

By: Solomons

H.B. No. 2783

Substitute the following for H.B. No. 2783:

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C.S.H.B. No. 2783

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the regulation of mortgage brokers.

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

4 SECTION 1. Section 156.201(b), Finance Code, is amended to  
5 read as follows:

6 (b) An individual may not act or attempt to act as a loan  
7 officer unless the individual at the time is:

8 (1) licensed under this chapter and [+

9 [~~2~~] sponsored by a licensed mortgage broker and  
10 acting for the mortgage broker; or

11 (2) [~~3~~] exempt under Section 156.202.

12 SECTION 2. Section 156.202, Finance Code, is amended to  
13 read as follows:

14 Sec. 156.202. EXEMPTIONS. This chapter does not apply to:

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

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

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

24 (C) an insurance company licensed or authorized

1 to do business in this state under the Insurance Code;

2 (D) a mortgage banker registered under Chapter  
3 157;

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

7 (F) a Farm Credit System institution; or

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

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

13 (3) an owner of real property who in any  
14 12-consecutive-month period makes no more than five ~~[makes a]~~  
15 mortgage loans ~~[loan]~~ to purchasers ~~[a purchaser]~~ of the property  
16 for all or part of the purchase price of the real estate against  
17 which the mortgage is secured; or

18 (4) an individual who:

19 (A) makes a mortgage loan from the individual's  
20 own funds;

21 (B) is not an authorized lender under Chapter  
22 342, Finance Code; and

23 (C) does not regularly engage in the business of  
24 making or brokering mortgage loans.

25 SECTION 3. Sections 156.204(a) and (b), Finance Code, are  
26 amended to read as follows:

27 (a) To be eligible to be licensed as a mortgage broker as an

1 individual, the individual [~~a person~~] must:

2 (1) be [~~an individual who is~~] at least 18 years of age;

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

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

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

9 (A) the person has received a bachelor's degree  
10 in an area relating to finance, banking, or business administration  
11 from an accredited college or university and has 18 months of  
12 experience in the mortgage or lending field as evidenced by  
13 documentary proof of full-time employment as a mortgage broker or  
14 licensed loan officer with a mortgage broker or a person exempt  
15 under Section 156.202;

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

17 (i) an active real estate broker under  
18 Chapter 1101, Occupations Code;

19 (ii) an active attorney; or

20 (iii) a local recording agent or insurance  
21 solicitor or agent for a legal reserve life insurance company under  
22 Chapter 21, Insurance Code, or holds an equivalent license under  
23 Chapter 21, Insurance Code; or

24 (C) the person has three years of experience in  
25 the mortgage lending field as evidenced by documentary proof of  
26 full-time employment as a licensed loan officer with a mortgage  
27 broker or a person exempt under Section 156.202;

1 (5) provide the commissioner with satisfactory  
2 evidence of:

3 (A) having passed an examination, offered by a  
4 testing service or company approved by the finance commission, that  
5 demonstrates knowledge of:

- 6 (i) the mortgage industry; and  
7 (ii) the role and responsibilities of a  
8 mortgage broker; and

9 (B) compliance with the financial requirements  
10 of this chapter;

11 (6) not have been convicted of a criminal offense that  
12 the commissioner determines directly relates to the occupation of a  
13 mortgage broker as provided by Chapter 53, Occupations Code;

14 (7) satisfy the commissioner as to the individual's  
15 good moral character, including the individual's honesty,  
16 trustworthiness, and integrity; and

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

20 (b) A corporation, limited liability company, or limited  
21 partnership may not act as a mortgage broker unless the entity  
22 obtains a mortgage broker license. To be eligible for a mortgage  
23 broker license the entity must designate an individual licensed as  
24 a mortgage broker as its designated representative and pay an  
25 application fee in an amount to be determined by the commissioner  
26 not to exceed \$175. The designated representative must be:

- 27 (1) if the entity is a corporation, an officer of the

1 corporation;

2 (2) if the entity is a limited liability company, a  
3 manager of the limited liability company; or

4 (3) if the entity is a limited partnership:

5 (A) an individual who is a general partner;

6 (B) an officer of a general partner that is a  
7 corporation; or

8 (C) a manager of a general partner that is a  
9 limited liability company. [A mortgage broker may conduct business

10 under a corporate structure, partnership, or any other business  
11 form or as an independent contractor for a corporation,  
12 partnership, or any other business entity. Before conducting  
13 mortgage broker activities under, through, or for a corporation,  
14 partnership, or other business entity, a mortgage broker must  
15 notify the commissioner, in writing, of any corporate name,  
16 partnership name, assumed name, or any other name under, through,  
17 or for which the mortgage broker conducts activities for which a  
18 license is required under this chapter. The corporation,  
19 partnership, or other business entity under, through, or for which  
20 the mortgage broker conducts business is not required to be  
21 separately licensed as a mortgage broker provided that all  
22 individuals who perform mortgage broker activities are licensed as  
23 mortgage brokers or loan officers. The commissioner shall require  
24 proof of compliance with this subsection at the time the mortgage  
25 broker applies for and renews a license.]

26 SECTION 4. Section 156.208(i), Finance Code, as added by  
27 Chapter 1018, Acts of the 79th Legislature, Regular Session, 2005,

1 is relettered as Subsection (j), Section 156.208, Finance Code, and  
2 amended to read as follows:

3 (j) [~~(i)~~] The commissioner may deny the renewal of a  
4 mortgage broker license or a loan officer license if:

5 (1) the mortgage broker or loan officer is in  
6 violation of this chapter, a rule adopted under this chapter, or any  
7 order previously issued to the individual by the commissioner; [~~or~~]

8 (2) the mortgage broker or loan officer is in default  
9 in the payment of any administrative penalty, fee, charge, or other  
10 indebtedness owed under this title; or

11 (3) during the current term of the license, the  
12 commissioner becomes aware of any fact that would have been grounds  
13 for denial of an original license if the fact had been known by the  
14 commissioner on the date the license was granted.

15 SECTION 5. Section 156.211, Finance Code, is amended by  
16 adding Subsections (b-1), (b-2), and (b-3) to read as follows:

17 (b-1) Not later than the 10th day before a mortgage broker  
18 begins doing business under an assumed name, the mortgage broker  
19 shall file with the commissioner a copy of an assumed name  
20 certificate for each assumed name under which the mortgage broker  
21 intends to conduct business and pay a \$25 registration fee for each  
22 assumed name. A loan officer may not conduct business under any  
23 assumed name that is not the registered assumed name of the  
24 sponsoring mortgage broker.

25 (b-2) A person licensed under this chapter must notify the  
26 commissioner not later than the 10th day after the date of any  
27 change of the person's name and pay to the commissioner a change of

1 name fee of \$25 for the issuance of an amended license certificate.

2 (b-3) A business entity licensed under this chapter shall  
3 notify the commissioner of any change of its designated  
4 representative. The commissioner may charge a fee of \$25 for each  
5 change of a designated representative.

6 SECTION 6. Subchapter C, Chapter 156, Finance Code, is  
7 amended by adding Section 156.214 to read as follows:

8 Sec. 156.214. APPROVAL OF COURSES. (a) The finance  
9 commission may adopt rules establishing:

10 (1) minimum standards for courses, approved course  
11 providers, and approved course instructors; and

12 (2) a fee not to exceed \$200 for the review and  
13 approval of each course not provided and approved by a duly  
14 organized trade association the purpose of which is primarily to  
15 represent residential mortgage originators.

16 (b) An approval is for up to two years.

17 SECTION 7. Section 156.303, Finance Code, is amended by  
18 amending Subsection (a) and adding Subsection (j) to read as  
19 follows:

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

23 (1) obtained a license, including a renewal of a  
24 license, under this chapter through a false or fraudulent  
25 representation or made a material misrepresentation in an  
26 application for a license or for the renewal of a license under this  
27 chapter;

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

4                   (A) is misleading;

5                   (B) is likely to deceive the public;

6                   (C) in any manner tends to create a misleading  
7 impression;

8                   (D) fails to identify as a mortgage broker or  
9 loan officer the person causing the advertisement to be published;  
10 or

11                   (E) violates federal or state law;

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

15           (4) entered a plea of guilty or nolo contendere to, or  
16 is convicted of, a criminal offense that is a felony or that  
17 involves fraud or moral turpitude in a court of this or another  
18 state or in a federal court;

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

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

27           (7) failed within a reasonable time to honor a check



1 issued to the commissioner after the commissioner has mailed a  
2 request for payment by certified mail to the person's last known  
3 business address as reflected by the commissioner's records;

4 (8) paid compensation to a person who is not licensed  
5 or exempt under this chapter for acts for which a license under this  
6 chapter is required;

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

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

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

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

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

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

1 (15) failed or refused on demand to:

2 (A) produce a document, book, or record  
3 concerning a mortgage loan transaction conducted by the mortgage  
4 broker or loan officer for inspection by the commissioner or the  
5 commissioner's authorized personnel or representative;

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

12 (C) provide information requested by the  
13 commissioner as a result of a formal or informal complaint made to  
14 the commissioner;

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

20 (17) disregarded or violated this chapter, a rule  
21 adopted by the finance commission under this chapter, or an order  
22 issued by the commissioner under this chapter; or

23 (18) provided false information to the commissioner  
24 during the course of an investigation or inspection.

25 (j) On notice and opportunity for hearing, the commissioner  
26 may suspend a person's license under this chapter if an indictment  
27 or information is filed or returned alleging that the person

1 committed a criminal offense involving fraud, theft, or dishonesty.  
2 The suspension continues until the criminal case is dismissed or  
3 the person is acquitted.

4 SECTION 8. A corporation, limited liability company, or  
5 limited partnership is not required to obtain a mortgage broker  
6 license, as required by Section 156.204(b), Finance Code, as  
7 amended by this Act, to act as a mortgage broker before January 1,  
8 2008.

9 SECTION 9. This Act takes effect September 1, 2007.