

1-1 By: Solomons, Anchia (Senate Sponsor - Seliger) H.B. No. 2783
1-2 (In the Senate - Received from the House May 7, 2007;
1-3 May 14, 2007, read first time and referred to Committee on Business
1-4 and Commerce; May 19, 2007, reported favorably, as amended, by the
1-5 following vote: Yeas 5, Nays 0; May 19, 2007, sent to printer.)

1-6 COMMITTEE AMENDMENT NO. 1 By: Eltife

1-7 Amend H.B. No. 2783 (house engrossment) as follows:

1-8 (1) Insert the following appropriately numbered
1-9 SECTIONS to the bill and renumber existing SECTIONS of the bill
1-10 accordingly:

1-11 SECTION __. Subchapter C, Chapter 156, Finance Code, is
1-12 amended by adding Section 156.2011 to read as follows:

1-13 Sec. 156.2011. PROVISIONAL LOAN OFFICER LICENSE. (a) An
1-14 applicant for a loan officer license may be issued a provisional
1-15 loan officer license as provided by this section only if the
1-16 applicant:

1-17 (1) during the 20 months immediately preceding the
1-18 application, has at least 18 months of experience as a loan officer
1-19 employed by a person exempt from this chapter under Section
1-20 156.202; and

1-21 (2) meets the qualifications for a loan officer
1-22 license, other than the educational and examination requirements.

1-23 (b) The commissioner shall use best efforts to issue the
1-24 provisional loan officer license on or before the later of:

1-25 (1) the 10th business day after the date of receipt of
1-26 a completed application; or

1-27 (2) the second business day after the date of receipt
1-28 of the criminal background information required under Section
1-29 156.206 demonstrating that the applicant has no pending criminal
1-30 charges and has not been convicted of a criminal offense.

1-31 (c) For purposes of Subsection (b)(2), a person is
1-32 considered convicted as provided by Section 156.204(d).

1-33 (d) A provisional loan officer license is valid for 90 days
1-34 after the date the license is issued, except as provided by
1-35 Subsection (e).

1-36 (e) The commissioner may revoke a provisional loan officer
1-37 license if the commissioner discovers that the applicant has made a
1-38 misrepresentation relating to the applicant's qualifications for a
1-39 loan officer license, has violated this chapter, or does not meet
1-40 the qualifications for a provisional loan officer license. The
1-41 revocation of a provisional loan officer license is not subject to
1-42 appeal.

1-43 (f) The finance commission by rule may impose a fee not to
1-44 exceed \$100 for an expedited issuance of a provisional loan officer
1-45 license. The fee is nonrefundable and is in addition to the fee for
1-46 the application for a regular loan officer license.

1-47 SECTION __. The changes in law made by Section 156.2011,
1-48 Finance Code, as added by this Act, and Section 156.204, Finance
1-49 Code, as amended by this Act, apply only to a loan officer or
1-50 mortgage broker license for which any part of an application is
1-51 submitted on or after September 1, 2007.

1-52 (2) In the recital to SECTION 5 of the bill (page 3,
1-53 line 58), strike "Sections 156.204(a) and (b)," and substitute
1-54 "Sections 156.204(a), (b), (c), and (e),".

1-55 (3) In SECTION 5 of the bill, in Subdivision (7) of
1-56 amended Section 156.204(a), Finance Code (page 4, line 34), strike
1-57 "; and" and substitute "; ~~and~~".

1-58 (4) In SECTION 5 of the bill, in Subdivision (8) of
1-59 amended Section 156.204(a), Finance Code, between "commissioner"
1-60 and the period (page 4, line 37), insert the following:

1-61 ; and

1-62 (9) provide the commissioner with satisfactory
1-63 evidence that:

1-64 (A) if the person has not been previously

2-1 licensed as a mortgage broker or a loan officer under this
 2-2 subchapter, the person has completed 90 classroom hours of
 2-3 education courses approved by the commissioner under this section;
 2-4 or

2-5 (B) if the person has not been previously
 2-6 licensed as a mortgage broker under this subchapter but has been
 2-7 licensed as a loan officer under this subchapter, the person has
 2-8 successfully completed an additional 30 classroom hours of
 2-9 education courses approved by the commissioner under this section

2-10 (5) In SECTION 5 of the bill, following amended
 2-11 Section 156.204(b), Finance Code (page 5, between lines 1 and 2),
 2-12 add the following:

2-13 (c) To be eligible to be licensed as a loan officer a person
 2-14 must:

2-15 (1) be an individual who is at least 18 years of age;

2-16 (2) be a citizen of the United States or a lawfully
 2-17 admitted alien;

2-18 (3) designate in the application the name of the
 2-19 mortgage broker sponsoring the loan officer;

2-20 (4) provide the commissioner with satisfactory
 2-21 evidence that the applicant satisfies one of the following:

2-22 (A) the person meets one of the requirements
 2-23 described by Subsection (a)(4) and has [+
 2-24 [~~(B)~~ ~~the person has~~] successfully completed 60

2-25 classroom [30] hours of education courses approved by the
 2-26 commissioner under this section;

2-27 (B) [~~(C)~~] the person has 18 months of experience
 2-28 as a loan officer as evidenced by documentary proof of full-time
 2-29 employment as a loan officer with [~~a mortgage broker or~~] a person
 2-30 exempt under Section 156.202 and has successfully completed 30
 2-31 classroom hours of education courses approved by the commissioner
 2-32 under this section; or

2-33 (C) [~~(D)~~] for applications received prior to
 2-34 January 1, 2000, the mortgage broker that will sponsor the
 2-35 applicant provides a certification under oath that the applicant
 2-36 has been provided necessary and appropriate education and training
 2-37 regarding all applicable state and federal law and regulations
 2-38 relating to mortgage loans;

2-39 (5) not have been convicted of a criminal offense that
 2-40 the commissioner determines directly relates to the occupation of a
 2-41 loan officer as provided by Chapter 53, Occupations Code;

2-42 (6) satisfy the commissioner as to the individual's
 2-43 good moral character, including the individual's honesty,
 2-44 trustworthiness, and integrity;

2-45 (7) provide the commissioner with satisfactory
 2-46 evidence of having passed an examination, offered by a testing
 2-47 service or company approved by the finance commission, that
 2-48 demonstrates knowledge of:

2-49 (A) the mortgage industry; and

2-50 (B) the role and responsibilities of a loan
 2-51 officer; and

2-52 (8) not be in violation of this chapter, a rule adopted
 2-53 under this chapter, or any order previously issued to the
 2-54 individual by the commissioner.

2-55 (e) The education courses required for a mortgage broker or
 2-56 loan officer license under Subsection (a)(9) or (c)(4) [~~(c)(4)(B)~~]
 2-57 must cover ethics, the Real Estate Settlement Procedures Act of
 2-58 1974 (12 U.S.C. Section 2601 et seq.), the Truth in Lending Act (15
 2-59 U.S.C. Section 1601 et seq.), the Equal Credit Opportunity Act (15
 2-60 U.S.C. Section 1691 et seq.), and the provisions of this chapter.

2-61 A BILL TO BE ENTITLED
 2-62 AN ACT

2-63 relating to the regulation of certain persons involved in mortgage
 2-64 lending.

2-65 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

2-66 SECTION 1. Section 156.002(10), Finance Code, is amended to
 2-67 read as follows:

3-1 (10) "Mortgage loan" means a debt against real estate
 3-2 secured by a [~~first-lien~~] security interest against one-to-four
 3-3 family residential real estate created by a deed of trust, security
 3-4 deed, or other security instrument.

3-5 SECTION 2. Section 156.201(b), Finance Code, is amended to
 3-6 read as follows:

3-7 (b) An individual may not act or attempt to act as a loan
 3-8 officer unless the individual at the time is:

3-9 (1) licensed under this chapter and [~~+~~
 3-10 [~~2~~] sponsored by a licensed mortgage broker and
 3-11 acting for the mortgage broker; or

3-12 (2) [~~3~~] exempt under Section 156.202.

3-13 SECTION 3. Section 156.202, Finance Code, is amended to
 3-14 read as follows:

3-15 Sec. 156.202. EXEMPTIONS. This chapter does not apply to:

3-16 (1) any of the following entities or an employee of any
 3-17 of the following entities provided the employee is acting for the
 3-18 benefit of the employer:

3-19 (A) a bank, savings bank, or savings and loan
 3-20 association, or a subsidiary or an affiliate of a bank, savings
 3-21 bank, or savings and loan association;

3-22 (B) a state or federal credit union, or a
 3-23 subsidiary, affiliate, or credit union service organization of a
 3-24 state or federal credit union;

3-25 (C) an insurance company licensed or authorized
 3-26 to do business in this state under the Insurance Code;

3-27 (D) a mortgage banker registered under Chapter
 3-28 157;

3-29 (E) an organization that qualifies for an
 3-30 exemption from state franchise and sales tax as a 501(c)(3)
 3-31 organization;

3-32 (F) a Farm Credit System institution; or

3-33 (G) a political subdivision of this state
 3-34 involved in affordable home ownership programs;

3-35 (2) an individual who makes a mortgage loan from the
 3-36 individual's own funds to a spouse, former spouse, or persons in the
 3-37 lineal line of consanguinity of the individual lending the money;

3-38 (3) an owner of real property who in any
 3-39 12-consecutive-month period makes no more than five [~~makes a~~
 3-40 mortgage loans [~~loan~~] to purchasers [~~a purchaser~~] of the property
 3-41 for all or part of the purchase price of the real estate against
 3-42 which the mortgage is secured; or

3-43 (4) an individual who:

3-44 (A) makes a mortgage loan from the individual's
 3-45 own funds;

3-46 (B) is not an authorized lender under Chapter
 3-47 342, Finance Code; and

3-48 (C) does not regularly engage in the business of
 3-49 making or brokering mortgage loans.

3-50 SECTION 4. Section 156.203(c), Finance Code, is amended to
 3-51 read as follows:

3-52 (c) An application for a loan officer license must be
 3-53 accompanied by:

3-54 (1) an application fee in an amount determined by the
 3-55 commissioner not to exceed \$275 [~~\$175~~]; and

3-56 (2) a recovery fund fee as provided by Section
 3-57 156.502.

3-58 SECTION 5. Sections 156.204(a) and (b), Finance Code, are
 3-59 amended to read as follows:

3-60 (a) To be eligible to be licensed as a mortgage broker as an
 3-61 individual, the individual [~~a person~~] must:

3-62 (1) be [~~an individual who is~~] at least 18 years of age;

3-63 (2) be a citizen of the United States or a lawfully
 3-64 admitted alien;

3-65 (3) maintain a physical office in this state and
 3-66 designate that office in the application;

3-67 (4) provide the commissioner with satisfactory
 3-68 evidence that the applicant satisfies one of the following:

3-69 (A) the person has received a bachelor's degree

4-1 in an area relating to finance, banking, or business administration
 4-2 from an accredited college or university and has 18 months of
 4-3 experience in the mortgage or lending field as evidenced by
 4-4 documentary proof of full-time employment as a mortgage broker or
 4-5 licensed loan officer with a mortgage broker or a person exempt
 4-6 under Section 156.202;

4-7 (B) the person is licensed in this state as:
 4-8 (i) an active real estate broker under
 4-9 Chapter 1101, Occupations Code;
 4-10 (ii) an active attorney; or
 4-11 (iii) a local recording agent or insurance
 4-12 solicitor or agent for a legal reserve life insurance company under
 4-13 Chapter 21, Insurance Code, or holds an equivalent license under
 4-14 Chapter 21, Insurance Code; or

4-15 (C) the person has three years of experience in
 4-16 the mortgage lending field as evidenced by documentary proof of
 4-17 full-time employment as a licensed loan officer with a mortgage
 4-18 broker or a person exempt under Section 156.202;

4-19 (5) provide the commissioner with satisfactory
 4-20 evidence of:

4-21 (A) having passed an examination, offered by a
 4-22 testing service or company approved by the finance commission, that
 4-23 demonstrates knowledge of:

4-24 (i) the mortgage industry; and
 4-25 (ii) the role and responsibilities of a
 4-26 mortgage broker; and

4-27 (B) compliance with the financial requirements
 4-28 of this chapter;

4-29 (6) not have been convicted of a criminal offense that
 4-30 the commissioner determines directly relates to the occupation of a
 4-31 mortgage broker as provided by Chapter 53, Occupations Code;

4-32 (7) satisfy the commissioner as to the individual's
 4-33 good moral character, including the individual's honesty,
 4-34 trustworthiness, and integrity; and

4-35 (8) not be in violation of this chapter, a rule adopted
 4-36 under this chapter, or any order previously issued to the
 4-37 individual by the commissioner.

4-38 (b) A corporation, limited liability company, or limited
 4-39 partnership may not act as a mortgage broker unless the entity
 4-40 obtains a mortgage broker license. To be eligible for a mortgage
 4-41 broker license the entity must designate an individual licensed as
 4-42 a mortgage broker as its designated representative and pay an
 4-43 application fee in an amount to be determined by the commissioner
 4-44 not to exceed \$175. The designated representative must be:

4-45 (1) if the entity is a corporation, an officer of the
 4-46 corporation;

4-47 (2) if the entity is a limited liability company, a
 4-48 manager of the limited liability company; or

4-49 (3) if the entity is a limited partnership:

4-50 (A) an individual who is a general partner;

4-51 (B) an officer of a general partner that is a
 4-52 corporation; or

4-53 (C) a manager of a general partner that is a
 4-54 limited liability company. [A mortgage broker may conduct business
 4-55 under a corporate structure, partnership, or any other business
 4-56 form or as an independent contractor for a corporation,
 4-57 partnership, or any other business entity. Before conducting
 4-58 mortgage broker activities under, through, or for a corporation,
 4-59 partnership, or other business entity, a mortgage broker must
 4-60 notify the commissioner, in writing, of any corporate name,
 4-61 partnership name, assumed name, or any other name under, through,
 4-62 or for which the mortgage broker conducts activities for which a
 4-63 license is required under this chapter. The corporation,
 4-64 partnership, or other business entity under, through, or for which
 4-65 the mortgage broker conducts business is not required to be
 4-66 separately licensed as a mortgage broker provided that all
 4-67 individuals who perform mortgage broker activities are licensed as
 4-68 mortgage brokers or loan officers. The commissioner shall require
 4-69 proof of compliance with this subsection at the time the mortgage

5-1 ~~broker applies for and renews a license.]~~

5-2 SECTION 6. Section 156.208(i), Finance Code, as added by
5-3 Chapter 1018, Acts of the 79th Legislature, Regular Session, 2005,
5-4 is relettered as Subsection (j), Section 156.208, Finance Code, and
5-5 amended to read as follows:

5-6 (j) [(i)] The commissioner may deny the renewal of a
5-7 mortgage broker license or a loan officer license if:

5-8 (1) the mortgage broker or loan officer is in
5-9 violation of this chapter, a rule adopted under this chapter, or any
5-10 order previously issued to the individual by the commissioner; [or]

5-11 (2) the mortgage broker or loan officer is in default
5-12 in the payment of any administrative penalty, fee, charge, or other
5-13 indebtedness owed under this title; or

5-14 (3) during the current term of the license, the
5-15 commissioner becomes aware of any fact that would have been grounds
5-16 for denial of an original license if the fact had been known by the
5-17 commissioner on the date the license was granted.

5-18 SECTION 7. Section 156.211, Finance Code, is amended by
5-19 adding Subsections (b-1), (b-2), and (b-3) to read as follows:

5-20 (b-1) Not later than the 10th day before a mortgage broker
5-21 begins doing business under an assumed name, the mortgage broker
5-22 shall file with the commissioner a copy of an assumed name
5-23 certificate for each assumed name under which the mortgage broker
5-24 intends to conduct business and pay a \$25 registration fee for each
5-25 assumed name. A loan officer may not conduct business under any
5-26 assumed name that is not the registered assumed name of the
5-27 sponsoring mortgage broker.

5-28 (b-2) A person licensed under this chapter must notify the
5-29 commissioner not later than the 10th day after the date of any
5-30 change of the person's name and pay to the commissioner a change of
5-31 name fee of \$25 for the issuance of an amended license certificate.

5-32 (b-3) A business entity licensed under this chapter shall
5-33 notify the commissioner of any change of its designated
5-34 representative. The commissioner may charge a fee of \$25 for each
5-35 change of a designated representative.

5-36 SECTION 8. Subchapter C, Chapter 156, Finance Code, is
5-37 amended by adding Section 156.214 to read as follows:

5-38 Sec. 156.214. APPROVAL OF COURSES. (a) The finance
5-39 commission may adopt rules establishing:

5-40 (1) minimum standards for courses, approved course
5-41 providers, and approved course instructors; and

5-42 (2) a fee not to exceed \$200 for the review and
5-43 approval of each course not provided and approved by a duly
5-44 organized trade association the purpose of which is primarily to
5-45 represent residential mortgage originators.

5-46 (b) An approval is for up to two years.

5-47 SECTION 9. Section 156.303, Finance Code, is amended by
5-48 amending Subsection (a) and adding Subsection (j) to read as
5-49 follows:

5-50 (a) The commissioner may order disciplinary action against
5-51 a licensed mortgage broker or a licensed loan officer when the
5-52 commissioner, after a hearing, has determined that the person:

5-53 (1) obtained a license, including a renewal of a
5-54 license, under this chapter through a false or fraudulent
5-55 representation or made a material misrepresentation in an
5-56 application for a license or for the renewal of a license under this
5-57 chapter;

5-58 (2) published or caused to be published an
5-59 advertisement related to the business of a mortgage broker or loan
5-60 officer that:

5-61 (A) is misleading;

5-62 (B) is likely to deceive the public;

5-63 (C) in any manner tends to create a misleading
5-64 impression;

5-65 (D) fails to identify as a mortgage broker or
5-66 loan officer the person causing the advertisement to be published;
5-67 or

5-68 (E) violates federal or state law;

5-69 (3) while performing an act for which a license under

6-1 this chapter is required, engaged in conduct that constitutes
 6-2 improper, fraudulent, or dishonest dealings;
 6-3 (4) entered a plea of guilty or nolo contendere to, or
 6-4 is convicted of, a criminal offense that is a felony or that
 6-5 involves fraud or moral turpitude in a court of this or another
 6-6 state or in a federal court;
 6-7 (5) failed to use a fee collected in advance of closing
 6-8 of a mortgage loan for a purpose for which the fee was paid;
 6-9 (6) charged or received, directly or indirectly, a fee
 6-10 for assisting a mortgage applicant in obtaining a mortgage loan
 6-11 before all of the services that the person agreed to perform for the
 6-12 mortgage applicant are completed, and the proceeds of the mortgage
 6-13 loan have been disbursed to or on behalf of the mortgage applicant,
 6-14 except as provided by Section 156.304;
 6-15 (7) failed within a reasonable time to honor a check
 6-16 issued to the commissioner after the commissioner has mailed a
 6-17 request for payment by certified mail to the person's last known
 6-18 business address as reflected by the commissioner's records;
 6-19 (8) paid compensation to a person who is not licensed
 6-20 or exempt under this chapter for acts for which a license under this
 6-21 chapter is required;
 6-22 (9) induced or attempted to induce a party to a
 6-23 contract to breach the contract so the person may make a mortgage
 6-24 loan;
 6-25 (10) published or circulated an unjustified or
 6-26 unwarranted threat of legal proceedings in matters related to the
 6-27 person's actions or services as a mortgage broker or loan officer,
 6-28 as applicable;
 6-29 (11) established an association, by employment or
 6-30 otherwise, with a person not licensed or exempt under this chapter
 6-31 who was expected or required to act as a mortgage broker or loan
 6-32 officer;
 6-33 (12) aided, abetted, or conspired with a person to
 6-34 circumvent the requirements of this chapter;
 6-35 (13) acted in the dual capacity of a mortgage broker or
 6-36 loan officer and real estate broker, salesperson, or attorney in a
 6-37 transaction without the knowledge and written consent of the
 6-38 mortgage applicant or in violation of applicable requirements under
 6-39 federal law;
 6-40 (14) discriminated against a prospective borrower on
 6-41 the basis of race, color, religion, sex, national origin, ancestry,
 6-42 familial status, or a disability;
 6-43 (15) failed or refused on demand to:
 6-44 (A) produce a document, book, or record
 6-45 concerning a mortgage loan transaction conducted by the mortgage
 6-46 broker or loan officer for inspection by the commissioner or the
 6-47 commissioner's authorized personnel or representative;
 6-48 (B) give the commissioner or the commissioner's
 6-49 authorized personnel or representative free access to the books or
 6-50 records relating to the person's business kept by an officer,
 6-51 agent, or employee of the person or any business entity through
 6-52 which the person conducts mortgage brokerage activities, including
 6-53 a subsidiary or holding company affiliate; or
 6-54 (C) provide information requested by the
 6-55 commissioner as a result of a formal or informal complaint made to
 6-56 the commissioner;
 6-57 (16) failed without just cause to surrender, on
 6-58 demand, a copy of a document or other instrument coming into the
 6-59 person's possession that was provided to the person by another
 6-60 person making the demand or that the person making the demand is
 6-61 under law entitled to receive; ~~or~~
 6-62 (17) disregarded or violated this chapter, a rule
 6-63 adopted by the finance commission under this chapter, or an order
 6-64 issued by the commissioner under this chapter; or
 6-65 (18) provided false information to the commissioner
 6-66 during the course of an investigation or inspection.
 6-67 (j) On notice and opportunity for hearing, the commissioner
 6-68 may suspend a person's license under this chapter if an indictment
 6-69 or information is filed or returned alleging that the person

7-1 committed a criminal offense involving fraud, theft, or dishonesty.
7-2 The suspension continues until the criminal case is dismissed or
7-3 the person is acquitted.

7-4 SECTION 10. The heading of Section 341.103, Finance Code,
7-5 is amended to read as follows:

7-6 Sec. 341.103. REGULATION OF SAVINGS INSTITUTIONS AND
7-7 LICENSED MORTGAGE BROKERS AND LOAN OFFICERS [ASSOCIATIONS].

7-8 SECTION 11. Section 341.103(a), Finance Code, is amended to
7-9 read as follows:

7-10 (a) The savings and mortgage lending [~~loan~~] commissioner
7-11 shall enforce this subtitle relating to the regulation of:

7-12 (1) state savings associations operating under this
7-13 subtitle;

7-14 (2) state savings banks operating under this subtitle;
7-15 and

7-16 (3) persons licensed under Chapter 156.

7-17 SECTION 12. Section 342.051, Finance Code, is amended by
7-18 adding Subsection (f) to read as follows:

7-19 (f) A mortgage broker licensed under Chapter 156 is not
7-20 required to obtain a license under this chapter to make, negotiate,
7-21 or transact a mortgage loan, as defined by Chapter 156.

7-22 SECTION 13. A corporation, limited liability company, or
7-23 limited partnership is not required to obtain a mortgage broker
7-24 license, as required by Section 156.204(b), Finance Code, as
7-25 amended by this Act, to act as a mortgage broker before January 1,
7-26 2008.

7-27 SECTION 14. This Act takes effect September 1, 2007.

7-28 * * * * *