

By: Truitt

H.B. No. 2779

Substitute the following for H.B. No. 2779:

By: Anderson

C.S.H.B. No. 2779

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain mortgage banker employees who are residential mortgage loan originators; providing penalties.

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

SECTION 1. Section 157.001, Finance Code, is amended to read as follows:

Sec. 157.001. SHORT TITLE. This chapter may be cited as the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act.

SECTION 2. Section 157.002, Finance Code, is amended to read as follows:

Sec. 157.002. DEFINITIONS. In this chapter:

(1) "Commissioner" means the savings and mortgage lending commissioner.

(2) "Disciplinary action" means any order by the commissioner that requires one or more of the following:

(A) suspension or revocation of a residential mortgage loan originator license under this chapter;

(B) probation of a suspension or revocation of a residential mortgage loan originator license under this chapter on terms and conditions that the commissioner determines appropriate;

(C) a reprimand of a person with a residential mortgage loan originator license under this chapter; or

(D) an administrative penalty imposed on a person

1 holding a residential mortgage loan originator license under this
2 chapter.

3 (3) "Finance commission" means the Finance Commission
4 of Texas.

5 (4) "Mortgage banker" means a person who:

6 (A) accepts an application for a residential
7 mortgage loan or makes a residential mortgage loan; and

8 (B) is an approved or authorized:

9 (i) mortgagee with direct endorsement
10 underwriting authority granted by the United States Department of
11 Housing and Urban Development;

12 (ii) seller or servicer of the Federal
13 National Mortgage Association or the Federal Home Loan Mortgage
14 Corporation; or

15 (iii) issuer for the Government National
16 Mortgage Association.

17 (5) "Residential mortgage [~~(3) "Mortgage~~] loan" means
18 a debt secured by a [~~first~~] lien on residential real property
19 designed principally for occupancy by one to four families that is
20 created by a deed of trust, security deed, or other security
21 instrument.

22 (6) "Residential mortgage loan originator" has the
23 meaning assigned by Section 180.002.

24 SECTION 3. Section 157.003, Finance Code, is amended by
25 amending Subsections (b), (c), and (d) and adding Subsection (b-1)
26 to read as follows:

27 (b) To register under this chapter, a mortgage banker shall

1 file with the commissioner a statement that contains:

2 (1) the name and address of the mortgage banker;

3 (2) the name, address, and telephone number of the
4 representative of the mortgage banker to be contacted regarding a
5 written complaint; ~~and~~

6 (3) a list of the locations in this state at which the
7 person conducts the business of a mortgage banker; and

8 (4) a list of employees of the mortgage banker who are
9 residential mortgage loan originators.

10 (b-1) The list of mortgage banker employees required by
11 Subsection (b)(4) must be promptly updated to reflect any changes,
12 and the updated list must be submitted to the commissioner.

13 (c) An employee of a mortgage banker who is not a
14 residential mortgage loan originator is not required to register or
15 be licensed under this chapter.

16 (d) Except as provided by Section 157.008(b), the ~~[The]~~
17 commissioner may not require a mortgage banker to provide
18 information other than information contained in the registration
19 statement.

20 SECTION 4. Section 157.004, Finance Code, is amended to
21 read as follows:

22 Sec. 157.004. EXEMPTIONS. This chapter does not apply to:

23 (1) a federally insured bank, savings bank, savings
24 and loan association, Farm Credit System Institution, or credit
25 union;

26 (2) a ~~[an affiliate or]~~ subsidiary of a federally
27 insured bank, savings bank, savings and loan association, Farm

Credit System Institution, or credit union; or

(3) a person licensed as a mortgage broker under Chapter 156[, ~~or~~

~~[(4) an authorized lender licensed under Chapter 342 if:~~

~~[(A) the authorized lender includes with an application for a mortgage loan a notice that is substantially similar to the notice required by Section 157.007 and provides the method of submitting complaints to the consumer credit commissioner;~~

~~[(B) the authorized lender uses the forms adopted by the Finance Commission of Texas under Section 157.011(b); and~~

~~[(C) the Finance Commission of Texas determines by rule that the consumer credit commissioner may suspend or revoke a license issued under Chapter 342 if the authorized lender engages in unlawful or unfair practices while making a mortgage loan].~~

SECTION 5. Section 157.007, Finance Code, is amended to read as follows:

Sec. 157.007. DISCLOSURE STATEMENT. A mortgage banker shall include the following notice to a residential mortgage loan applicant with an application for a residential mortgage loan:

"COMPLAINTS REGARDING MORTGAGE BANKERS SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, _____ (street address of the Department of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT _____ (telephone number of the Department of Savings and Mortgage Lending's toll-free consumer hotline)."

SECTION 6. Section 157.009(d), Finance Code, is amended to read as follows:

(d) The commissioner may revoke the registration of a mortgage banker after considering a complaint filed under this chapter if the commissioner concludes that the mortgage banker has engaged in an intentional course of conduct to violate federal or state law or has engaged in an intentional course of conduct that constitutes improper, fraudulent, or dishonest dealings or has engaged in a negligent course of conduct exhibited through pattern or practice. The commissioner shall recite the basis of the decision in an order revoking the registration.

SECTION 7. Section 157.011, Finance Code, is amended by adding Subsection (c) to read as follows:

(c) The finance commission, for the purpose of enabling this state to participate in the Nationwide Mortgage Licensing System and Registry and comply with Chapter 180, by rule may waive or modify, wholly or partly, any requirement of this chapter and establish requirements under this chapter that are reasonably necessary to accomplish that purpose.

SECTION 8. Chapter 157, Finance Code, is amended by adding Sections 157.012 through 157.031 to read as follows:

Sec. 157.012. LICENSE REQUIRED FOR CERTAIN EMPLOYEES OF MORTGAGE BANKERS. (a) An employee of a mortgage banker may not act in the capacity of a residential mortgage loan originator unless the employee:

(1) is licensed under this chapter and enrolled with the Nationwide Mortgage Licensing System and Registry as required

1 by Section 180.052; and

2 (2) complies with other applicable requirements of
3 Chapter 180 and rules adopted by the finance commission under that
4 chapter.

5 (b) The finance commission by rule may waive or modify,
6 wholly or partly, any requirement of this chapter and may establish
7 new requirements as reasonably necessary to enable the commissioner
8 to participate in and mortgage banker employees to enroll with the
9 Nationwide Mortgage Licensing System and Registry for purposes of
10 this section and Chapter 180.

11 (c) To be eligible to be licensed as a residential mortgage
12 loan originator, an employee of a mortgage banker, in addition to
13 the requirements of Subsection (a), must:

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

17 (2) not be in violation of this chapter or a rule
18 adopted under this chapter; and

19 (3) provide the commissioner with satisfactory
20 evidence that the employee meets the qualifications provided by
21 Chapter 180.

22 (d) The net worth of the mortgage banker who must comply
23 with the requirements of Section 157.002(4) shall constitute the
24 net worth requirement for the mortgage banker's residential
25 mortgage loan originator employee in compliance with Chapter 180,
26 in lieu of a surety bond or a recovery fund fee as otherwise would be
27 required by Section 180.058.

1 Sec. 157.013. APPLICATION FOR LICENSE; FEES. (a) An
2 application for a residential mortgage loan originator license must
3 be:

4 (1) in writing;

5 (2) under oath; and

6 (3) on the form prescribed by the commissioner.

7 (b) An application for a residential mortgage loan
8 originator license must be accompanied by an application fee in an
9 amount determined by the commissioner, not to exceed \$500.

10 (c) An application fee under this section is not refundable
11 and may not be credited or applied to any other fee or indebtedness
12 owed by the person paying the fee.

13 Sec. 157.014. ISSUANCE OF RESIDENTIAL MORTGAGE LOAN
14 ORIGINATOR LICENSE. (a) The commissioner shall issue a
15 residential mortgage loan originator license to an applicant if the
16 commissioner determines that the applicant meets all requirements
17 and conditions for the license.

18 (b) Each residential mortgage loan originator license must
19 have a unique identifier as provided by Chapter 180.

20 Sec. 157.015. RENEWAL OF LICENSE. (a) A residential
21 mortgage loan originator license issued under this chapter is valid
22 for one year and may be renewed on or before its expiration date.

23 (b) Each residential mortgage loan originator license will
24 be renewed for not more than a one-year period expiring December 31
25 of each calendar year.

26 (c) An application for renewal of a residential mortgage
27 loan originator license shall meet the requirements of Section

1 157.013.

2 (d) An application for renewal of a residential mortgage
3 loan originator license must meet all of the standards and
4 qualifications for license renewal under Chapter 180.

5 (e) The commissioner shall issue a renewal residential
6 mortgage loan originator license if the commissioner finds that the
7 applicant meets all of the requirements and conditions for the
8 license.

9 (f) The commissioner may deny the renewal application for a
10 residential mortgage loan originator license for the same reasons
11 and grounds on which the commissioner could have denied an original
12 application for a license.

13 (g) The commissioner may deny the renewal application for a
14 residential mortgage loan originator license if:

15 (1) the person seeking the renewal of the residential
16 mortgage loan originator license is in violation of this chapter or
17 Chapter 180, an applicable rule adopted under this chapter or
18 Chapter 180, or any order previously issued to the person by the
19 commissioner;

20 (2) the person seeking renewal of the residential
21 mortgage loan originator license is in default in the payment of any
22 administrative penalty, fee, charge, or other indebtedness owed
23 under this title;

24 (3) the person seeking the renewal of the residential
25 mortgage loan originator license is in default on a student loan
26 administered by the Texas Guaranteed Student Loan Corporation,
27 under Section 57.491, Education Code; or

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

5 Sec. 157.016. RENEWAL AFTER EXPIRATION OF LICENSE; NOTICE.

6 (a) A person whose residential mortgage loan originator license
7 has expired may not engage in activities that require a license
8 until the license has been renewed.

9 (b) A person whose residential mortgage loan originator
10 license has not been renewed before January 1 but who is otherwise
11 eligible to renew a license, and does so before March 1, may renew
12 the license by paying the commissioner a reinstatement fee in an
13 amount that is equal to 150 percent of the required renewal fee.

14 (c) A person whose residential mortgage loan originator
15 license has not been renewed before March 1 may not renew the
16 license. The person may obtain a new license by complying with the
17 requirements and procedures for obtaining an original license.

18 (d) Not later than the 60th day before the date a person's
19 residential mortgage loan originator license is scheduled to
20 expire, the commissioner or the commissioner's authorized
21 representative shall send written notice of the impending
22 expiration to the person at the person's last known address
23 according to the official licensing records.

24 Sec. 157.017. DENIAL OF APPLICATIONS AND RENEWALS. (a) If
25 the commissioner declines or fails to issue or renew a residential
26 mortgage loan originator license, the commissioner shall promptly
27 give written notice to the applicant that the application or

1 renewal, as appropriate, was denied.

2 (b) Before the applicant or a person requesting the renewal
3 of a residential mortgage loan originator license may appeal a
4 determination to a district court as provided by Section
5 157.026(d), the applicant or person must file with the
6 commissioner, not later than the 10th day after the date on which
7 notice under Subsection (a) is received, an appeal of the ruling
8 requesting a time and place for a hearing before an administrative
9 law judge designated by the commissioner.

10 (c) The designated administrative law judge shall set the
11 time and place for a hearing requested under Subsection (b) not
12 later than the 90th day after the date on which the appeal is
13 received. The administrative law judge shall provide at least 10
14 days' notice of the hearing to the applicant or person requesting
15 the renewal. The time of the hearing may be continued periodically
16 with the consent of the applicant or person requesting the renewal.
17 After the hearing, the commissioner shall enter an order relative
18 to the applicant based on the findings of fact, conclusions of law,
19 and recommendations of the administrative law judge.

20 (d) If an applicant or person requesting the renewal fails
21 to request a hearing under this section, the commissioner's refusal
22 to issue or renew a license is final and not subject to review by the
23 courts.

24 (e) A hearing held under this section is governed by Chapter
25 2001, Government Code. An appeal of a final order issued under this
26 section may be made in accordance with Section 157.026(d).

27 (f) A person who requests a hearing under this section shall

1 be required to pay a deposit to secure the payment of the costs of
2 the hearing in an amount to be determined by the commissioner not to
3 exceed \$500. The entire deposit shall be refunded to the person if
4 the person prevails in the contested case hearing. If the person
5 does not prevail, any portion of the deposit in excess of the costs
6 of the hearing assessed against that person shall be refunded.

7 (g) A person whose application for a license has been denied
8 is not eligible to be licensed for a period of two years after the
9 date the denial becomes final, or a shorter period determined by the
10 commissioner after evaluating the specific circumstances of the
11 person's subsequent application. The finance commission may adopt
12 rules to provide conditions for which the commissioner may shorten
13 the time for eligibility for a new license.

14 Sec. 157.018. PROBATIONARY AND PROVISIONAL LICENSES. (a)
15 The commissioner may issue probationary and provisional licenses.

16 (b) The finance commission by rule shall adopt reasonable
17 terms and conditions for probationary and provisional licenses.

18 Sec. 157.019. MODIFICATION OF LICENSE. (a) Before the 10th
19 day preceding the effective date of an address change, a mortgage
20 banker employee who is a residential mortgage loan originator shall
21 notify the commissioner or authorized designee in writing of the
22 new address.

23 (b) A person licensed under this chapter must notify the
24 commissioner or the commissioner's authorized designee not later
25 than the 10th day after the date of any change in the person's name
26 for the issuance of an amended license.

27 Sec. 157.020. ANNUAL CALL REPORT. (a) Each mortgage banker

1 shall file an annual call report with the commissioner or the
2 commissioner's authorized designee on a form prescribed by the
3 commissioner or authorized designee. The report is a statement of
4 condition of the mortgage banker and the mortgage banker's
5 operations, including financial statements and production activity
6 volumes.

7 (b) The information contained in the call report related to
8 residential mortgage loan origination volume or other trade
9 information is confidential and may not be disclosed by the
10 commissioner or authorized designee.

11 Sec. 157.021. INSPECTION; INVESTIGATIONS. (a) The
12 commissioner may conduct an inspection of a person licensed as a
13 residential mortgage loan originator as the commissioner
14 determines necessary to determine whether the person is complying
15 with this chapter, Chapter 180, and applicable rules. An
16 inspection under this subsection may include inspection of the
17 books, records, documents, operations, and facilities of the
18 person. The commissioner may request the assistance and
19 cooperation of the mortgage banker in providing needed documents
20 and records. The commissioner may not make a request of the
21 mortgage banker for documents and records unrelated to the person
22 being investigated or inspected. The commissioner may share
23 evidence of criminal activity gathered during an inspection or
24 investigation with any state or federal law enforcement agency.

25 (b) On the signed written complaint of a person, the
26 commissioner shall investigate the actions and records of a person
27 licensed as a residential mortgage loan originator if the

1 complaint, or the complaint and documentary or other evidence
2 presented in connection with the complaint, provides a reasonable
3 cause. Before commencing an investigation, the commissioner must
4 notify the licensed residential mortgage loan originator in writing
5 of the complaint and that the commissioner intends to investigate
6 the matter.

7 (c) For reasonable cause, the commissioner at any time may
8 investigate a person licensed as a residential mortgage loan
9 originator to determine whether the person is complying with this
10 chapter, Chapter 180, and applicable rules.

11 (d) The commissioner may conduct an undercover or covert
12 investigation only if the commissioner, after due consideration of
13 the circumstances, determines that the investigation is necessary
14 to prevent immediate harm and to carry out the purposes of this
15 chapter.

16 (e) The finance commission by rule shall provide guidelines
17 to govern an inspection or investigation, including rules to:

18 (1) determine the information and records of the
19 licensed residential mortgage loan originator to which the
20 commissioner may demand access during an inspection or an
21 investigation; and

22 (2) establish what constitutes reasonable cause for an
23 investigation.

24 (f) Information obtained by the commissioner during an
25 inspection or an investigation is confidential unless disclosure of
26 the information is permitted or required by other law.

27 (g) The commissioner may share information gathered during

1 an investigation or inspection with any state or federal agency
2 only if the commissioner determines there is a valid reason for the
3 sharing.

4 Sec. 157.022. ISSUANCE AND ENFORCEMENT OF SUBPOENA. (a)
5 During an investigation, the commissioner may issue a subpoena that
6 is addressed to a peace officer of this state or other person
7 authorized by law to serve citation or perfect service. The
8 subpoena may require a person to give a deposition, produce
9 documents, or both.

10 (b) If a person disobeys a subpoena or if a person appearing
11 in a deposition in connection with the investigation refuses to
12 testify, the commissioner may petition a district court in Travis
13 County to issue an order requiring the person to obey the subpoena,
14 testify, or produce documents relating to the matter. The court
15 shall promptly set an application to enforce a subpoena issued
16 under Subsection (a) for hearing and shall cause notice of the
17 application and the hearing to be served on the person to whom the
18 subpoena is directed.

19 Sec. 157.023. ADMINISTRATIVE PENALTY. (a) The
20 commissioner, after notice and opportunity for a hearing, may
21 impose an administrative penalty on a person licensed as a
22 residential mortgage loan originator under this chapter who
23 violates this chapter or a rule or order adopted under this chapter.

24 (b) The amount of the penalty may not exceed \$2,500, and
25 each day a violation continues or occurs is a separate violation for
26 the purpose of imposing a penalty. The amount shall be based on:

27 (1) the seriousness of the violation, including the

1 nature, circumstances, extent, and gravity of the violation;

2 (2) the history of previous violations;

3 (3) the amount necessary to deter a future violation;

4 (4) efforts to correct the violation; and

5 (5) any other matter that justice may require.

6 (c) The enforcement of the penalty may be stayed during the
7 time the order is under judicial review if the person pays the
8 penalty to the clerk of the court or files a supersedeas bond with
9 the court in the amount of the penalty. A person who cannot afford
10 to pay the penalty or file the bond may stay the enforcement by
11 filing an affidavit in the manner required by the Texas Rules of
12 Civil Procedure for a party who cannot afford to file security for
13 costs, subject to the right of the commissioner to contest the
14 affidavit as provided by those rules.

15 (d) The attorney general may sue to collect the penalty.

16 (e) An appeal of an administrative penalty under this
17 section is considered to be a contested case under Chapter 2001,
18 Government Code.

19 Sec. 157.024. DISCIPLINARY ACTION; CEASE AND DESIST ORDER.

20 (a) The commissioner may order disciplinary action against a
21 licensed residential mortgage loan originator when the
22 commissioner, after notice and opportunity for a hearing, has
23 determined that the person:

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

1 chapter;

2 (2) published or caused to be published an
3 advertisement related to the business of a residential mortgage
4 loan originator that:

5 (A) was misleading;

6 (B) was likely to deceive the public;

7 (C) in any manner tended to create a misleading
8 impression;

9 (D) failed to identify as a licensed residential
10 mortgage loan originator the person causing the advertisement to be
11 published; or

12 (E) violated federal or state law;

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

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

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

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

27 (7) induced or attempted to induce a party to a

1 contract to breach the contract so the person could make a
2 residential mortgage loan;

3 (8) published or circulated an unjustified or
4 unwarranted threat of legal proceedings in matters related to the
5 person's actions or services as a licensed residential mortgage
6 loan originator;

7 (9) aided, abetted, or conspired with a person to
8 circumvent the requirements of this chapter;

9 (10) acted in the dual capacity of a licensed
10 residential mortgage loan originator and real estate broker,
11 salesperson, or attorney in a transaction without the knowledge and
12 written consent of the mortgage applicant or in violation of
13 applicable requirements under federal law;

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

17 (12) failed or refused on demand to:

18 (A) produce a document, book, or record
19 concerning a residential mortgage loan transaction conducted by the
20 licensed residential mortgage loan originator for inspection by the
21 commissioner or the commissioner's authorized personnel or
22 representative;

23 (B) give the commissioner or the commissioner's
24 authorized personnel or representative free access to the books or
25 records relating to the residential mortgage loan originator's
26 business kept by any other person or any business entity through
27 which the residential mortgage loan originator conducts

1 residential mortgage loan origination activities; or

2 (C) provide information requested by the
3 commissioner as a result of a formal or informal complaint made to
4 the commissioner;

5 (13) failed without just cause to surrender, on
6 demand, a copy of a document or other instrument coming into the
7 residential mortgage loan originator's possession that was
8 provided to the residential mortgage loan originator by another
9 person making the demand or that the person making the demand is
10 under law entitled to receive;

11 (14) disregarded or violated this chapter, a rule
12 adopted under this chapter, or an order issued by the commissioner
13 under this chapter;

14 (15) provided false information to the commissioner
15 during the course of an investigation or inspection;

16 (16) paid compensation to a person who is not licensed
17 or exempt under this chapter for acts for which a license under this
18 chapter is required; or

19 (17) established an association, by employment or
20 otherwise, with a person not licensed or exempt under this chapter
21 who was expected or required to act as a residential mortgage loan
22 originator.

23 (b) The commissioner may also order disciplinary action
24 against a licensed residential mortgage loan originator, after
25 notice and opportunity for a hearing, if the commissioner, during
26 the current term of the license, becomes aware of any fact that
27 would have been grounds for denial of an original license if the

1 fact had been known by the commissioner on the date the license was
2 granted.

3 (c) In addition to disciplinary action by the commissioner
4 authorized under Subsections (a) and (b), the commissioner, if the
5 commissioner has reasonable cause to believe that a licensed
6 residential mortgage loan originator has violated or is about to
7 violate this section, may issue without notice and hearing an order
8 to cease and desist continuing a particular action or an order to
9 take affirmative action, or both, to enforce compliance with this
10 chapter.

11 (d) An order issued under Subsection (c) must contain a
12 reasonably detailed statement of the facts on which the order is
13 made. If a residential mortgage loan originator against whom the
14 order is made requests a hearing, the commissioner shall set and
15 give notice of a hearing before the commissioner or an
16 administrative law judge. The hearing shall be governed by Chapter
17 2001, Government Code. Based on the findings of fact, conclusions
18 of law, and recommendations of the administrative law judge, the
19 commissioner by order may find that a violation has occurred or not
20 occurred.

21 (e) If a hearing is not requested under Subsection (d) not
22 later than the 30th day after the date on which an order is made, the
23 order is considered final and not appealable.

24 (f) The commissioner, after giving notice, may impose
25 against a residential mortgage loan originator who violates a cease
26 and desist order an administrative penalty in an amount not to
27 exceed \$1,000 for each day of the violation. In addition to any

1 other remedy provided by law, the commissioner may institute in
2 district court a suit for injunctive relief and to collect the
3 administrative penalty. A bond is not required of the commissioner
4 with respect to injunctive relief granted under this subsection.

5 (g) For purposes of Subsection (a), a residential mortgage
6 loan originator is considered convicted if a sentence is imposed on
7 that person, that person receives community supervision, including
8 deferred adjudication community supervision, or the court defers
9 final disposition of that person's case.

10 (h) If a residential mortgage loan originator fails to pay
11 an administrative penalty that has become final or fails to comply
12 with an order of the commissioner that has become final, in addition
13 to any other remedy provided under law, the commissioner, on not
14 less than 10 days' notice to the residential mortgage loan
15 originator, may without a prior hearing suspend the residential
16 mortgage loan originator's license. The suspension continues until
17 the residential mortgage loan originator has complied with the
18 administrative order or paid the administrative penalty. During
19 the period of suspension, the residential mortgage loan originator
20 may not originate a residential mortgage loan, as defined by
21 Section 180.002.

22 (i) An order of suspension under Subsection (h) may be
23 appealed. An appeal is a contested case governed by Chapter 2001,
24 Government Code. A hearing of an appeal of an order of suspension
25 issued under Subsection (h) shall be held not later than the 15th
26 day after the date of receipt of the notice of appeal. The
27 appellant shall be provided at least three days' notice of the time

1 and place of the hearing.

2 (j) An order revoking the license of a residential mortgage
3 loan originator may provide that the person is prohibited, without
4 previously obtaining written consent of the commissioner, from:

5 (1) engaging in the business of originating or making
6 residential mortgage loans, as defined by Section 180.002;

7 (2) otherwise affiliating with a person for the
8 purpose of engaging in the business of originating or making
9 residential mortgage loans, as defined by Section 180.002; and

10 (3) being an employee, officer, director, manager,
11 shareholder, member, agent, contractor, or processor of a mortgage
12 banker, mortgage broker, or mortgage broker loan officer.

13 (k) On notice and opportunity for a hearing, the
14 commissioner may suspend the license of a residential mortgage loan
15 originator under this chapter if an indictment or information is
16 filed or returned alleging that the person committed a criminal
17 offense involving fraud, theft, or dishonesty. The suspension
18 continues until the criminal case is dismissed or the person is
19 acquitted.

20 Sec. 157.025. RESTITUTION. The commissioner may order a
21 residential mortgage loan originator to make restitution for any
22 amount received by that person in violation of this chapter.

23 Sec. 157.026. HEARINGS AND JUDICIAL REVIEW. (a) The
24 commissioner may employ an enforcement staff to investigate and
25 prosecute complaints made against residential mortgage loan
26 originators licensed under this chapter. The commissioner may
27 employ an administrative law judge to conduct hearings under this

1 section. The commissioner may collect and deposit any court costs
2 assessed under a final order.

3 (b) If the commissioner proposes to suspend or revoke a
4 license of a residential mortgage loan originator or if the
5 commissioner refuses to issue or renew a license to an applicant for
6 a residential mortgage loan originator license or person requesting
7 a renewal of a residential mortgage loan originator license under
8 this chapter, the applicant or license holder is entitled to a
9 hearing before the commissioner or an administrative law judge who
10 shall make a proposal for decision to the commissioner. The
11 commissioner or administrative law judge shall prescribe the time
12 and place of the hearing. The hearing is governed by Chapter 2001,
13 Government Code.

14 (c) The commissioner or administrative law judge may issue
15 subpoenas for the attendance of witnesses and the production of
16 records or documents. Process issued by the commissioner or the
17 administrative law judge may extend to all parts of the state and
18 may be served by any person designated by the commissioner or
19 administrative law judge.

20 (d) An individual aggrieved by a ruling, order, or decision
21 of the commissioner has the right to appeal to a district court in
22 the county in which the hearing was held. An appeal under this
23 subsection is governed by Chapter 2001, Government Code.

24 Sec. 157.027. CIVIL ACTIONS AND INJUNCTIVE RELIEF. (a) A
25 residential mortgage loan applicant injured by a violation of this
26 chapter by a residential mortgage loan originator may bring an
27 action for recovery of actual monetary damages and reasonable

1 attorney's fees and court costs.

2 (b) The commissioner, the attorney general, or a
3 residential mortgage loan applicant may bring an action to enjoin a
4 violation of this chapter by a residential mortgage loan
5 originator.

6 (c) A remedy provided by this section is in addition to any
7 other remedy provided by law.

8 Sec. 157.028. BURDEN OF PROOF TO ESTABLISH AN EXEMPTION.
9 The burden of proving an exemption in a proceeding or action brought
10 under this chapter is on the person claiming the benefit of the
11 exemption.

12 Sec. 157.029. RELIANCE ON WRITTEN NOTICES FROM THE
13 COMMISSIONER. A person does not violate this chapter with respect
14 to an action taken or omission made in reliance on a written notice,
15 written interpretation, or written report from the commissioner
16 unless a subsequent amendment to this chapter or a rule adopted
17 under this chapter affects the commissioner's notice,
18 interpretation, or report.

19 Sec. 157.030. COMPLETION OF RESIDENTIAL MORTGAGE
20 ORIGINATION SERVICES. (a) On disbursement of mortgage proceeds to
21 or on behalf of the residential mortgage loan applicant, the
22 residential mortgage loan originator who assisted the applicant in
23 obtaining the residential mortgage loan is considered to have
24 completed the performance of the loan originator's services for the
25 applicant and owes no additional duties or obligations to the
26 applicant with respect to the loan.

27 (b) This section does not limit or preclude the liability of

a residential mortgage loan originator for:

(1) failing to comply with this chapter or a rule adopted under this chapter;

(2) failing to comply with a provision of or duty arising under an agreement with a residential mortgage loan applicant under this chapter; or

(3) violating any other state or federal law.

Sec. 157.031. UNLICENSED ACTIVITY; OFFENSE. (a) A person commits an offense if the person is an employee of a mortgage banker, is not exempt under this chapter, and acts as a residential mortgage loan originator without first obtaining a license required under this chapter. An offense under this subsection is a Class B misdemeanor. A second or subsequent conviction for an offense under this subsection is a Class A misdemeanor.

(b) If the commissioner has reasonable cause to believe that a person who is not licensed or exempt under this chapter has engaged, or is about to engage, in an act or practice for which a license is required under this chapter, the commissioner may issue, without notice and hearing, an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter. The order must contain a reasonably detailed statement of the facts on which the order is made. The order may assess an administrative penalty in an amount not to exceed \$1,000 per day for each violation and may require a person to pay to a residential mortgage loan applicant any compensation received by the person from the applicant in violation of this chapter. If a person against whom the order is made

1 requests a hearing, the commissioner shall set and give notice of a
2 hearing before the commissioner or an administrative law judge.
3 The hearing shall be governed by Chapter 2001, Government Code. An
4 order under this subsection becomes final unless the person to whom
5 the order is issued requests a hearing not later than the 30th day
6 after the date the order is issued.

7 (c) If a hearing has not been requested under Subsection (b)
8 not later than the 30th day after the date the order is made, the
9 order is considered final and not appealable. The commissioner,
10 after giving notice, may impose against a person who violates a
11 cease and desist order, an administrative penalty in an amount not
12 to exceed \$1,000 for each day of a violation. In addition to any
13 other remedy provided by law, the commissioner may institute in
14 district court a suit for injunctive relief and to collect the
15 administrative penalty. A bond is not required of the commissioner
16 with respect to injunctive relief granted under this section.

17 SECTION 9. The heading to Section 341.103, Finance Code, is
18 amended to read as follows:

19 Sec. 341.103. REGULATION OF SAVINGS INSTITUTIONS, ~~[AND]~~
20 LICENSED MORTGAGE BROKERS AND LOAN OFFICERS, AND REGISTERED
21 MORTGAGE BANKERS AND LICENSED LOAN OFFICERS.

22 SECTION 10. Section 341.103(a), Finance Code, is amended to
23 read as follows:

24 (a) The savings and mortgage lending commissioner shall
25 enforce this subtitle relating to the regulation of:

26 (1) state savings associations operating under this
27 subtitle;

- 1 (2) state savings banks operating under this subtitle;
2 ~~[and]~~
3 (3) persons licensed under Chapter 156; and
4 (4) persons registered or licensed under Chapter 157.

5 SECTION 11. An individual is not required to comply with
6 Section 157.012, Finance Code, as added by this Act, until the later
7 of:

- 8 (1) July 31, 2010; or
9 (2) a subsequent date that is approved by the
10 secretary of the United States Department of Housing and Urban
11 Development under the authority granted under the federal Secure
12 and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No.
13 110-289).

14 SECTION 12. This Act takes effect only if House Bill 10 or
15 another similar bill of the Regular Session of the 81st Legislature
16 relating to the licensing of residential mortgage loan originators
17 is enacted and becomes law. If House Bill 10 or another similar
18 bill of the Regular Session of the 81st Legislature relating to the
19 licensing of residential mortgage loan originators does not become
20 law, this Act does not take effect.

21 SECTION 13. Except as provided by Section 12 of this Act,
22 this Act takes effect April 1, 2010.