

1-1 By: Solomons (Senate Sponsor - Van de Putte) H.B. No. 1716
1-2 (In the Senate - Received from the House April 16, 2007;
1-3 April 17, 2007, read first time and referred to Committee on
1-4 Business and Commerce; May 2, 2007, reported favorably by the
1-5 following vote: Yeas 8, Nays 0; May 2, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the registration of a registered financial services
1-9 company and the authority of its exclusive agents to act as mortgage
1-10 brokers.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 156.002, Finance Code, is amended by
1-13 adding Subdivision (11) to read as follows:

1-14 (11) "Registered financial services company" means a
1-15 person registered under Section 156.214.

1-16 SECTION 2. Section 156.202, Finance Code, is amended to
1-17 read as follows:

1-18 Sec. 156.202. EXEMPTIONS. The following persons are exempt
1-19 from this [This] chapter [~~does not apply to~~]:

1-20 (1) any of the following entities or an employee of any
1-21 of the following entities provided the employee is acting for the
1-22 benefit of the employer:

1-23 (A) a bank, savings bank, or savings and loan
1-24 association, or a subsidiary or an affiliate of a bank, savings
1-25 bank, or savings and loan association;

1-26 (B) a state or federal credit union, or a
1-27 subsidiary, affiliate, or credit union service organization of a
1-28 state or federal credit union;

1-29 (C) an insurance company licensed or authorized
1-30 to do business in this state under the Insurance Code;

1-31 (D) a mortgage banker registered under Chapter
1-32 157;

1-33 (E) an organization that qualifies for an
1-34 exemption from state franchise and sales tax as a 501(c)(3)
1-35 organization;

1-36 (F) a Farm Credit System institution; or

1-37 (G) a political subdivision of this state
1-38 involved in affordable home ownership programs;

1-39 (2) an individual who makes a mortgage loan from the
1-40 individual's own funds to a spouse, former spouse, or persons in the
1-41 lineal line of consanguinity of the individual lending the money;

1-42 (3) an owner of real property who makes a mortgage loan
1-43 to a purchaser of the property for all or part of the purchase price
1-44 of the real estate against which the mortgage is secured; ~~or~~

1-45 (4) an individual who:

1-46 (A) makes a mortgage loan from the individual's
1-47 own funds;

1-48 (B) is not an authorized lender under Chapter
1-49 342, Finance Code; and

1-50 (C) does not regularly engage in the business of
1-51 making or brokering mortgage loans; or

1-52 (5) an individual who is an exclusive agent of a
1-53 registered financial services company under a written agreement
1-54 prohibiting the individual from soliciting, processing,
1-55 negotiating, or placing a mortgage loan with a person other than the
1-56 registered financial services company or an affiliate of that
1-57 company.

1-58 SECTION 3. Subchapter C, Chapter 156, Finance Code, is
1-59 amended by adding Section 156.214 to read as follows:

1-60 Sec. 156.214. REGISTERED FINANCIAL SERVICES COMPANY. (a)
1-61 A registered financial services company may perform the services of
1-62 a mortgage broker as if the company were licensed as a mortgage
1-63 broker under this chapter, through individuals who are the
1-64 exclusive agents of the registered financial services company.

2-1 (b) To be eligible to register as a registered financial
 2-2 services company, a person must:

2-3 (1) be a depository institution exempt from this
 2-4 chapter under Section 156.202(1)(A) or (B) and chartered and
 2-5 regulated by the Office of Thrift Supervision or the Office of the
 2-6 Comptroller of the Currency, or be a subsidiary or affiliate of the
 2-7 institution;

2-8 (2) provide the commissioner with satisfactory
 2-9 evidence of an undertaking of accountability in a form acceptable
 2-10 to the commissioner, supported by a surety bond equal to \$1 million
 2-11 to cover the person's responsibility for mortgage broker activities
 2-12 of each exclusive agent;

2-13 (3) provide a business plan satisfactory to the
 2-14 commissioner that sets forth the person's plan to provide education
 2-15 to its exclusive agents, handle consumer complaints relating to its
 2-16 exclusive agents, and supervise the mortgage broker activities of
 2-17 its exclusive agents;

2-18 (4) pay an annual registration fee of the lesser of:
 2-19 (A) one-half of the license fee for a loan
 2-20 officer under Section 156.203(c)(1), multiplied by the number of
 2-21 exclusive agents under contract to act for the person in this state;
 2-22 or

2-23 (B) \$200,000; and
 2-24 (5) designate an officer of the person to be
 2-25 responsible for the activities of the exclusive agents.

2-26 (c) If the commissioner determines that a person has met the
 2-27 requirements of Subsection (b), the commissioner shall issue a
 2-28 registration to the person. The registration is valid for one year
 2-29 and may be renewed on or before its expiration date. A person may
 2-30 renew an expired registration in the same manner as a person may
 2-31 renew an expired license under Section 156.2081(b).

2-32 (d) A registered financial services company is subject to
 2-33 Subchapters D and E as if the company were licensed as a mortgage
 2-34 broker.

2-35 (e) No person may be an exclusive agent of a registered
 2-36 financial services company without the prior consent of the
 2-37 commissioner if the individual has:

2-38 (1) been convicted of a criminal offense involving
 2-39 dishonesty, breach of trust, or money laundering; or pled guilty or
 2-40 nolo contendere in connection with a prosecution for an offense
 2-41 described in this subdivision; or agreed to enter into a pretrial
 2-42 diversion or similar program in connection with a prosecution for
 2-43 an offense described in this subdivision; or

2-44 (2) been the subject of a revocation or suspension of
 2-45 any professional license in this state or any other jurisdiction.

2-46 (f) Prior to permitting an exclusive agent to solicit,
 2-47 process, negotiate, or place a mortgage loan, the registered
 2-48 financial services company shall submit to the commissioner such
 2-49 information as the commissioner may require relating to the person
 2-50 together with a fingerprint imprint of the person. The
 2-51 commissioner shall obtain criminal history record information as
 2-52 provided in Section 156.206(b). The commissioner may assess a fee
 2-53 in an amount determined by the finance commission to cover the cost
 2-54 of the criminal background check. This section does not apply to a
 2-55 person who is licensed as a mortgage broker or loan officer under
 2-56 Chapter 156 at the time he becomes an exclusive agent of a
 2-57 registered financial services company.

2-58 (g) The commissioner shall notify the person and the
 2-59 registered financial services company of his determination as to
 2-60 whether or not the person is eligible to be an exclusive agent under
 2-61 Subsection (a). A person who is determined to be ineligible may
 2-62 appeal the decision of the commissioner in the same manner as an
 2-63 appeal may be made under Section 156.209.

2-64 SECTION 4. This Act takes effect September 1, 2007.

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