner determines is directly related to the  
18 occupation of a loan officer as provided by [~~under~~] Chapter 53,  
19 Occupations Code; and

20 (3) provides the commissioner with satisfactory  
21 evidence that the loan officer:

22 (A) has attended, during the term of the current  
23 license, 15 hours of continuing education courses that the  
24 commissioner, in accordance with the rules adopted by the finance  
25 commission under this section, has approved as continuing education  
26 courses, including courses provided by or through the licensed  
27 mortgage broker with whom the loan officer is associated after

1 submission to and approval by the commission; or

2 (B) maintains an active license in this state as:

3 (i) a real estate broker;

4 (ii) a real estate salesperson;

5 (iii) an attorney; or

6 (iv) a local recording agent or insurance  
7 solicitor or agent for a legal reserve life insurance company under  
8 Chapter 21, Insurance Code, or an equivalent license under Chapter  
9 21, Insurance Code.

10 (h) For the purposes of Subsections (a)(2) and (b)(2), a  
11 person is considered convicted if a sentence is imposed on the  
12 person, the person receives community supervision, including  
13 deferred adjudication community supervision, or the court defers  
14 final disposition of the person's case.

15 SECTION 3. Section 156.303(a), Finance Code, is amended to  
16 read as follows:

17 (a) The commissioner may order disciplinary action against  
18 a licensed mortgage broker or a licensed loan officer when the  
19 commissioner, after a hearing, has determined that the person:

20 (1) obtained a license under this chapter through a  
21 false or fraudulent representation or made a material  
22 misrepresentation in an application for a license under this  
23 chapter;

24 (2) published or caused to be published an  
25 advertisement related to the business of a mortgage broker or loan  
26 officer that:

27 (A) is misleading;

1 (B) is likely to deceive the public;

2 (C) in any manner tends to create a misleading  
3 impression;

4 (D) fails to identify as a mortgage broker or  
5 loan officer the person causing the advertisement to be published;  
6 or

7 (E) violates federal or state law;

8 (3) while performing an act for which a license under  
9 this chapter is required, engaged in conduct that constitutes  
10 improper, fraudulent, or dishonest dealings;

11 (4) failed to notify the commissioner not later than  
12 the 30th day after the date of the final conviction if the person,  
13 in a court of this or another state or in a federal court, has been  
14 convicted of or entered a plea of guilty or nolo contendere to a  
15 felony or a criminal offense involving fraud;

16 (5) failed to use a fee collected in advance of closing  
17 of a mortgage loan for a purpose for which the fee was paid;

18 (6) charged or received, directly or indirectly, a fee  
19 for assisting a mortgage applicant in obtaining a mortgage loan  
20 before all of the services that the person agreed to perform for the  
21 mortgage applicant are completed, and the proceeds of the mortgage  
22 loan have been disbursed to or on behalf of the mortgage applicant,  
23 except as provided by Section 156.304;

24 (7) failed within a reasonable time to honor a check  
25 issued to the commissioner after the commissioner has mailed a  
26 request for payment by certified mail to the person's last known  
27 business address as reflected by the commissioner's records;

1           (8) paid compensation to a person who is not licensed  
2 or exempt under this chapter for acts for which a license under this  
3 chapter is required;

4           (9) induced or attempted to induce a party to a  
5 contract to breach the contract so the person may make a mortgage  
6 loan;

7           (10) published or circulated an unjustified or  
8 unwarranted threat of legal proceedings in matters related to the  
9 person's actions or services as a mortgage broker or loan officer,  
10 as applicable;

11           (11) established an association, by employment or  
12 otherwise, with a person not licensed or exempt under this chapter  
13 who was expected or required to act as a mortgage broker or loan  
14 officer;

15           (12) aided, abetted, or conspired with a person to  
16 circumvent the requirements of this chapter;

17           (13) acted in the dual capacity of a mortgage broker or  
18 loan officer and real estate broker, salesperson, or attorney in a  
19 transaction without the knowledge and written consent of the  
20 mortgage applicant or in violation of applicable requirements under  
21 federal law;

22           (14) discriminated against a prospective borrower on  
23 the basis of race, color, religion, sex, national origin, ancestry,  
24 familial status, or a disability;

25           (15) failed or refused on demand to:

26                   (A) produce a document, book, or record  
27 concerning a mortgage loan transaction conducted by the mortgage



1 broker or loan officer for inspection by the commissioner or the  
2 commissioner's authorized personnel or representative;

3 (B) give the commissioner or the commissioner's  
4 authorized personnel or representative free access to the books or  
5 records relating to the person's business kept by an officer,  
6 agent, or employee of the person or any business entity through  
7 which the person conducts mortgage brokerage activities, including  
8 a subsidiary or holding company affiliate; or

9 (C) provide information requested by the  
10 commissioner as a result of a formal or informal complaint made to  
11 the commissioner;

12 (16) failed without just cause to surrender, on  
13 demand, a copy of a document or other instrument coming into the  
14 person's possession that was provided to the person by another  
15 person making the demand or that the person making the demand is  
16 under law entitled to receive; or

17 (17) disregarded or violated this chapter, ~~or~~ a rule  
18 adopted by the finance commission under this chapter, or an order  
19 issued by the commissioner under this chapter.

20 SECTION 4. This Act takes effect September 1, 2003.