

SENATE AMENDMENTS

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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;

(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

1 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING,
2 _____ (street address of the Department
3 of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS
4 AVAILABLE AT _____ (telephone number of the Department of
5 Savings and Mortgage Lending's toll-free consumer hotline)."

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

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

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

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

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

27 Sec. 157.012. LICENSE REQUIRED FOR CERTAIN EMPLOYEES OF

1 MORTGAGE BANKERS. (a) An employee of a mortgage banker may not act
2 in the capacity of a residential mortgage loan originator unless
3 the employee:

4 (1) is licensed under this chapter and enrolled with
5 the Nationwide Mortgage Licensing System and Registry as required
6 by Section 180.052; and

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

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

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

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

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

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

27 Sec. 157.013. APPLICATION FOR LICENSE; FEES. (a) An

1 application for a residential mortgage loan originator license must
2 be:

3 (1) in writing;

4 (2) under oath; and

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

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

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

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

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

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

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

25 (c) An application for renewal of a residential mortgage
26 loan originator license shall meet the requirements of Section
27 157.013.

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

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

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

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

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

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

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

27 (4) during the current term of the license, the

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

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

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

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

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

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

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

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

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

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

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

26 (f) A person who requests a hearing under this section shall
27 be required to pay a deposit to secure the payment of the costs of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (g) The commissioner may share information gathered during
27 an investigation or inspection with any state or federal agency

1 only if the commissioner determines there is a valid reason for the
2 sharing.

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

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

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

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

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

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

4 (A) was misleading;

5 (B) was likely to deceive the public;

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

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

11 (E) violated federal or state law;

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

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

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

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

26 (7) induced or attempted to induce a party to a
27 contract to breach the contract so the person could make a

1 residential mortgage loan;

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

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

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

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

16 (12) failed or refused on demand to:

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

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

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

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

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

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

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

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

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

1 granted.

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

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

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

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

1 district court a suit for injunctive relief and to collect the
2 administrative penalty. A bond is not required of the commissioner
3 with respect to injunctive relief granted under this subsection.

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

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

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

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

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

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

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

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

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

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

1 assessed under a final order.

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

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

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

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

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

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

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

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

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

26 (b) This section does not limit or preclude the liability of
27 a residential mortgage loan originator for:

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

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

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

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

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

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

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

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

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

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

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

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

27 (2) state savings banks operating under this subtitle;

1 ~~[and]~~

2 (3) persons licensed under Chapter 156; and

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

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

7 (1) July 31, 2010; or

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

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

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

ADOPTED

MAY 26 2009

Letty Spaw
Secretary of the Senate

By: Truitt Wentworth

H.B. No. 2779

Substitute the following for ____B. No. ____:

By: *[Signature]*

C.S. H.B. No. 2779

A BILL TO BE ENTITLED

AN ACT

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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

1 Credit System Institution, or credit union;

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

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

6 (5) the state or a governmental agency, political
7 subdivision, or other instrumentality of the state, or an employee
8 of the state or a governmental agency, political subdivision, or
9 instrumentality of the state who is acting within the scope of the
10 person's employment ~~[if:~~

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

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

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

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

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

27 "COMPLAINTS REGARDING MORTGAGE BANKERS SHOULD BE SENT TO THE

1 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING,
2 _____ (street address of the Department
3 of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS
4 AVAILABLE AT _____ (telephone number of the Department of
5 Savings and Mortgage Lending's toll-free consumer hotline)."

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

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

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

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

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

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

1 the employee:

2 (1) is licensed under this chapter and enrolled with
3 the Nationwide Mortgage Licensing System and Registry as required
4 by Section 180.052; and

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

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

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

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

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

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

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

26 (1) in writing;

27 (2) under oath; and

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

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

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

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

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

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

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

21 (c) An application for renewal of a residential mortgage
22 loan originator license shall meet the requirements of Section
23 157.013.

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

27 (e) The commissioner shall issue a renewal residential

1 mortgage loan originator license if the commissioner finds that the
2 applicant meets all of the requirements and conditions for the
3 license.

4 (f) The commissioner may deny the renewal application for a
5 residential mortgage loan originator license for the same reasons
6 and grounds on 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 residential mortgage loan originator license if:

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

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

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

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

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

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

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

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

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

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

24 (b) Before the applicant or a person requesting the renewal
25 of a residential mortgage loan originator license may appeal a
26 determination to a district court as provided by Section
27 157.026(d), the applicant or person must file with the

1 commissioner, not later than the 10th day after the date on which
2 notice under Subsection (a) is received, an appeal of the ruling
3 requesting a time and place for a hearing before an administrative
4 law judge designated by the commissioner.

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

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

19 (e) A hearing held under this section is governed by Chapter
20 2001, Government Code. An appeal of a final order issued under this
21 section may be made in accordance with Section 157.026(d).

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

1 of the hearing assessed against that person shall be refunded.

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

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

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

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

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

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

1 volumes.

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

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

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

1 the matter.

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

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

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

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

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

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

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

26 Sec. 157.022. ISSUANCE AND ENFORCEMENT OF SUBPOENA. (a)
27 During an investigation, the commissioner may issue a subpoena that

1 is addressed to a peace officer of this state or other person
2 authorized by law to serve citation or perfect service. The
3 subpoena may require a person to give a deposition, produce
4 documents, or both.

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

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

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

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

24 (2) the history of previous violations;

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

26 (4) efforts to correct the violation; and

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

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

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

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

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

15 (a) The commissioner may order disciplinary action against a
16 licensed residential mortgage loan originator when the
17 commissioner, after notice and opportunity for a hearing, has
18 determined that the person:

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

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

27 (A) was misleading;

1 (B) was likely to deceive the public;
2 (C) in any manner tended to create a misleading
3 impression;
4 (D) failed to identify as a licensed residential
5 mortgage loan originator the person causing the advertisement to be
6 published; or
7 (E) violated federal or state law;
8 (3) while performing an act for which a license under
9 this chapter is required, engaged in conduct that constitutes
10 improper, fraudulent, or dishonest dealings;
11 (4) entered a plea of nolo contendere to or was
12 convicted of a criminal offense that is a felony or that involves
13 fraud or moral turpitude in a court of this or another state or in a
14 federal court;
15 (5) failed to use a fee collected in advance of closing
16 a residential mortgage loan for a purpose for which the fee was
17 paid;
18 (6) failed within a reasonable time to honor a check
19 issued to the commissioner after the commissioner mailed a request
20 for payment by mail to the person's last known business address as
21 reflected in the commissioner's records;
22 (7) induced or attempted to induce a party to a
23 contract to breach the contract so the person could make a
24 residential mortgage loan;
25 (8) published or circulated an unjustified or
26 unwarranted threat of legal proceedings in matters related to the
27 person's actions or services as a licensed residential mortgage

1 loan originator;
2 (9) aided, abetted, or conspired with a person to
3 circumvent the requirements of this chapter;
4 (10) acted in the dual capacity of a licensed
5 residential mortgage loan originator and real estate broker,
6 salesperson, or attorney in a transaction without the knowledge and
7 written consent of the mortgage applicant or in violation of
8 applicable requirements under federal law;
9 (11) discriminated against a prospective borrower on
10 the basis of race, color, religion, sex, national origin, ancestry,
11 familial status, or disability;
12 (12) failed or refused on demand to:
13 (A) produce a document, book, or record
14 concerning a residential mortgage loan transaction conducted by the
15 licensed residential mortgage loan originator for inspection by the
16 commissioner or the commissioner's authorized personnel or
17 representative;
18 (B) give the commissioner or the commissioner's
19 authorized personnel or representative free access to the books or
20 records relating to the residential mortgage loan originator's
21 business kept by any other person or any business entity through
22 which the residential mortgage loan originator conducts
23 residential mortgage loan origination activities; or
24 (C) provide information requested by the
25 commissioner as a result of a formal or informal complaint made to
26 the commissioner;
27 (13) failed without just cause to surrender, on

1 demand, a copy of a document or other instrument coming into the
2 residential mortgage loan originator's possession that was
3 provided to the residential mortgage loan originator by another
4 person making the demand or that the person making the demand is
5 under law entitled to receive;

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

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

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

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

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

25 (c) In addition to disciplinary action by the commissioner
26 authorized under Subsections (a) and (b), the commissioner, if the
27 commissioner has reasonable cause to believe that a licensed

1 residential mortgage loan originator has violated or is about to
2 violate this section, may issue without notice and hearing an order
3 to cease and desist continuing a particular action or an order to
4 take affirmative action, or both, to enforce compliance with this
5 chapter.

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

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

19 (f) The commissioner, after giving notice, may impose
20 against a residential mortgage loan originator who violates a cease
21 and desist order an administrative penalty in an amount not to
22 exceed \$1,000 for each day of the violation. In addition to any
23 other remedy provided by law, the commissioner may institute in
24 district court a suit for injunctive relief and to collect the
25 administrative penalty. A bond is not required of the commissioner
26 with respect to injunctive relief granted under this subsection.

27 (g) For purposes of Subsection (a), a residential mortgage

1 loan originator is considered convicted if a sentence is imposed on
2 that person, that person receives community supervision, including
3 deferred adjudication community supervision, or the court defers
4 final disposition of that person's case.

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

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

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

27 (1) engaging in the business of originating or making

1 residential mortgage loans, as defined by Section 180.002;

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

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

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

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

18 Sec. 157.026. HEARINGS AND JUDICIAL REVIEW. (a) The
19 commissioner may employ an enforcement staff to investigate and
20 prosecute complaints made against residential mortgage loan
21 originators licensed under this chapter. The commissioner may
22 employ an administrative law judge to conduct hearings under this
23 section. The commissioner may collect and deposit any court costs
24 assessed under a final order.

25 (b) If the commissioner proposes to suspend or revoke a
26 license of a residential mortgage loan originator or if the
27 commissioner refuses to issue or renew a license to an applicant for

1 a residential mortgage loan originator license or person requesting
2 a renewal of a residential mortgage loan originator license under
3 this chapter, the applicant or license holder is entitled to a
4 hearing before the commissioner or an administrative law judge who
5 shall make a proposal for decision to the commissioner. The
6 commissioner or administrative law judge shall prescribe the time
7 and place of the hearing. The hearing is governed by Chapter 2001,
8 Government Code.

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

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

19 Sec. 157.027. CIVIL ACTIONS AND INJUNCTIVE RELIEF. (a) A
20 residential mortgage loan applicant injured by a violation of this
21 chapter by a residential mortgage loan originator may bring an
22 action for recovery of actual monetary damages and reasonable
23 attorney's fees and court costs.

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

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

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

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

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

22 (b) This section does not limit or preclude the liability of
23 a residential mortgage loan originator for:

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

26 (2) failing to comply with a provision of or duty
27 arising under an agreement with a residential mortgage loan

1 applicant under this chapter; or

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

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

10 (b) If the commissioner has reasonable cause to believe that
11 a person who is not licensed or exempt under this chapter has
12 engaged, or is about to engage, in an act or practice for which a
13 license is required under this chapter, the commissioner may issue,
14 without notice and hearing, an order to cease and desist from
15 continuing a particular action or an order to take affirmative
16 action, or both, to enforce compliance with this chapter. The order
17 must contain a reasonably detailed statement of the facts on which
18 the order is made. The order may assess an administrative penalty
19 in an amount not to exceed \$1,000 per day for each violation and may
20 require a person to pay to a residential mortgage loan applicant any
21 compensation received by the person from the applicant in violation
22 of this chapter. If a person against whom the order is made
23 requests a hearing, the commissioner shall set and give notice of a
24 hearing before the commissioner or an administrative law judge.
25 The hearing shall be governed by Chapter 2001, Government Code. An
26 order under this subsection becomes final unless the person to whom
27 the order is issued requests a hearing not later than the 30th day

1 after the date the order is issued.

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

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

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

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

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

21 (1) state savings associations operating under this
22 subtitle;

23 (2) state savings banks operating under this subtitle;
24 ~~[and]~~

25 (3) persons licensed under Chapter 156; and

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

27 SECTION 11. An individual is not required to comply with

1 Section 157.012, Finance Code, as added by this Act, until the later
2 of:

3 (1) July 31, 2010; or

4 (2) a subsequent date that is approved by the
5 secretary of the United States Department of Housing and Urban
6 Development under the authority granted under the federal Secure
7 and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No.
8 110-289).

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

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

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 27, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2779 by Truitt (Relating to the regulation of certain mortgage banker employees who are residential mortgage loan originators; providing penalties.), **As Passed 2nd House**

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|---|
| No significant fiscal implication to the State is anticipated. |
|---|

The bill amends the Finance Code to provide licensing and regulation of mortgage banker employees who are residential mortgage originators.

Based on the analysis of the Office of Consumer Credit Commissioner, the Department of Banking, and the Department of Savings and Mortgage Lending, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing agency resources.

The bill takes effect on April 1, 2010, 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.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 450 Department of Savings and Mortgage Lending, 451 Department of Banking, 466 Office of Consumer Credit Commissioner

LBB Staff: JOB, SZ, JRO, MW, ACa

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 15, 2009

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2779 by Truitt (Relating to the regulation of certain mortgage banker employees who are residential mortgage loan originators; providing penalties.), **Committee Report 2nd House, Substituted**

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| No significant fiscal implication to the State is anticipated. |
|---|

The bill amends the Finance Code to provide licensing and regulation of mortgage banker employees who are residential mortgage originators.

Based on the analysis of the Office of Consumer Credit Commissioner, the Department of Banking, and the Department of Savings and Mortgage Lending, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing agency resources.

The bill takes effect on April 1, 2010, 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.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 450 Department of Savings and Mortgage Lending, 451 Department of Banking, 466 Office of Consumer Credit Commissioner

LBB Staff: JOB, JRO, MW, ACa

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 4, 2009

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2779 by Truitt (Relating to the regulation of certain mortgage banker employees who are residential mortgage loan originators; providing penalties.), **As Engrossed**

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|---|
| No significant fiscal implication to the State is anticipated. |
|---|

The bill amends the Finance Code to provide licensing and regulation of mortgage banker employees who are residential mortgage originators.

Based on the analysis of the Office of Consumer Credit Commissioner, the Department of Banking, and the Department of Savings and Mortgage Lending, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing agency resources.

The bill takes effect on April 1, 2010, 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.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 450 Department of Savings and Mortgage Lending, 451 Department of Banking, 466 Office of Consumer Credit Commissioner

LBB Staff: JOB, JRO, MW, ACa

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 27, 2009

TO: Honorable Vicki Truitt, Chair, House Committee on Pensions, Investments & Financial Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2779 by Truitt (relating to the regulation of certain mortgage banker employees who are residential mortgage loan originators; providing penalties.), **Committee Report 1st House, Substituted**

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|---|
| No significant fiscal implication to the State is anticipated. |
|---|

The bill amends the Finance Code to provide licensing and regulation of mortgage banker employees who are residential mortgage originators.

Based on the analysis of the Office of Consumer Credit Commissioner, the Department of Banking, and the Department of Savings and Mortgage Lending, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing agency resources.

The bill takes effect on April 1, 2010, 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.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 450 Department of Savings and Mortgage Lending, 451 Department of Banking, 466 Office of Consumer Credit Commissioner

LBB Staff: JOB, JRO, MW, ACa

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 24, 2009

TO: Honorable Vicki Truitt, Chair, House Committee on Pensions, Investments & Financial Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2779 by Truitt (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.), **As Introduced**

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| No significant fiscal implication to the State is anticipated. |
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The bill amends the Finance Code to provide licensing and regulation of mortgage banker employees who are residential mortgage originators.

Based on the analysis of the Office of Consumer Credit Commissioner, the Department of Banking, and the Department of Savings and Mortgage Lending, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing agency resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 450 Department of Savings and Mortgage Lending, 451 Department of Banking, 466 Office of Consumer Credit Commissioner

LBB Staff: JOB, JRO, MW, ACa