

By: Solomons

H.B. No. 1716

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the registration of a registered financial services  
3 company and the authority of its exclusive agents to act as mortgage  
4 brokers.

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

6 SECTION 1. Section 156.002, Finance Code, is amended by  
7 adding Subdivision (11) to read as follows:

8 (11) "Registered financial services company" means a  
9 person registered under Section 156.214.

10 SECTION 2. Section 156.202, Finance Code, is amended to  
11 read as follows:

12 Sec. 156.202. EXEMPTIONS. The following persons are exempt  
13 from this [This] chapter [~~does not apply to~~]:

14 (1) any of the following entities or an employee of any  
15 of the following entities provided the employee is acting for the  
16 benefit of the employer:

17 (A) a bank, savings bank, or savings and loan  
18 association, or a subsidiary or an affiliate of a bank, savings  
19 bank, or savings and loan association;

20 (B) a state or federal credit union, or a  
21 subsidiary, affiliate, or credit union service organization of a  
22 state or federal credit union;

23 (C) an insurance company licensed or authorized  
24 to do business in this state under the Insurance Code;

1 (D) a mortgage banker registered under Chapter  
2 157;

3 (E) an organization that qualifies for an  
4 exemption from state franchise and sales tax as a 501(c)(3)  
5 organization;

6 (F) a Farm Credit System institution; or

7 (G) a political subdivision of this state  
8 involved in affordable home ownership programs;

9 (2) an individual who makes a mortgage loan from the  
10 individual's own funds to a spouse, former spouse, or persons in the  
11 lineal line of consanguinity of the individual lending the money;

12 (3) an owner of real property who makes a mortgage loan  
13 to a purchaser of the property for all or part of the purchase price  
14 of the real estate against which the mortgage is secured; [~~or~~]

15 (4) an individual who:

16 (A) makes a mortgage loan from the individual's  
17 own funds;

18 (B) is not an authorized lender under Chapter  
19 342, Finance Code; and

20 (C) does not regularly engage in the business of  
21 making or brokering mortgage loans; or

22 (5) an individual who is an exclusive agent of a  
23 registered financial services company under a written agreement  
24 prohibiting the individual from soliciting, processing,  
25 negotiating, or placing a mortgage loan with a person other than the  
26 registered financial services company or an affiliate of that  
27 company.

1 SECTION 3. Subchapter C, Chapter 156, Finance Code, is  
2 amended by adding Section 156.214 to read as follows:

3 Sec. 156.214. REGISTERED FINANCIAL SERVICES COMPANY. (a)

4 A registered financial services company may perform the services of  
5 a mortgage broker as if the company were licensed as a mortgage  
6 broker under this chapter, through individuals who are the  
7 exclusive agents of the registered financial services company.

8 (b) To be eligible to register as a registered financial  
9 services company, a person must:

10 (1) be a depository institution exempt from this  
11 chapter under Section 156.202(1)(A) or (B) and chartered and  
12 regulated by the Office of Thrift Supervision or the Office of the  
13 Comptroller of the Currency, or be a subsidiary or affiliate of the  
14 institution;

15 (2) provide the commissioner with satisfactory  
16 evidence of an undertaking of accountability in a form acceptable  
17 to the commissioner, supported by a surety bond equal to \$1 million  
18 to cover the person's responsibility for mortgage broker activities  
19 of each exclusive agent;

20 (3) provide a business plan satisfactory to the  
21 commissioner that sets forth the person's plan to provide education  
22 to its exclusive agents, handle consumer complaints relating to its  
23 exclusive agents, and supervise the mortgage broker activities of  
24 its exclusive agents;

25 (4) pay an annual registration fee of the lesser of:

26 (A) one-half of the license fee for a loan  
27 officer under Section 156.203(c)(1), multiplied by the number of

1 exclusive agents under contract to act for the person in this state;  
2 or

3 (B) \$200,000; and

4 (5) designate an officer of the person to be  
5 responsible for the activities of the exclusive agents.

6 (c) If the commissioner determines that a person has met the  
7 requirements of Subsection (b), the commissioner shall issue a  
8 registration to the person. The registration is valid for one year  
9 and may be renewed on or before its expiration date. A person may  
10 renew an expired registration in the same manner as a person may  
11 renew an expired license under Section 156.2081(b).

12 (d) A registered financial services company is subject to  
13 Subchapters D and E as if the company were licensed as a mortgage  
14 broker.

15 (e) A registered financial services company shall conduct a  
16 criminal background check for each proposed exclusive agent. Based  
17 on the criminal background check, a registered financial services  
18 company may not engage an individual to act as an exclusive agent,  
19 without the prior consent of the commissioner, if the individual  
20 has:

21 (1) been convicted of a criminal offense involving  
22 dishonesty, breach of trust, or money laundering;

23 (2) pled guilty or nolo contendere in connection with  
24 a prosecution for an offense described by Subdivision (1); or

25 (3) agreed to enter into a pretrial diversion or  
26 similar program in connection with a prosecution for an offense  
27 described by Subdivision (1).

1 SECTION 4. This Act takes effect September 1, 2007.