

By: Truitt

H.B. No. 2779

A BILL TO BE ENTITLED

AN ACT

relating to amending the Texas Mortgage Banker Registration Act to provide for licensing and regulation of mortgage banker employees who are residential mortgage originators and providing enforcement and penalties.

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

SECTION 1. Chapter 157 of the Finance Code is amended to read as follows:

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

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 mortgage loan originator license under this chapter;

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

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

(D) an administrative penalty imposed on a person holding a mortgage loan originator license under this chapter under

1 Section \_\_\_\_.

2 (3) "Finance Commission" means the Finance Commission  
3 of Texas.

4 (4) "Loan processor or underwriter" shall mean an  
5 individual who performs clerical or support duties as an employee  
6 at the direction of and subject to the supervision and instruction  
7 of a person licensed as a mortgage loan originator or exempt from  
8 licensing. Clerical or support duties may include subsequent to  
9 the receipt of a residential mortgage loan application:

10 (A) the receipt, collection, distribution, and  
11 analysis of information common for the processing or underwriting  
12 of a residential mortgage loan; and

13 (B) communicating with a consumer to obtain the  
14 information necessary for the processing or underwriting of a loan,  
15 to the extent that such communication does not include offering or  
16 negotiating loan rates or terms, or counseling consumers about  
17 residential mortgage loan rates or terms.

18 (5) [~~(2)~~] "Mortgage banker" means a person who:

19 (A) accepts an application for a residential  
20 mortgage loan or makes a residential mortgage loan; and

21 (B) is an approved or authorized:

22 (i) mortgagee with direct endorsement  
23 underwriting authority granted by the United States Department of  
24 Housing and Urban Development;

25 (ii) seller or servicer of the Federal  
26 National Mortgage Association or the Federal Home Loan Mortgage  
27 Corporation; or

(iii) issuer for the Government National Mortgage Association.

(6) "Mortgage loan originator" means a mortgage banker employee who for compensation or gain or in the expectation of compensation or gain:

(A) takes a residential mortgage loan application; or

(B) offers or negotiates terms of a residential mortgage loan.

The term does not include an individual engaged solely as a loan processor or underwriter.

(7) "Mortgage loan servicer" means an employee of a mortgage banker who on behalf of the mortgage banker collects or receives payments, including payments of principal, interest, escrow amounts, and other amounts due, on obligations due and owing to the mortgage banker servicing a residential mortgage loan including working with the borrower when the borrower is in default or in reasonably foreseeable likelihood of default to modify either temporarily or permanently certain terms of those obligations or otherwise finalizing collection through the foreclosure process.

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

(9) "Secure and Fair Enforcement for Mortgage Licensing Act" refers to Chapter 180 of the Finance Code.

1           Sec. 157.003. REGISTRATION REQUIRED. (a) A person must  
2 register under this chapter before the person may conduct the  
3 business of a mortgage banker in this state, unless the person is  
4 exempt under this section or Section 157. 004.

5           (b) To register under this chapter, a mortgage banker shall  
6 file with the commissioner a statement that contains:

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

8                   (2) the name, address, and telephone number of the  
9 representative of the mortgage banker to be contacted regarding a  
10 written complaint; ~~and~~

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

13                   (4) a list of employees of the mortgage banker who are  
14 residential mortgage loan originators which list will be  
15 continuously updated when there is a change.

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

19           (d) Except as authorized in Section 157.008(b), the ~~The~~  
20 commissioner may not require a mortgage banker to provide  
21 information other than information contained in the registration  
22 statement.

23           (e) The registration of a mortgage banker is valid until  
24 withdrawn or revoked. Periodic renewal of the registration is not  
25 required.

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

27                   (1) a federally insured bank, savings bank, savings

1 and loan association, Farm Credit System Institution, or credit  
2 union;

3 (2) A ~~[an affiliate or]~~ subsidiary of a federally  
4 insured bank, savings bank, savings and loan association, Farm  
5 Credit System Institution, or credit union; or

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

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

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

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

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

21 Sec. 157.005. UPDATE OF REGISTRATION STATEMENT. A mortgage  
22 banker shall update information contained in the registration  
23 statement not later than the 30th day after the date the information  
24 changes.

25 Sec. 157.006. REGISTRATION AND ADMINISTRATION FEE. The  
26 commissioner may charge a mortgage banker a reasonable fee to cover  
27 the costs of filing the registration statement and administering

1 this chapter. The fee may not exceed \$500 a year.

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

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

11       Sec. 157.008. COMPLAINTS. (a) If the Department of  
12 Savings and Mortgage Lending receives a signed written complaint  
13 from a person concerning a mortgage banker, the commissioner shall  
14 notify the representative designated by the mortgage banker under  
15 Section 157.003(b) in writing of the complaint and provide a copy of  
16 the complaint to the representative.

17       (b) The commissioner may request documentary and other  
18 evidence considered by the commissioner as necessary to effectively  
19 evaluate the complaint, including correspondence, loan documents,  
20 and disclosures. A mortgage banker shall promptly provide any  
21 evidence requested by the commissioner.

22       (c) The commissioner may require the mortgage banker to  
23 resolve the complaint or to provide the commissioner with a  
24 response to the complaint. The commissioner may direct the  
25 mortgage banker in writing to take specific action to resolve the  
26 complaint.

27       Sec. 157.009. TERMINATION OF REGISTRATION. (a) A

1 mortgage banker may withdraw the mortgage banker's registration at  
2 any time.

3 (b) The commissioner may revoke the registration of a  
4 mortgage banker if the mortgage banker fails to pay the  
5 registration and administration fee and fails to cure the default  
6 before the 30th day after the date the mortgage banker receives  
7 notice of the default from the commissioner.

8 (c) The commissioner may revoke the registration of a  
9 mortgage banker if the mortgage banker fails or refuses to comply  
10 with the commissioner's written request for a response to a  
11 complaint.

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

21 (e) If the commissioner proposes to revoke a registration  
22 under Subsection (c) or (d), the mortgage banker is entitled to a  
23 hearing before the commissioner or a hearings officer, who shall  
24 propose a decision to the commissioner. The commissioner or  
25 hearings officer shall prescribe the time and place of the hearing.  
26 The hearing is governed by Chapter 2001, Government Code.

27 (f) A mortgage banker aggrieved by a ruling, order, or

1 decision of the commissioner is entitled to appeal to a district  
2 court in the county in which the hearing was held. An appeal under  
3 this subsection is governed by Chapter 2001, Government Code.

4       Sec. 157.010. REREGISTRATION. (a) A mortgage banker  
5 whose registration is revoked by the commissioner may register  
6 again only after receiving the authorization of the commissioner.  
7 The commissioner shall authorize the registration if the  
8 commissioner concludes that the mortgage banker will comply with  
9 state and federal law and will not engage in improper, fraudulent,  
10 or dishonest dealings.

11       (b) A mortgage banker who seeks registration under this  
12 section may request and is entitled to a hearing before the  
13 commissioner or a hearings officer, who shall propose a decision to  
14 the commissioner. The hearing is governed by Chapter 2001,  
15 Government Code.

16       (c) If the commissioner denies authorization for the  
17 registration of a mortgage banker under this section, the  
18 commissioner shall recite the basis of the decision in an order  
19 denying the authorization.

20       (d) If the commissioner denies authorization for the  
21 registration of a mortgage banker under this section, the mortgage  
22 banker is entitled to appeal to a district court in Travis County.  
23 An appeal brought under this subsection is governed by Chapter  
24 2001, Government Code.

25       Sec. 157.011. LICENSE REQUIRED. (a) An employee of a  
26 mortgage banker may not act in the capacity of a mortgage loan  
27 originator without first obtaining from the commissioner a mortgage



1 loan originator license pursuant to and in compliance with the  
2 requirements of the Secure and Fair Enforcement for Mortgage  
3 License Act, Chapter 180 of the Finance Code and any rule adopted  
4 under this chapter or Chapter 180.

5 (b) To be eligible to be licensed as a mortgage loan  
6 originator, an individual must:

7 (1) satisfy the commissioner as to the individual's  
8 good moral character, including the individual's honesty,  
9 trustworthiness, and integrity;

10 (2) not be in violation of this chapter or Chapter 180,  
11 Finance Code, or a rule adopted under this chapter or Chapter 180;  
12 and

13 (3) provide the commissioner with satisfactory  
14 evidence that the individual meets the qualifications provided in  
15 Chapter 180, Finance Code.

16 (c) The net worth of the mortgage banker who must comply with  
17 the requirements of Section 157.002(5) shall constitute the net  
18 worth requirement for the mortgage banker's mortgage loan  
19 originator employee in compliance with the S.A.F.E Mortgage  
20 Licensing Act in lieu of a surety bond or a recovery fund fee as  
21 otherwise would be required by Section 180.059, Finance Code.

22 Sec. 157.012. APPLICATION FOR A LICENSE; FEES (a) An  
23 application for a mortgage loan originator license must be:

24 (1) in writing;

25 (2) under oath; and

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

27 (b) An application for a mortgage loan originator license

1 must be accompanied by an application fee in an amount determined by  
2 the commissioner not to exceed \$500.

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

6 Sec. 157.013. ISSUANCE OF MORTGAGE LOAN ORIGINATOR  
7 LICENSE. (a) The commissioner shall issue a mortgage loan  
8 originator license to an applicant if the commissioner finds that  
9 the applicant meets all requirements and conditions for the  
10 license.

11 (b) Each mortgage loan originator license shall be issued  
12 for no more than a one year period expiring December 31 of each  
13 calendar year.

14 (c) Each mortgage loan originator license shall have a  
15 license number or a unique identifier as provided for in Chapter  
16 180, Finance Code.

17 Sec. 157.014. RENEWALS. (a) A mortgage loan originator  
18 license issued under this chapter is valid for one year and may be  
19 renewed on or before its expiration date.

20 (b) Each mortgage loan originator license will be renewed  
21 for no more than a one year period expiring December 31 of each  
22 calendar year.

23 (c) An application for renewal of a mortgage loan originator  
24 license shall meet the requirements of Section 157.012.

25 (d) An application for renewal of a mortgage loan originator  
26 license must meet all of the standards and qualifications for  
27 license renewal contained in Chapter 180, Finance Code.

1       (e) The commissioner shall issue a renewal mortgage loan  
2 originator license if the commissioner finds that the applicant  
3 meets all of the requirements and conditions for the license.

4       (f) The commissioner may deny the renewal application for a  
5 mortgage loan originator license for the same reasons and grounds  
6 upon which the commissioner could have denied an original  
7 application for a license.

8       (g) The commissioner may deny the renewal application for a  
9 mortgage loan originator license if:

10           (1) the person seeking the renewal of the mortgage  
11 loan originator license is in violation of this chapter, a rule  
12 adopted under this chapter, or any order previously issued to the  
13 person by the commissioner;

14           (2) the person seeking renewal of the mortgage loan  
15 originator license is in default in the payment of any  
16 administrative penalty, fee, charge, or other indebtedness owed  
17 under this title;

18           (3) the person seeking the renewal of the mortgage  
19 loan originator license is in default on a student loan  
20 administered by the Texas Guaranteed Student Loan Corporation,  
21 pursuant to Section 57.492 of the Texas Education Code; or

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

26       Sec. 157.015. RENEWAL AFTER EXPIRATION; NOTICE. (a) A  
27 person whose mortgage loan originator license has expired may not

1 engage in activities that require a license until the license has  
2 been renewed.

3 (b) A person whose mortgage loan originator license has not  
4 been renewed prior to January 1 but who is otherwise eligible to  
5 renew a license, and does so before March 1, may renew the license  
6 by paying the commissioner a reinstatement fee that is equal to 150%  
7 of the normally required renewal fee.

8 (c) A person whose mortgage loan originator license has not  
9 been renewed prior to March 1 may not renew the license. The person  
10 may obtain a new license by complying with the requirements and  
11 procedures for obtaining an original license.

12 (d) Not later than the 60th day before the date a person's  
13 mortgage loan originator license is scheduled to expire, the  
14 commissioner or authorized designee shall send written notice of  
15 the impending expiration to the person at the person's last known  
16 address according to the official licensing records.

17 Sec. 157.016. DENIAL OF APPLICATIONS AND RENEWALS. (a) If  
18 the commissioner declines or fails to issue or renew a mortgage loan  
19 originator license, the commissioner shall promptly give written  
20 notice to the applicant that the application or renewal, as  
21 appropriate, was denied.

22 (b) Before the applicant or a person requesting the renewal  
23 of a mortgage loan originator license may appeal to a district court  
24 as provided in Section 157.025(d), the applicant or person must  
25 file with the commissioner not later than the 10th day after the  
26 date on which notice under subsection (a) is received, an appeal of  
27 the ruling requesting a time and place for a hearing before an

1 administrative law judge designated by the commissioner.

2 (c) The designated administrative law judge shall set the  
3 time and place for a hearing requested under subsection (b) not  
4 later than the 90th day after the date on which the appeal is  
5 received. The administrative law judge shall provide at least 10  
6 days' notice of the hearing to the applicant or person requesting  
7 the renewal. The time of the hearing may be continued periodically  
8 with the consent of the applicant or person requesting the renewal.  
9 After the hearing, the commissioner shall enter an order relative  
10 to the applicant based on the findings of fact, conclusions of law,  
11 and recommendations of the administrative law judge.

12 (d) If an applicant or person requesting the renewal fails  
13 to request a hearing under this section, the commissioner's refusal  
14 to issue or renew a license is final and may not be subject to a  
15 review by the courts.

16 (e) A hearing held under this section is governed by Chapter  
17 2001, Government Code. An appeal of a final order issued under this  
18 section may be made in accordance with Section 157.025(d).

19 (f) A person who requests a hearing under this section shall  
20 be required to pay a deposit to secure the payment of the costs of  
21 the hearing in an amount to be determined by the commissioner not to  
22 exceed \$500. The entire deposit shall be refunded to the person if  
23 the person prevails in the contested case hearing. If the person  
24 does not prevail, any portion of the deposit in excess of the costs  
25 of the hearing assessed against that person shall be refundable.

26 (g) A person whose application for a license has been denied  
27 is not eligible to be licensed for a period of two years after the

1 date the denial becomes final, or a shorter period determined by the  
2 commissioner after evaluating the specific circumstances of the  
3 person's subsequent application. The Finance Commission may adopt  
4 rules to provide conditions for which the commissioner may shorten  
5 the time for eligibility for a new license.

6 Sec. 157.017. PROBATIONARY AND PROVISIONAL LICENSES. The  
7 commissioner may issue probationary and provisional license. The  
8 Finance Commission by rule shall adopt reasonable terms and  
9 conditions for probationary and provisional licenses.

10 Sec. 157.018. MODIFICATION OF LICENSE. (a) Before the 10th  
11 day preceding the effective date of an address change, a mortgage  
12 banker employee who is a mortgage loan originator shall notify the  
13 commissioner or authorized designee in writing of the new address.

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

18 Sec. 157.019. ANNUAL CALL REPORT. (a) Each mortgage banker  
19 shall file an annual call report with the commissioner or  
20 authorized designee on a form prescribed by the commissioner or  
21 authorized designee. The report is a statement of condition of the  
22 mortgage banker and its operations including financial statements  
23 and production activity volumes.

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

1       Sec. 157.020. INSPECTION; INVESTIGATIONS. (a) The  
 2 commissioner may conduct inspections of a person licensed as a  
 3 mortgage loan originator as the commissioner determines necessary  
 4 to determine whether the person is complying with this chapter and  
 5 applicable rules. The inspections may include inspection of the  
 6 books, records, documents, operations, and facilities of the  
 7 person. The commissioner may request the assistance and  
 8 cooperation of the mortgage banker in providing needed documents  
 9 and records. The commissioner shall not make a request of the  
 10 mortgage banker for documents and records unrelated to the person  
 11 being investigated or inspected. The commissioner may share  
 12 evidence of criminal activity gathered during an inspection or  
 13 investigation with any state or federal law enforcement agency.

14       (b) On the signed written complaint of a person, the  
 15 commissioner shall investigate the actions and records of a person  
 16 licensed as a mortgage loan originator if the complaint, or the  
 17 complaint and documentary or other evidence presented in connection  
 18 with the complaint, provides a reasonable cause. The commissioner,  
 19 before commencing an investigation, shall notify the licensed  
 20 mortgage loan originator in writing of the complaint and that the  
 21 commissioner intends to investigate the matter.

22       (c) For reasonable cause, the commissioner at any time may  
 23 investigate a person licensed as a mortgage loan originator to  
 24 determine whether the person is complying with this chapter and  
 25 applicable rules.

26       (d) The commissioner may conduct an undercover or covert  
 27 investigation only if the commissioner, after due consideration of

1 the circumstances, determines that the investigation is necessary  
2 to prevent immediate harm and to carry out the purposes of this  
3 chapter.

4 (e) The Finance Commission by rule shall provide guidelines  
5 to govern an inspection or investigation, including rules to:

6 (1) determine the information and records of the  
7 licensed mortgage originator to which the commissioner may demand  
8 access during an inspection or an investigation; and

9 (2) establish what constitutes reasonable cause for an  
10 investigation.

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

14 (g) The commissioner may share information gathered during  
15 an investigation or inspection with any state or federal agency  
16 only if the commissioner determines there is a valid reason for the  
17 sharing.

18 Sec. 157.021. ISSUANCE AND ENFORCEMENT OF SUBPOENA. (a)  
19 During an investigation, the commissioner may issue a subpoena that  
20 is addressed to a peace officer of this state or other person  
21 authorized by law to serve citation or perfect service. The  
22 subpoena may require a person to give a deposition, produce  
23 documents, or both.

24 (b) If a person disobeys a subpoena or if a person appearing  
25 in a deposition in connection with the investigation refuses to  
26 testify, the commissioner may petition a district court in Travis  
27 County to issue an order requiring the person to obey the subpoena,



1 testify, or produce documents relating to the matter. The court  
2 shall promptly set an application to enforce a subpoena issued  
3 under subsection (a) for hearing and shall cause notice of the  
4 application and the hearing to be served upon the person to whom the  
5 subpoena is directed.

6 Sec. 157.022. ADMINISTRATIVE PENALTY. (a) The  
7 commissioner, after notice and opportunity for a hearing, may  
8 impose an administrative penalty on a person licensed as a mortgage  
9 loan originator under this chapter who violates this chapter or a  
10 rule or order adopted under this chapter.

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

14 (1) the seriousness of the violation, including the  
15 nature, circumstances, extent, and gravity of the violation;

16 (2) the history of previous violations;

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

18 (4) efforts to correct the violation; and

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

20 (c) The enforcement of the penalty may be stayed during the  
21 time the order is under judicial review if the person pays the  
22 penalty to the clerk of the court or files a supersedes bond with  
23 the court in the amount of the penalty. A person who cannot afford  
24 to pay the penalty or file the bond may stay the enforcement by  
25 filing an affidavit in the manner required by the Texas Rules of  
26 Civil Procedure for a party who cannot afford to file security for  
27 costs, subject to the right of the commissioner to contest the

1 affidavit as provided by those rules.

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

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

6 Sec. 157.023. DISCIPLINARY ACTION; CEASE AND DESIST ORDER.

7 (a) The commissioner may order disciplinary action against a  
8 licensed mortgage loan originator when the commissioner, after  
9 notice and opportunity for a hearing, has determined that the  
10 person:

11 (1) obtained a license, including a renewal of a  
12 license, under this chapter through a false or fraudulent  
13 representation or made a material misrepresentation in an  
14 application for a license or for the renewal of a license under this  
15 chapter;

16 (2) published or caused to be published an  
17 advertisement related to the business of a mortgage loan originator  
18 that:

19 (A) is misleading;

20 (B) is likely to deceive the public;

21 (C) in any manner tends to create a misleading  
22 impression;

23 (D) fails to identify as a licensed mortgage loan  
24 originator the person causing the advertisement to be published; or

25 (E) violates federal or state law;

26 (3) while performing an act for which a license under  
27 this chapter is required, engaged in conduct that constitutes

1 improper, fraudulent, or dishonest dealings;

2 (4) entered a plea of nolo contendere to or is convicted  
3 of, a criminal offense that is a felony or that involves fraud or  
4 moral turpitude in a court of this or another state or in a federal  
5 court;

6 (5) failed to use a fee collected in advance of closing  
7 of a residential mortgage loan for a purpose for which the fee was  
8 paid;

9 (6) failed within a reasonable time to honor a check  
10 issued to the commissioner after the commissioner has mailed a  
11 request for payment by mail to the person's last known business  
12 address as reflected by the commissioner's records;

13 (7) induced or attempted to induce a party to a  
14 contract to breach the contract so the person may make a residential  
15 mortgage loan;

16 (8) published or circulated an unjustified or  
17 unwarranted threat of legal proceedings in matters related to the  
18 person's actions or services as a licensed mortgage loan  
19 originator;

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

22 (10) acted in the dual capacity of a licensed mortgage  
23 loan originator and real estate broker, salesperson, or attorney in  
24 a transaction without the knowledge and written consent of the  
25 mortgage applicant or in violation of applicable requirements under  
26 federal law;

27 (11) discriminated against a prospective borrower on

the basis of race, color, religion, sex, national origin, ancestry, familial status, or a disability;

(12) failed or refused on demand to:

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

(B) give the commissioner or the commissioner's authorized personnel or representative free access to the books or records relating to the mortgage loan originator's business kept by any other person or any business entity through which the mortgage loan originator conducts mortgage origination activities; or

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

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

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

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

(16) during the current term of the license, the

1 commissioner becomes aware of any fact that would have been grounds  
2 for denial of any original license if the fact had been known by the  
3 commissioner on the date the license was granted;

4 (17) 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; or

7 (18) established an association, by employment or  
8 otherwise, with a person not licensed or exempt under this chapter  
9 who was expected or required to act as a mortgage loan originator.

10 (b) In addition to disciplinary action by the commissioner  
11 authorized under subsection (a), the commissioner, if the  
12 commissioner has reasonable cause to believe that a licensed  
13 mortgage loan originator has or is about to violate this section,  
14 may issue without notice and hearing an order to cease and desist  
15 continuing a particular action or an order to take affirmative  
16 action, or both, to enforce compliance with this chapter.

17 (c) An order issued under subsection (b) must contain a  
18 reasonably detailed statement of the facts on which the order is  
19 made. If a mortgage loan originator against whom the order is made  
20 requests a hearing, the commissioner shall set and give notice of a  
21 hearing before the commissioner or an administrative law judge.  
22 The hearing shall be governed by Chapter 2001, Government Code.  
23 Based on the findings of fact, conclusions of law, and  
24 recommendations of the administrative law judge, the commissioner  
25 by order may find a violation has occurred or not occurred.

26 (d) If a hearing is not requested under subsection (c) not  
27 later than the 30th day after the date on which an order is made, the

1 order is considered final and not appealable.

2 (e) The commissioner, after giving notice, may impose  
3 against a mortgage loan originator who violates a cease and desist  
4 order an administrative penalty in an amount not to exceed \$1,000  
5 for each day of the violation. In addition to any other remedy  
6 provided by law, the commissioner may institute in district court a  
7 suit for injunctive relief and to collect the administrative  
8 penalty. A bond is not required of the commissioner with respect to  
9 injunctive relief granted under this subsection.

10 (f) For purposes of subsection (a), a mortgage loan  
11 originator is considered convicted if a sentence is imposed on that  
12 person, that person receives community supervision, including  
13 deferred adjudication community supervision, or the court defers  
14 final disposition of that person's case.

15 (g) If a mortgage loan originator fails to pay an  
16 administrative penalty that has become final or fails to comply  
17 with an order of the commissioner that has become final, in addition  
18 to any other remedy provided under law the commissioner, on not less  
19 than 10 days' notice to the mortgage loan originator, may without a  
20 prior hearing suspend the mortgage loan originator's license. The  
21 suspension shall continue until the mortgage loan originator has  
22 complied with the administrative order or paid the administrative  
23 penalty. During the period of suspension, the mortgage loan  
24 originator may not originate a residential mortgage loan.

25 (h) An order of suspension under subsection (g) may be  
26 appealed. An appeal is a contested case governed by Chapter 2001,  
27 Government Code. A hearing of an appeal of an order of suspension

1 issued under subsection (g) shall be held not later than the 15th  
2 day after the date of receipt of the notice of appeal. The  
3 appellant shall be provide at least three days' notice of the time  
4 and place of the hearing.

5 (i) An order revoking the license of a mortgage loan  
6 originator may provide that the person is prohibited, without  
7 obtaining prior written consent of the commissioner, from:

8 (1) engaging in the business of originating or making  
9 residential mortgage loans;

10 (2) otherwise affiliating with a person for the  
11 purpose of engaging in the business of originating or making  
12 residential mortgage loans; and

13 (3) being an employee, officer, director, manager,  
14 shareholder, member, agent, contractor, or processor of a mortgage  
15 banker, mortgage broker, or mortgage broker loan officer.

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

22 Sec. 157.024. RESTITUTION. The commissioner may order a  
23 mortgage loan originator to make restitution for any amount  
24 received by that person in violation of this chapter.

25 Sec. 157.025. HEARINGS AND JUDICIAL REVIEW. (a) The  
26 commissioner may employ an enforcement staff to investigate and  
27 prosecute complaints made against mortgage loan originators

licensed under this chapter. The commissioner may employ an administrative law judge to conduct hearings under this section. The commissioner may collect and deposit any court costs assessed pursuant to a final order.

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

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

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

Sec. 157.026. CIVIL ACTIONS AND INJUNCTIVE RELIEF. (a) A residential mortgage loan applicant injured by a violation of this chapter by a mortgage loan originator may bring an action for



1 recovery of actual monetary damages and reasonable attorney's fees  
2 and court costs.

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

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

8 Sec. 157.027. 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. 157.028. 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. 157.029. COMPLETION OF MORTGAGE ORIGINATION SERVICES.  
20 (a) On disbursement of mortgage proceeds to or on behalf of the  
21 residential mortgage loan applicant, the mortgage loan originator  
22 who assisted the residential mortgage loan applicant in obtaining  
23 the residential mortgage loan is considered to have completed the  
24 performance of the mortgage loan originator's services for the  
25 residential mortgage loan applicant and owes no additional duties  
26 or obligations to the residential mortgage loan applicant with  
27 respect to the residential mortgage loan.

1        (b) This section does not limit or preclude the liability of  
2 a mortgage loan originator for:

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

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

8            (3) violating any other state or federal law.

9        Sec. 157.030. UNLICENSED ACTIVITY. (a) A person who is an  
10 employee of a mortgage banker and who is not exempt under this  
11 chapter and who acts as a mortgage loan originator without first  
12 obtaining a license required under this chapter commits an offense.  
13 An offense under this subsection is a Class B misdemeanor. A second  
14 or subsequent conviction for an offense under this subsection shall  
15 be punished as a Class A misdemeanor.

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

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

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

Sec. 157.031. [~~157.013~~.] RULEMAKING AUTHORITY. (a) The Finance Commission of Texas may adopt rules necessary to implement or fulfill the purpose of this chapter.

(b) The Finance Commission of Texas may by rule adopt standard forms for, and require the use of the forms by, a mortgage banker who represents that an applicant for a loan is preapproved or has prequalified for the loan.

(c) The Finance Commission, for the purpose of enabling Texas to participate in the Nationwide Mortgage Licensing System and Registry and comply with the S.A.F.E. Mortgage Licensing Act,

1 by rule, may waive or modify, in whole or in part, any requirement  
2 of this chapter and establish requirements under this chapter that  
3 are reasonably necessary to accomplish that purpose.

4 SECTION 2. Section 341.103 is amended to read as follows:

5 Section 341.103. REGULATION OF SAVINGS INSTITUTIONS ~~[AND]~~,  
6 LICENSED MORTGAGE BROKERS AND LOAN OFFICERS, AND REGISTERED  
7 MORTGAGE BANKERS AND LICENSED LOAN OFFICERS

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

10 (1) state savings associations operating under this  
11 subtitle;

12 (2) state savings banks operating under this subtitle;  
13 ~~[and]~~

14 (3) persons licensed under Chapter 156~~[-]~~; and

15 (4) persons registered or licensed under Chapter 157.

16 (b) The official exercising authority over the operation of  
17 federal savings associations equivalent to the authority exercised  
18 by the savings and mortgage lending commissioner over state savings  
19 associations may enforce this subtitle relating to the regulation  
20 of a federal savings association operating under this subtitle.

21 SECTION 3. This Act takes effect April 1, 2010.