

1-1 By: Truitt (Senate Sponsor - Wentworth) H.B. No. 2779
1-2 (In the Senate - Received from the House April 29, 2009;
1-3 May 1, 2009, read first time and referred to Committee on Business
1-4 and Commerce; May 19, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 May 19, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2779 By: Van de Putte

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of certain mortgage banker employees who
1-11 are residential mortgage loan originators; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 157.001, Finance Code, is amended to
1-14 read as follows:

1-15 Sec. 157.001. SHORT TITLE. This chapter may be cited as the
1-16 Mortgage Banker Registration and Residential Mortgage Loan
1-17 Originator License Act.

1-18 SECTION 2. Section 157.002, Finance Code, is amended to
1-19 read as follows:

1-20 Sec. 157.002. DEFINITIONS. In this chapter:

1-21 (1) "Commissioner" means the savings and mortgage
1-22 lending commissioner.

1-23 (2) "Disciplinary action" means any order by the
1-24 commissioner that requires one or more of the following:

1-25 (A) suspension or revocation of a residential
1-26 mortgage loan originator license under this chapter;

1-27 (B) probation of a suspension or revocation of a
1-28 residential mortgage loan originator license under this chapter on
1-29 terms and conditions that the commissioner determines appropriate;

1-30 (C) a reprimand of a person with a residential
1-31 mortgage loan originator license under this chapter; or

1-32 (D) an administrative penalty imposed on a person
1-33 holding a residential mortgage loan originator license under this
1-34 chapter.

1-35 (3) "Finance commission" means the Finance Commission
1-36 of Texas.

1-37 (4) "Mortgage banker" means a person who:

1-38 (A) accepts an application for a residential
1-39 mortgage loan or makes a residential mortgage loan; and

1-40 (B) is an approved or authorized:

1-41 (i) mortgagee with direct endorsement
1-42 underwriting authority granted by the United States Department of
1-43 Housing and Urban Development;

1-44 (ii) seller or servicer of the Federal
1-45 National Mortgage Association or the Federal Home Loan Mortgage
1-46 Corporation; or

1-47 (iii) issuer for the Government National
1-48 Mortgage Association.

1-49 (5) "Residential mortgage [~~(3) "Mortgage~~] loan" means
1-50 a debt secured by a [~~first~~] lien on residential real property
1-51 designed principally for occupancy by one to four families that is
1-52 created by a deed of trust, security deed, or other security
1-53 instrument.

1-54 (6) "Residential mortgage loan originator" has the
1-55 meaning assigned by Section 180.002.

1-56 SECTION 3. Section 157.003, Finance Code, is amended by
1-57 amending Subsections (b), (c), and (d) and adding Subsection (b-1)
1-58 to read as follows:

1-59 (b) To register under this chapter, a mortgage banker shall
1-60 file with the commissioner a statement that contains:

1-61 (1) the name and address of the mortgage banker;

1-62 (2) the name, address, and telephone number of the
1-63 representative of the mortgage banker to be contacted regarding a

written complaint; ~~and~~

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

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

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

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

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

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

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

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

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

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

(4) an authorized lender licensed under Chapter 342; or

(5) the state or a governmental agency, political subdivision, or other instrumentality of the state, or an employee of the state or a governmental agency, political subdivision, or instrumentality of the state who is acting within the scope of the person's employment [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 may adopt rules under this

chapter as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

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 by Section 180.052; and

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

(b) The finance commission may adopt rules under this chapter as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

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

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

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

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

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

(1) in writing;

(2) under oath; and

(3) on the form prescribed by the commissioner.

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

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

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

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

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

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

(c) An application for renewal of a residential mortgage loan originator license shall meet the requirements of Section 157.013.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 157.017. DENIAL OF APPLICATIONS AND RENEWALS. (a) If the commissioner declines or fails to issue or renew a residential mortgage loan originator license, the commissioner shall promptly give written notice to the applicant that the application or renewal, as appropriate, was denied.

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

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

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

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

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

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

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

Sec. 157.018. PROBATIONARY AND PROVISIONAL LICENSES.

(a) The commissioner may issue probationary and provisional licenses.

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

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

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

Sec. 157.020. ANNUAL CALL REPORT. (a) Each mortgage banker shall file an annual call report with the commissioner or the commissioner's authorized designee on a form prescribed by the commissioner or authorized designee. The report is a statement of condition of the mortgage banker and the mortgage banker's operations, including financial statements and production activity volumes.

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

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

(b) On the signed written complaint of a person, the commissioner shall investigate the actions and records of a person licensed as a residential mortgage loan originator if the complaint, or the complaint and documentary or other evidence presented in connection with the complaint, provides a reasonable cause. Before commencing an investigation, the commissioner must notify the licensed residential mortgage loan originator in writing of the complaint and that the commissioner intends to investigate the matter.

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

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

chapter.

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

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

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

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

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

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

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

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

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

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

(2) the history of previous violations;

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

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

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

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

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

Sec. 157.024. DISCIPLINARY ACTION; CEASE AND DESIST ORDER. (a) The commissioner may order disciplinary action against a licensed residential mortgage loan originator when the commissioner, after notice and opportunity for a hearing, has determined that the person:

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

(2) published or caused to be published an

7-1 advertisement related to the business of a residential mortgage
 7-2 loan originator that:
 7-3 (A) was misleading;
 7-4 (B) was likely to deceive the public;
 7-5 (C) in any manner tended to create a misleading
 7-6 impression;
 7-7 (D) failed to identify as a licensed residential
 7-8 mortgage loan originator the person causing the advertisement to be
 7-9 published; or
 7-10 (E) violated federal or state law;
 7-11 (3) while performing an act for which a license under
 7-12 this chapter is required, engaged in conduct that constitutes
 7-13 improper, fraudulent, or dishonest dealings;
 7-14 (4) entered a plea of nolo contendere to or was
 7-15 convicted of a criminal offense that is a felony or that involves
 7-16 fraud or moral turpitude in a court of this or another state or in a
 7-17 federal court;
 7-18 (5) failed to use a fee collected in advance of closing
 7-19 a residential mortgage loan for a purpose for which the fee was
 7-20 paid;
 7-21 (6) failed within a reasonable time to honor a check
 7-22 issued to the commissioner after the commissioner mailed a request
 7-23 for payment by mail to the person's last known business address as
 7-24 reflected in the commissioner's records;
 7-25 (7) induced or attempted to induce a party to a
 7-26 contract to breach the contract so the person could make a
 7-27 residential mortgage loan;
 7-28 (8) published or circulated an unjustified or
 7-29 unwarranted threat of legal proceedings in matters related to the
 7-30 person's actions or services as a licensed residential mortgage
 7-31 loan originator;
 7-32 (9) aided, abetted, or conspired with a person to
 7-33 circumvent the requirements of this chapter;
 7-34 (10) acted in the dual capacity of a licensed
 7-35 residential mortgage loan originator and real estate broker,
 7-36 salesperson, or attorney in a transaction without the knowledge and
 7-37 written consent of the mortgage applicant or in violation of
 7-38 applicable requirements under federal law;
 7-39 (11) discriminated against a prospective borrower on
 7-40 the basis of race, color, religion, sex, national origin, ancestry,
 7-41 familial status, or disability;
 7-42 (12) failed or refused on demand to:
 7-43 (A) produce a document, book, or record
 7-44 concerning a residential mortgage loan transaction conducted by the
 7-45 licensed residential mortgage loan originator for inspection by the
 7-46 commissioner or the commissioner's authorized personnel or
 7-47 representative;
 7-48 (B) give the commissioner or the commissioner's
 7-49 authorized personnel or representative free access to the books or
 7-50 records relating to the residential mortgage loan originator's
 7-51 business kept by any other person or any business entity through
 7-52 which the residential mortgage loan originator conducts
 7-53 residential mortgage loan origination activities; or
 7-54 (C) provide information requested by the
 7-55 commissioner as a result of a formal or informal complaint made to
 7-56 the commissioner;
 7-57 (13) failed without just cause to surrender, on
 7-58 demand, a copy of a document or other instrument coming into the
 7-59 residential mortgage loan originator's possession that was
 7-60 provided to the residential mortgage loan originator by another
 7-61 person making the demand or that the person making the demand is
 7-62 under law entitled to receive;
 7-63 (14) disregarded or violated this chapter, a rule
 7-64 adopted under this chapter, or an order issued by the commissioner
 7-65 under this chapter;
 7-66 (15) provided false information to the commissioner
 7-67 during the course of an investigation or inspection;
 7-68 (16) paid compensation to a person who is not licensed
 7-69 or exempt under this chapter for acts for which a license under this

chapter is required; or

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

(b) The commissioner may also order disciplinary action against a licensed residential mortgage loan originator, after notice and opportunity for a hearing, if the commissioner, during the current term of the license, becomes aware of any fact that would have been grounds for denial of an original license if the fact had been known by the commissioner on the date the license was granted.

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

(d) An order issued under Subsection (c) must contain a reasonably detailed statement of the facts on which the order is made. If a residential mortgage loan originator 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. Based on the findings of fact, conclusions of law, and recommendations of the administrative law judge, the commissioner by order may find that a violation has occurred or not occurred.

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

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

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

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

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

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

(1) engaging in the business of originating or making

residential mortgage loans, as defined by Section 180.002;

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

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

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

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

Sec. 157.026. HEARINGS AND JUDICIAL REVIEW. (a) The commissioner may employ an enforcement staff to investigate and prosecute complaints made against residential 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 under a final order.

(b) If the commissioner proposes to suspend or revoke a license of a residential mortgage loan originator or if the commissioner refuses to issue or renew a license to an applicant for a residential mortgage loan originator license or person requesting a renewal of a residential 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 may extend 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. 157.027. CIVIL ACTIONS AND INJUNCTIVE RELIEF. (a) A residential mortgage loan applicant injured by a violation of this chapter by a residential mortgage loan originator may bring an action for recovery of actual monetary damages and reasonable attorney's fees and court costs.

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

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

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

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

Sec. 157.030. COMPLETION OF RESIDENTIAL MORTGAGE ORIGINATION SERVICES. (a) On disbursement of mortgage proceeds to

or on behalf of the residential mortgage loan applicant, the residential mortgage loan originator who assisted the applicant in obtaining the residential mortgage loan is considered to have completed the performance of the loan originator's services for the applicant and owes no additional duties or obligations to the applicant with respect to the loan.

(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 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.

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

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

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

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

(1) state savings associations operating under this subtitle;

(2) state savings banks operating under this subtitle;

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

(4) persons registered or licensed under Chapter 157.

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

(1) July 31, 2010; or

(2) a subsequent date that is approved by the secretary of the United States Department of Housing and Urban Development under the authority granted under the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

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

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

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