

BILL ANALYSIS

Senate Research Center

S.B. 1124
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Secure and Fair Enforcement for Mortgage Licensing Act (Texas SAFE Act) was passed in 2009, based on a federal mandate handed down by Congress. The federal legislation creating that mandate, known as the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, provided for the Nationwide Mortgage Licensing System and Registry, a system that issues a unique identifying number permanently identifying a residential mortgage loan originator. Texas was required to enact the provisions of the Texas SAFE Act to be in compliance with federal rules that have been proposed by the United States Department of Housing and Urban Development.

A number of provisions within the Texas SAFE Act need to be reconciled due to the differences in definitions and powers that existed in the residential mortgage loan origination statutes of Chapters 156 (Mortgage Brokers), 157 (Registration of Mortgage Bankers), 180 (RMLO), and 342 (Consumer Loans), Finance Code, prior to the passage of the Texas SAFE Act.

S.B. 1124 reconciles differences in definitions and powers that existed in the residential mortgage loan origination statutes of Chapter 156, 157, and 342, Finance Code, as well as adding a new provision to Chapter 180, stating that the long-standing licensing exception for certain owner-financed residential loans continues to exist following the implementation of the Texas SAFE Act.

This bill also includes a provision to address a drafting oversight in the original Texas SAFE Act. The Texas SAFE Act shifted jurisdiction for oversight of the second mortgage liens from the Office of the Consumer Credit Commissioner (OCCC) to the Texas Department of Savings and Mortgage Lending (SML). In doing so, the bill added oversight to SML but failed to eliminate the licensing requirement with OCCC.

S.B. 1124 amends current law relating to licensing and regulation of certain persons involved in residential mortgage lending pursuant to the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Finance Commission of Texas (finance commission) is modified in SECTION 1 (Section 11.306, Finance Code), SECTION 7 (Section 156.004, Finance Code), SECTION 9 (Section 156.102, Finance Code), SECTION 11 (Section 156.105, Finance Code), and SECTION 25 (Section 156.210, Finance Code) of this bill.

Rulemaking authority is expressly granted to the finance commission in SECTION 50 (Section 157.007, Finance Code) of this bill.

Rulemaking authority previously granted to the finance commission is rescinded in SECTION 65 (Sections 156.2011, 156.208, 156.215, and 157.018, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.306, Finance Code, as follows:

Sec. 11.306. New heading: RESIDENTIAL MORTGAGE LOAN ORIGINATION RULES. Authorizes the Finance Commission of Texas (finance commission) to adopt residential mortgage loan origination rules, rather than mortgage broker rules, as provided by Chapter 156.

SECTION 2. Amends Chapter 13, Finance Code, by adding Section 13.016, as follows:

Sec. 13.016. RECOVERY FUND. (a) Requires the savings and mortgage lending commissioner (commissioner) to establish, administer, and maintain one recovery fund for the purposes of Chapters 156 (Mortgage Brokers) and 157 (Registration of Mortgage Bankers). Requires the recovery fund to be administered and maintained under Subchapter F (Mortgage Broker Recovery Fund), Chapter 156.

(b) Provides that the commissioner's authority under this section includes the authority to:

(1) set fee amounts under Chapters 156 and 157 for deposit in the recovery fund; and

(2) enforce disciplinary action as provided by Chapters 156 and 157 for a person's failure to comply with the applicable provisions of those chapters relating to the recovery fund and with applicable rules adopted under those chapters.

SECTION 3. Amends the heading to Chapter 156, Finance Code, to read as follows:

CHAPTER 156. RESIDENTIAL MORTGAGE LOAN COMPANIES AND RMLO

SECTION 4. Amends Section 156.001, Finance Code, to authorize that this chapter be cited as the Residential Mortgage Loan Company and Residential Mortgage Loan Originator Licensing and Registration Act, rather than the Mortgage Broker License Act.

SECTION 5. Amends Section 156.002, Finance Code, by amending Subdivisions (1), (2), (7), and (8) and adding Subdivisions (1-a), (1-b), (1-c), (4-a), (6-a), (8-a), (10-a), (10-b), (10-c), (12), (13), (14), and (15), to define "auxiliary mortgage loan activity company," "credit union subsidiary organization," "department," "independent contractor loan processor or underwriter company," "loan processor or underwriter," "mortgage company," "Nationwide Mortgage Licensing System and Registry," "qualifying individual," "recovery fund," "residential mortgage loan," "residential mortgage loan company" (RMLC), "residential mortgage loan originator" (RMLO), "residential real estate," and to redefine "disciplinary action," "mortgage applicant," and "mortgage banker."

SECTION 6. Amends Section 156.003, Finance Code, to replace a reference to a mortgage broker with an RMLO.

SECTION 7. Amends Section 156.004, Finance Code, as follows:

Sec. 165.004. DISCLOSURE TO APPLICANT. (a) Creates this subsection from existing text. Makes nonsubstantive and conforming changes.

(b) Creates this subsection from existing text. Requires the finance commission, by rule, to adopt, rather than promulgate, a standard disclosure form to be used by the RMLO, rather than the mortgage broker.

SECTION 8. Amends Section 156.005, Finance Code, to make conforming changes.

SECTION 9. Amends Sections 156.102(b) and (b-1), Finance Code, as follows:

(b) Authorizes the finance commission to adopt rules to prohibit false, misleading, or deceptive practices by RMLOs, rather than by mortgage brokers and loan officers, but prohibits the finance commission from adopting any other rules restricting competitive bidding or advertising by RMLOs, rather than by mortgage brokers or loan officers. Prohibits the finance commission, when adopting rules under this subsection, from restricting certain details of the advertisement, including a RMLO's advertisement, rather than a mortgage broker's or loan officer's advertisement, under a trade name.

(b-1) Authorizes the finance commission on the commissioner's recommendation to adopt rules to promote a fair and orderly administration of the recovery fund consistent with the purposes of Subchapter F.

SECTION 10. Amends Sections 156.104(b-1) and (h), Finance Code, as follows:

(b-1) Requires the mortgage industry advisory committee (advisory committee) to include six individuals licensed by the Texas Department of Banking (TDB) as RMLOs, two of whom must hold an active real estate broker or salesperson license issued under Chapter 1101 (Real Estate Brokers and Salespersons), Occupations Code, rather than to include three individuals licensed as RMLOs under this chapter, one of whom must hold an active real estate broker or salesperson license issued under Chapter 1101, Occupations Code, and three individuals licensed as RMLOs under Chapter 157, one of whom must hold an active real estate broker or salesperson license issued under Chapter 1101, Occupations Code.

(h) Requires the advisory committee, in addition to other powers and duties delegated to the advisory committee by the commissioner, to advise the commissioner with respect to:

(1) the proposal and adoption of rules relating to:

(A) the licensing of RMLOs or RMLCs, rather than mortgage brokers and loan officers;

(B) the education and experience requirements for licensing RMLOs, rather than mortgage brokers and loan officers; and

(C) the conduct and ethics of RMLOs, rather than mortgage brokers and loan officers;

(2) the form of or format for any applications or other documents under this chapter; and

(3) the interpretation, implementation, and enforcement of this chapter.

SECTION 11. Amends Section 156.105, Finance Code, as follows:

Sec. 156.105. STANDARD FORMS. (a) Requires the finance commission, by rule, to adopt one or more standard forms for use by an RMLO, rather than a mortgage broker or loan officer, in representing that an applicant for a residential mortgage loan is preapproved or has prequalified for the loan.

(b) Requires the finance commission to adopt rules requiring an RLMO, rather than a mortgage broker or loan officer, licensed under this chapter to use the forms adopted by the finance commission under Subsection (a).

SECTION 12. Amends the heading to Subchapter C, Chapter 156, Finance Code, to read as follows:

SUBCHAPTER C. RESIDENTIAL MORTGAGE LOAN COMPANY AND RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSES AND REGISTRATION

SECTION 13. Amends Section 156.201, Finance Code, as follows:

Sec. 156.201. LICENSES REQUIRED. (a) Prohibits a person from acting in the capacity of, engaging in the business of, or advertise or holding that person out as engaging in or conducting the business of an RMLC, rather than a mortgage broker, in this state unless the person holds an active RMLC license, rather than a mortgage broker license, is registered under Section 156.214 (Registered Financial Services Company), or is exempt under Section 156.202 (Exemptions).

(b) Prohibits an individual, except as provided by Subsection (b-1), from acting or attempting to act as an RMLO, rather than a loan officer, unless the individual at the time is:

(1) licensed under this chapter and sponsored by a licensed RMLC, rather than a mortgage broker, and is acting for the RMLC, rather than mortgage broker; or

(2) exempt under Section 156.202.

(b-1) Prohibits an exclusive agent of a registered financial services company, unless exempt under Section 180.003(b), from acting or attempting to act as an RMLO unless the exclusive agent at the time is licensed under this chapter and sponsored by a registered financial services company and is acting for the company.

(b-2) Requires an RMLO to be sponsored by at least one RMLC.

(c) Provides that each RMLC and the company's qualifying individual, rather than each mortgage broker, licensed under this chapter is responsible to the commissioner and members of the public for any act or conduct performed by the RMLO, rather than mortgage broker or a loan officer, sponsored by or acting for the RMLC, rather than the mortgage broker, in connection with:

(1) the origination of a residential mortgage loan; or

(2) a transaction that is related to the origination of a residential mortgage loan in which the qualifying individual, rather than mortgage broker, knew or should have known of the transaction.

SECTION 14. Amends Section 156.202, Finance Code, by amending Subsection (a) and adding Subsections (a-1), (a-2), and (c), as follows:

(a) Defines, in this section, "depository institution," "dwelling," "federal banking agency," and "immediate family member."

(a-1) Creates this subsection from existing text. Exempts the following individuals or entities, and employees of those entities when acting for the benefit of those entities, from this chapter:

(1) a registered mortgage loan originator when acting for:

(A) a depository institution;

(B) a subsidiary of a depository institution that is owned and controlled by the depository institution, and regulated by a federal banking agency; or

(C) an institution regulated by the Farm Credit Administration;

(2) an individual who offers or negotiates the terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney:

(A) takes a residential mortgage loan application; and

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

(4) an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence;

(5) a nonprofit organization providing self-help housing that originates zero interest residential mortgage loans for borrowers who have provided part of the labor to construct the dwelling securing the loan;

(6) a mortgage banker registered under Chapter 157;

(7) any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured;

(8) an entity that is:

(A) a depository institution;

(B) a subsidiary of a depository institution that is owned and controlled by the depository institution, and regulated by a federal banking agency; or

(C) an institution regulated by the Farm Credit Administration; and

(9) an individual who is exempt as provided by Section 180.003(b).

(a-2) Provides that a person is not required to obtain a license or registration under this chapter to originate a loan subject to Chapter 342 or a loan governed by Section 50(a)(6) (relating to requiring the homestead of a family, or of a single adult person, to be protected from forced sale, for the payment of all debts except under certain conditions), Article XVI (General Provisions), Texas Constitution, if the person:

(1) is enrolled in the Nationwide Mortgage Licensing System and Registry;

(2) is licensed under Chapter 342; and

(3) makes consumer loans subject to a Subchapter G (Interest and Other Charges on Secondary Mortgage Loans), Chapter 342 and Subchapter E (Interest Charges on Non-Real Property Loans) or F (Alternative Charges for Certain Loans), Chapter 342.

(c) Authorizes the finance commission to grant an exemption from the RMLO licensing requirements of this chapter to a municipality, county, community development corporation, or public or private grant administrator to the extent the entity is administering the Texas HOME Investment Partnerships program if the finance commission determines that granting the exemption is not inconsistent with the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289). Deletes existing text exempting certain persons from this chapter.

SECTION 15. Amends Section 156.203, Finance Code, by amending Subsections (a), (b), and (c) and adding Subsections (a-1) and (a-2), as follows:

(a) Provides that, for purposes of this section, an application for an RMLC license means an application for:

- (1) a mortgage company license;
- (2) a credit union subsidiary organization license;
- (3) an auxiliary mortgage loan activity company license; or
- (4) an independent contractor loan processor or underwriter company license.

(a-1) Redesignates existing Subsection (a) as Subsection (a-1). Requires that an application for an RMLC license and an RMLO license, rather than a mortgage broker or loan officer license, be:

- (1) in writing;
- (2) under oath; and
- (3) on the form prescribed by the commissioner.

(a-2) Requires that an application for a financial services company registration under Section 156.214 be:

- (1) in writing;
- (2) under oath; and
- (3) on the form prescribed by the commissioner.

(b) Requires that an application for an RMLC license, rather than a mortgage broker license, be accompanied by an application fee in an amount determined by the commissioner not to exceed \$375. Deletes existing text requiring that an application for a mortgage broker license be accompanied by, in addition to an application fee in an amount determined by the commissioner not to exceed \$375, a recovery fund fee as provided by Section 156.502 (Funding).

(c) Requires that an application for an RMLO license, rather than a loan officer license, be accompanied by:

- (1) an application fee in an amount determined by the commissioner not to exceed \$375, rather than \$275; and
- (2) a recovery fund fee as provided by Section 156.502.

SECTION 16. Amends Subchapter C, Chapter 156, Finance Code, by adding Sections 156.2041, 156.2042, 156.2043, 156.2044, 156.2045, and 156.2046, as follows:

Sec. 156.2041. QUALIFICATIONS AND REQUIREMENTS FOR LICENSES: MORTGAGE COMPANY AND RMLO. (a) Requires an applicant, to be issued a mortgage company license, to:

- (1) submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry (NMLSR);
- (2) designate control persons for the mortgage company through NMLSR;

(3) designate an individual licensed as an RMLO under this chapter as the company's qualifying individual;

(4) submit a completed branch application through NMLSR for each branch office that engages in residential mortgage loan activity on residential real estate located in this state;

(5) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant;

(6) have the company name or assumed name properly filed with either the secretary of state or with the appropriate county clerk's office;

(7) maintain a physical office in this state; and

(8) provide financial statements and any other information required by the commissioner.

(b) Requires an individual, to be issued a license to act as a mortgage company RMLO, to submit a completed application through NMLSR together with the payment of applicable fees and to establish to the satisfaction of the commissioner that the applicant:

(1) has not had an RMLO license revoked in any governmental jurisdiction;

(2) is not in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant;

(3) has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;

(4) at any time preceding the date of the application, has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;

(5) demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as an RMLO under this chapter;

(6) has successfully completed at least 20 hours of prelicensing education courses approved by NMLSR;

(7) has passed both the state and national components of a written test that meets the requirements of Section 180.057 (Testing Requirements);

(8) has paid a recovery fund fee as required by Section 156.502(a) (relating to paying a fee in addition to the original application fee); and

(9) is a citizen of the United States or a lawfully admitted alien.

Sec. 156.2042. QUALIFICATIONS AND REQUIREMENTS FOR LICENSES: CREDIT UNION SUBSIDIARY ORGANIZATION AND RMLO. (a) Requires an applicant, to be issued a credit union subsidiary organization license, to:

(1) submit a completed application together with the payment of applicable fees through NMLSR;

- (2) designate control persons for the organization through NMLSR;
- (3) designate an individual licensed as an RMLO under this chapter as the company's qualifying individual;
- (4) submit a completed branch application through NMLSR for each branch office that engages in residential mortgage loan activity on residential real estate located in this state; and
- (5) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant.

(b) Requires an individual, to be issued a license to act as a credit union subsidiary organization RMLO, to submit a completed application through NMLSR together with the payment of applicable fees and to establish to the satisfaction of the commissioner that the applicant:

- (1) has not had an RMLO license revoked in any governmental jurisdiction;
- (2) is not in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant;
- (3) has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;
- (4) at any time preceding the date of the application, has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;
- (5) demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as an RMLO under this chapter;
- (6) has successfully completed at least 20 hours of prelicensing education courses approved by NMLSR;
- (7) has passed both the state and national components of a written test that meets the requirements of Section 180.057;
- (8) has paid a recovery fund fee as required by Section 156.502(a); and
- (9) is a citizen of the United States or a lawfully admitted alien.

Sec. 156.2043. QUALIFICATIONS AND REQUIREMENTS FOR LICENSES: AUXILIARY MORTGAGE LOAN ACTIVITY COMPANY AND RMLO. (a) Requires an applicant, to be issued an auxiliary mortgage loan activity company license, to:

- (1) submit a completed application together with the payment of applicable fees through NMLSR;
- (2) designate control persons for the company through NMLSR;
- (3) designate an individual licensed as an RMLO under this chapter as the company's qualifying individual; and

(4) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant.

(b) Requires an individual, to be issued a license to act as an auxiliary mortgage loan activity RMLO, to submit a completed application through NMLSR together with the payment of applicable fees and to establish to the satisfaction of the commissioner that the applicant:

(1) has not had an RMLO license revoked in any governmental jurisdiction;

(2) is not in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant;

(3) has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;

(4) at any time preceding the date of the application, has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;

(5) demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as an RMLO under this chapter;

(6) has successfully completed at least 20 hours of prelicensing education courses approved by NMLSR;

(7) has passed both the state and national components of a written test that meets the requirements of Section 180.057;

(8) has paid a recovery fund fee as required by Section 156.502(a); and

(9) is a citizen of the United States or a lawfully admitted alien.

Sec. 156.2044. QUALIFICATIONS AND REQUIREMENTS FOR LICENSES: INDEPENDENT CONTRACTOR LOAN PROCESSOR OR UNDERWRITER COMPANY AND INDIVIDUAL LOAN PROCESSORS OR UNDERWRITERS. (a) Requires an applicant, to be issued an independent contractor loan processor or underwriter company license under this chapter, to:

(1) submit a completed application together with the payment of applicable fees through NMLSR;

(2) designate control persons for the company through NMLSR;

(3) designate an individual licensed as an RMLO under this chapter as the company's qualifying individual; and

(4) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant.

(b) Provides that an independent contractor loan processor or underwriter company is not authorized to originate residential mortgage loans with a license issued under Subsection (a).

(c) Requires an individual, to be issued a license to act as an independent contractor loan processor or underwriter, to submit a completed application

through NMLSR together with the payment of applicable fees and to establish to the satisfaction of the commissioner that the applicant:

- (1) has not had an RMLO license revoked in any governmental jurisdiction;
- (2) is not in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant;
- (3) has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;
- (4) at any time preceding the date of the application, has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;
- (5) demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as an RMLO under this chapter;
- (6) has successfully completed at least 20 hours of prelicensing education courses approved by NMLSR;
- (7) has passed both the state and national components of a written test that meets the requirements of Section 180.057;
- (8) has paid a recovery fund fee as required by Section 156.502(a); and
- (9) is a citizen of the United States or a lawfully admitted alien.

Sec. 156.2045. QUALIFICATIONS AND REQUIREMENTS FOR REGISTRATION AND LICENSE: FINANCIAL SERVICES COMPANY AND EXCLUSIVE AGENTS.

(a) Requires an applicant, to be issued a financial services company registration under Section 156.214(c) (relating to issuing a registration to the person who has met certain requirements), to:

- (1) obtain pre-approval from the commissioner that the company meets the eligibility requirements for registration as a financial services company under Section 156.214(b) (relating to the requirements to be eligible to register as a registered financial services company);
- (2) submit a completed application through NMLSR together with applicable fees required by Section 156.214(b)(4) (relating to paying pay an annual registration fee);
- (3) provide evidence to the commissioner that the company has obtained surety bond coverage in an amount equal to \$1 million;
- (4) designate an officer of the company to be responsible for the activities of the company's exclusive agents; and
- (5) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant.

(b) Requires an individual, to be issued a license to act as a financial services company exclusive agent, to submit a completed application through NMLSR together with the payment of applicable fees and to establish to the satisfaction of the commissioner that the applicant:

- (1) has not had an RMLO license revoked in any governmental jurisdiction;
- (2) is not in violation of this chapter, a rule adopted under this chapter, or any order previously issued to the applicant by the commissioner;
- (3) has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;
- (4) at any time preceding the date of the application, has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;
- (5) demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as an RMLO under this chapter;
- (6) has successfully completed at least 20 hours of prelicensing education courses approved by NMLSR;
- (7) has passed both the state and national components of a written test that meets the requirements of Section 180.057; and
- (8) is a citizen of the United States or a lawfully admitted alien.

Sec. 156.2046. CONVICTION OF OFFENSE. Provides that, for the purposes of Section 156.2041, 156.2042, 156.2043, 156.2044, or 156.2045, a person is considered to have been convicted of a criminal offense if:

- (1) a sentence is imposed on the person;
- (2) the person received probation or community supervision, including deferred adjudication or community service; or
- (3) the court deferred final disposition of the person's case.

SECTION 17. Amends Section 156.205, Finance Code, as follows:

Sec. 156.205. FINANCIAL REQUIREMENTS. (a) Creates this subsection from existing text. Requires that financial requirements for holding an RMLO license, rather than a mortgage broker or loan officer license, except as provided by Subsection (b), be met through participation in the recovery fund.

- (b) Provides that an exclusive agent of a financial services company meets the agent's financial requirements for holding an RMLO license by obtaining surety bond coverage in an amount equal to \$1 million.

SECTION 18. Amends the heading to Section 156.206, Finance Code, to read as follows:

Sec. 156.206. CRIMINAL AND OTHER BACKGROUND CHECKS.

SECTION 19. Amends Sections 156.206(a), (b), and (c), Finance Code, as follows:

- (a) Requires the commissioner, on receipt of an application for an RMLO license, rather than a mortgage broker license or a loan officer license, to, at a minimum, conduct a criminal background and credit history check of the applicant.

(b) Requires the commissioner to conduct criminal background and credit history checks in accordance with Section 180.054 (Criminal and Other Background Checks), and authorizes the commissioner, in connection with each application for an RMLO license or other individual license, to conduct a criminal background check through the Texas Department of Public Safety of the State of Texas (DPS). Deletes existing text requiring the commissioner to obtain criminal history record information on an applicant that is maintained by DPS and to obtain criminal history record information from the Federal Bureau of Investigation (FBI) on each applicant. Deletes existing text requiring each applicant to submit with the application fingerprint and other information necessary to implement this section. Deletes existing text authorizing the commissioner to submit the fingerprint and other information to the FBI, and providing that DPS is designated to be the recipient of the criminal history record information. Deletes existing text authorizing the commissioner to also obtain criminal history record information from any court or any local, state, or national governmental agency.

(c) Requires the commissioner to keep confidential any background information obtained under this section, rather than any criminal background information under this subsection, and prohibits the commissioner from releasing or disclosing the information except under certain conditions.

SECTION 20. Amends the heading to Section 156.207, Finance Code, to read as follows:

Sec. 156.207. ISSUANCE OF LICENSE; PROVISIONAL LICENSE.

SECTION 21. Amends Sections 156.207(a) and (b), Finance Code, as follows:

(a) Requires the commissioner to issue a license, rather than a certificate, to an applicant for an RMLC license, rather than a mortgage broker license, if the commissioner finds that the applicant meets all requirements and conditions for the license.

(b) Requires the commissioner, when an applicant for an RMLO license, rather than a loan officer license, has met all requirements and conditions for the license, to issue a license to the individual, rather than issue a license certificate to the mortgage broker sponsoring the loan officer.

SECTION 22. Amends Section 156.208, Finance Code, by amending Subsections (a-1), (b-1), (c), and (j) and adding Subsection (b-2), as follows:

(a-1) Provides that an RMLC license issued under this chapter is valid through December 31 of the year of issuance and may be renewed on or before its expiration date if the RMLC:

(1) pays to the commissioner a renewal fee in an amount determined by the commissioner not to exceed \$375; and

(2) has not shown a pattern or practice of abusive mortgage activity and has no civil judgments or liens that, in the commissioner's opinion, directly impact the ability of the RMLC to conduct business while safeguarding and protecting the public interest.

Deletes existing text providing that a mortgage broker license issued under this chapter is valid for a term of not more than two years and may be renewed on or before its expiration date if the mortgage broker pays to the commissioner, in addition to a renewal fee in an amount determined by the commissioner not to exceed \$375, a recovery fund fee provided by Section 156.502; has not been convicted of a criminal offense the commissioner determines is directly related to the occupation of a mortgage broker as provided by Chapter 53 (Consequences of Criminal Conviction), Occupations Code; and provides the commissioner with satisfactory evidence that the mortgage broker has attended, during the term of the

current license, continuing education courses in accordance with the applicable requirements of Chapter 180 (RMLO).

(b-1) Provides that an RMLO license issued under this chapter, except as provided by Subsection (b-2), is valid through December 31 of the year of issuance and may be renewed on or before its expiration date if the RMLO:

(1) pays to the commissioner a renewal fee in an amount determined by the commissioner not to exceed \$375 and a recovery fund fee provided by Section 156.502;

(2) continues to meet the minimum requirements for license issuance; and

(3) provides the commissioner with satisfactory evidence that the RMLO has attended, during the term of the current license, continuing education courses in accordance with the applicable requirements of Chapter 180.

Deletes existing text providing that a loan officer license issued under this chapter is valid for a term of not more than two years and may be renewed on or before its expiration date if the loan officer pays to the commissioner a renewal fee in an amount determined by the commissioner not to exceed \$275 and a recovery fund fee provided by Section 156.502; has not been convicted of a criminal offense the commissioner determines is directly related to the occupation of a loan officer as provided by Chapter 53, Occupations Code; and provides the commissioner with satisfactory evidence that the loan officer has attended, during the term of the current license, continuing education courses in accordance with the applicable requirements of Chapter 180.

(b-2) Provides that a license issued under this chapter to a registered financial services company's exclusive agent is valid through December 31 of the year of issuance and may be renewed on or before the expiration date if the exclusive agent complies with the requirements of Subsections (b-1)(2) and (3).

(c) Authorizes the commissioner to require RMLOs, rather than mortgage brokers or loan officers, to submit requests for renewal on a form prescribed by the commissioner.

(j) Authorizes the commissioner to deny the renewal of an RMLO license, rather than a mortgage broker license or a loan officer license, if:

(1) the RMLO, rather than mortgage broker or loan officer, is in violation of this chapter, a rule adopted under this chapter, or any order previously issued to the individual by the commissioner;

(2) the RMLO, rather than the mortgage broker or loan officer, is in default in the payment of any administrative penalty, fee, charge, or other indebtedness owed under this title;

(3) 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; or

(4) the RMLO, rather than the mortgage broker or loan officer, is in default on a student loan administered by the Texas Guaranteed Student Loan Corporation, pursuant to Section 57.491 (Loan Default Ground for Nonrenewal of Professional or Occupational License), Education Code.

SECTION 23. Amends the heading to Section 156.2081, Finance Code, to read as follows:

Sec. 156.2081. REINSTATEMENT AFTER EXPIRATION.

SECTION 24. Amends Sections 156.2081(b) and (c), Finance Code, as follows:

(b) Authorizes a person who is otherwise eligible to renew a license, but has not done so before January 1, to renew the license before March 1 by paying the commissioner a reinstatement fee in an amount equal to 150 percent of the required renewal fee, rather than authorizes a person whose license has been expired for 90 days or less but who is otherwise eligible to renew a license to renew the license by paying to the commissioner a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) Prohibits a person whose RMLO license has not been renewed before March 1, rather than has been expired for 91 days or more, from renewing the license.

SECTION 25. Amends Section 156.210, Finance Code, as follows:

Sec. 156.210. New heading: **CONDITIONAL LICENSE**. Authorizes the commissioner to issue a conditional license, rather than a probationary license. Requires the finance commission by rule to adopt reasonable terms and conditions for a conditional license, rather than a probationary license.

SECTION 26. Amends Sections 156.211(a), (b), (b-1), (b-2), and (b-3), Finance Code, as follows:

(a) Requires an RMLC, rather than a mortgage broker, before the 10th day preceding the effective date of an address change, to notify the commissioner in writing of the new address accompanied by a change of address fee of \$25. Deletes existing text requiring that a new license certificate be obtained before the mortgage broker may conduct business at the new location.

(b) Deletes existing text authorizing a loan officer to act only for the mortgage broker sponsoring the loan officer. Deletes existing text authorizing a loan officer to be sponsored by only one mortgage broker at a time. Requires the RMLO and the RMLC, rather than the loan officer and the mortgage broker, respectively, when the sponsorship of an RMLO, rather than a loan officer, is terminated, to immediately notify the commissioner. Deletes existing text requiring the mortgage broker to return the loan officer license to the commissioner. Provides that the RMLO's license, rather than the loan officer's license, then becomes inactive. Authorizes the RMLO license, rather than the loan officer license, to be activated if, before the license expires, an RMLC, files a request, accompanied by a \$25 fee, notifying the commissioner that the RMLC will sponsor the RMLO and will assume responsibility for the actions of the RMLO. Makes conforming changes.

(b-1) Makes conforming changes.

(b-2) Requires a person licensed under this chapter to notify the commissioner not later than the 10th day after the date of any change of the person's name for the issuance of an amended license, rather than a certificate. Deletes existing text requiring a person licensed under this chapter to pay to the commissioner a change of name fee of \$25.

(b-3) Requires an RMLC, rather than a business entity, licensed under this chapter that changes the company's qualifying individual, rather than its designated representative, to notify the commissioner not later than the 10th business day after the date of the change.

SECTION 27. Amends Section 156.212, Finance Code, as follows:

Sec. 156.212. **MAINTENANCE AND LOCATION OF OFFICES**. (a) Deletes existing text requiring the address of the office to be designated on the license certificate. Makes a conforming change.

(a-1) Provides that, if an RMLC's main office is outside this state, the requirement of Subsection (a) is satisfied if the company has a branch office located in this state.

(b) Requires an RMLC, rather than a mortgage broker, if the company maintains an office separate and distinct from the company's main office, rather than if a mortgage broker maintains more than one place of business in this state, whether located in this state or not, that conducts mortgage business with consumers of this state or regarding residential real estate in this state, to apply for, pay a fee of \$50 for, and obtain an additional license, rather than certificate, to be known as a branch office license for each additional office to be maintained by the company. Makes a conforming change.

SECTION 28. Amends Section 156.213, Finance Code, as added by Chapter 337 (H.B. 1636), Acts of the 77th Legislature, Regular Session, 2001, as follows:

Sec. 156.213. New heading: MORTGAGE CALL REPORT. (a) Requires each licensed RMLC or licensed RMLO, as required by the commissioner, rather than each mortgage broker, to file a mortgage call report, rather than an annual report, with the commissioner or the commissioner's authorized designee on a form prescribed by the commissioner or authorized designee, rather than with the Savings and Loan Department. Provides that the report:

(1) is a statement of condition of the RMLC and the company's operations, or a statement of condition of the RMLOs sponsored by the company, as applicable, including financial statements and production activity volumes;

(2) must include any other information required by the commissioner; and

(3) must be filed as frequently as required by the commissioner.

Deletes existing text requiring that the report include data on loan originations in this state for the mortgage broker, information on each loan officer sponsored by the mortgage broker, and any other information required by finance commission rule.

(b) Provides that information contained in the mortgage call report related to residential mortgage loan origination volume or other trade information, including information used to determine statistical entries in the report related to loan origination volume, is confidential and is prohibited from being disclosed by the commissioner, the commissioner's authorized designee, or any other employee of TDB, rather than by the Savings and Loan Department. Makes a nonsubstantive change.

SECTION 29. Amends Sections 156.214(a), (b), (c), and (d), Finance Code, as follows:

(a) Makes conforming changes.

(b) Requires a person, to be eligible to register as a registered financial services company, to:

(1) be a depository institution exempt from this chapter under Section 156.202(a-1)(8)(A), rather than under Section 156.202(1)(A) or (B), and chartered and regulated by the Office of Thrift Supervision or the Office of the Comptroller of the Currency, or be a subsidiary of the institution;

(2) provide the commissioner with satisfactory evidence of an undertaking of accountability in a form acceptable to the commissioner, supported by a surety

bond equal to \$1 million to cover the person's responsibility for RMLC activities, rather than mortgage broker activities, of each exclusive agent;

(3) provide a business plan satisfactory to the commissioner that sets forth the person's plan to provide education to its exclusive agents, handle consumer complaints relating to its exclusive agents, and supervise the residential mortgage loan origination activities of its exclusive agents;

(4) pay an annual registration fee in an amount determined in a certain manner, including if the registered financial services company has 2,000 or fewer exclusive agents acting in this state, an amount equal to the lesser of one-half of the license fee for an RMLO, rather than a loan officer, under Section 156.203(c)(1) (relating to requiring an application fee to accompany an application for a loan officer license), multiplied by the number of exclusive agents under contract to act for the person in this state or \$200,000; and

(5) designate an officer of the person to be responsible for the activities of the exclusive agents.

(c) Requires the commissioner, if the commissioner determines that a person has met the requirements of Subsection (b) and Section 156.2045(a), to issue a registration to the person. Provides that the registration is valid for one year, expires on December 31 of each year, and is required, rather than authorized, to be renewed annually, rather than on or before its expiration date. Requires, rather than authorizes, a person to renew an expired registration in the manner determined by the commissioner, rather than in the same manner as a person may renew an expired license under Section 156.2081(b).

(d) Provides that a registered financial services company is subject to Subchapters D (License Revocation and Suspension and Other Actions Against License Holder) and E (Hearings; Judicial Review; Civil Actions; Unlicensed Activity) as if the company were licensed as an RMLC, rather than a mortgage broker.

SECTION 30. Amends Sections 156.301(b) and (h), Finance Code, to make conforming changes.

SECTION 31. Amends Section 156.302(b), Finance Code, as follows:

(b) Prohibits the amount of the penalty from exceeding \$25,000 for each violation. Deletes existing text prohibiting the amount of the penalty from exceeding \$2,500, and providing that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. Requires that the amount be based on certain factors, including the economic harm to property caused by the violation. Makes nonsubstantive changes.

SECTION 32. Amends Sections 156.303(a), (a-1), (g), and (i), Finance Code, as follows:

(a) Authorizes the commissioner to order disciplinary action against a licensed or registered RMLC, rather than a mortgage broker, or a licensed RMLO, rather than a loan officer, when the commissioner, after notice and opportunity for hearing, has determined that the person:

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

(2) published or caused to be published an advertisement related to the business of an RMLC, rather than a mortgage broker, or RMLO, rather than a loan officer, that:

(A) is misleading;

(B) is likely to deceive the public;

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

(D) fails to identify as an RMLC, rather than a mortgage broker, or RMLO, rather than a loan officer, the person causing the advertisement to be published; or

(E) violates federal or state law;

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

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

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

(6) charged or received, directly or indirectly, a fee for assisting a mortgage applicant in obtaining a residential mortgage loan before all of the services that the person agreed to perform for the mortgage applicant are completed, and the proceeds of the residential mortgage loan have been disbursed to or on behalf of the mortgage applicant, except as provided by Section 156.304 (Fee Assessment and Disclosure);

(7) failed within a reasonable time to honor a check issued to the commissioner after the commissioner has mailed a request for payment of the check and any applicable fees by certified mail to the person's last known business address as reflected by the commissioner's records;

(8) paid compensation to a person who is not licensed, registered, or exempt under this chapter for acts for which a license or registration under this chapter is required;

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

(10) published or circulated an unjustified or unwarranted threat of legal proceedings in matters related to the person's actions or services as an RMLC, rather than a mortgage broker, or RMLO, rather than a loan officer, as applicable;

(11) established an association, by employment or otherwise, with a person not licensed, registered, or exempt under this chapter who was expected or required to act as an RMLC, rather than a mortgage broker, or RMLO, rather than a loan officer;

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

(13) acted in the dual capacity of an RMLC, rather than a mortgage broker, or RMLO, rather than a loan officer, and real estate broker, salesperson, or attorney in a transaction without the knowledge and written consent of the mortgage applicant or in violation of applicable requirements under federal law;

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

(15) failed or refused on demand to:

(A) produce a document, book, or record concerning a residential mortgage loan transaction conducted by the RMLO, rather than mortgage broker or loan officer, for inspection by the commissioner or the commissioner's authorized personnel or representative;

(B) give the commissioner or the commissioner's authorized personnel or representative free access to the books or records relating to the person's business kept by an officer, agent, or employee of the person or any business entity through which the person conducts residential mortgage loan origination activities, rather than mortgage brokerage activities, including a subsidiary or holding company affiliate; or

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

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

(17) disregarded or violated this chapter, a rule adopted by the finance commission under this chapter, or an order issued by the commissioner under this chapter; or

(18) provided false information to the commissioner during the course of an investigation or inspection.

(a-1), (g), and (i) Makes conforming changes.

SECTION 33. Amends Section 156.304, Finance Code, to make conforming changes.

SECTION 34. Amends Section 156.305, Finance Code, to make conforming changes.

SECTION 35. Amends Section 156.401, Finance Code, by adding Subsection (e) to authorize the commissioner, in the commissioner's discretion, to rescind or vacate any previously issued revocation order.

SECTION 36. Amends Section 156.405, Finance Code, as follows:

Sec. 156.405. New heading: COMPLETION OF RESIDENTIAL MORTGAGE LOAN ORIGINATOR SERVICES. Makes conforming and nonsubstantive changes.

SECTION 37. Amends Sections 156.406(a), (b), and (d), Finance Code, as follows:

(a)-(b) Makes conforming changes.

(d) Requires a penalty collected under this subsection to be deposited in the recovery fund.

SECTION 38. Amends Section 156.501, Finance Code, as follows:

Sec. 156.501. New heading: RECOVERY FUND. (a) Requires the commissioner to establish, administer, and maintain a recovery fund, rather than a mortgage broker recovery fund, as provided by Section 13.016 and this subchapter.

(b) Requires the recovery fund, subject to this subsection, to be used to reimburse residential mortgage loan applicants for actual damages incurred because of acts committed by an RMLO, rather than a mortgage broker or loan officer, who was licensed under this chapter or under Chapter 157 when the act was committed. Provides that the use of the fund is limited to reimbursement for out-of-pocket losses caused by an act by:

(1) an RMLO licensed under this chapter, rather than a mortgage broker or loan officer, that constitutes a violation of Section 156.303(a)(2), (3), (5), (6), (8), (9), (10), (11), (12), (13), or (16) or 156.304; or

(2) an RMLO licensed under Chapter 157 that constitutes a violation of Section 157.024(a)(2) (relating to ordering a disciplinary action against a licensed RMLO for publishing or causing to be published an advertisement meeting certain conditions), (3) (relating to ordering a disciplinary action against a licensed RMLO for engaging in conduct constituting improper, fraudulent, or dishonest dealings), (5) (relating to ordering a disciplinary action against a licensed RMLO or failing to use a certain fee), (7) (relating to ordering a disciplinary action against a licensed RMLO for inducing or attempting to induce a party to a contract breach under certain conditions), (8) (relating to ordering a disciplinary action against a licensed RMLO for publishing or circulating an unjustified or unwarranted threat of legal proceedings in certain matters), (9) (relating to ordering a disciplinary action against a licensed RMLO for aiding, abetting, or conspiring with a person to circumvent certain requirements), (10) (relating to ordering a disciplinary action against a licensed RMLO for acting in certain dual capacities), (13) (relating to ordering a disciplinary action against a licensed RMLO for failing without just cause to surrender, on demand, certain documents or instruments), or (16) (relating to ordering a disciplinary action against a licensed RMLO for paying compensation to a person who is not licensed or exempted under this chapter for certain acts).

(b-1) Creates this subsection from existing text. Makes conforming changes.

(c) Authorizes amounts in the recovery fund to be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas, and requires the interest from these investments to be deposited to the credit of the fund.

(d) Authorizes the recovery fund to be used at the discretion of the commissioner to reimburse expenses incurred to secure and destroy residential mortgage loan documents that have been abandoned by a current or former individual or entity under the regulatory authority of TDB.

(e) Requires payments from the recovery fund to be reduced by the amount of any recovery from the RMLO, rather than the mortgage broker or loan officer, or from any surety, insurer, or other person or entity making restitution to the applicant on behalf of the RMLO, rather than the mortgage broker or loan officer.

(f) Entitles the commissioner, as manager of the recovery fund, to reimbursement for reasonable and necessary costs and expenses incurred in the management of the fund, including costs and expenses incurred with regard to applications filed under Section 156.504 (Procedure for Recovery).

SECTION 39. Amends Section 156.502, Finance Code, as follows:

Sec. 156.502. FUNDING. (a) Requires that the fee for an application for an original license or for renewal of a license issued under this chapter be deposited in the recovery fund.

(b) Requires that the amount of money in excess of \$3.5 million, if the balance remaining in the recovery fund at the end of a calendar year is more than that amount, to be available to the commissioner to offset the expenses of participating in and sharing information with NMLSR in accordance with Chapter 180.

SECTION 40. Amends Section 156.503, Finance Code, as follows:

Sec. 156.503. STATUTE OF LIMITATIONS. (a) Prohibits an application for the recovery of actual damages from the recovery fund under Section 156.504 from being filed after the second anniversary of the date of the alleged act or omission causing the actual damages or the date the act or omission should reasonably have been discovered.

(b) Provides that this section does not apply to a subrogation claim brought by the commissioner for recovery of money paid out of the recovery fund.

SECTION 41. Amends Sections 156.504(a), (b), and (d), Finance Code, as follows:

(a) Requires a residential mortgage loan applicant, to recover from the recovery fund, to file a written sworn application with the commissioner in the form prescribed by the commissioner, subject to Section 156.503.

(b) Requires the residential mortgage loan applicant to show:

(1) that the applicant's claim is based on facts allowing recovery under Section 156.501; and

(2) that the applicant:

(A) is not a spouse of the licensed RMLO, rather than the licensed mortgage broker or loan officer;

(B) is not a child, parent, grandchild, grandparent, or sibling, including relationships by adoption, of the licensed RMLO, rather than the licensed mortgage broker or loan officer;

(C) is not a person sharing living quarters with the licensed RMLO, rather than the licensed mortgage broker or loan officer, or a current or former employer, employee, or associate of the licensed RMLO, rather than the licensed mortgage broker or loan officer;

(D) is not a person who has aided, abetted, or participated other than as a victim with the licensed RMLO, rather than the licensed mortgage broker or loan officer, in any activity that is illegal under Section 156.303(a)(2), (3), (5), (6), (8), (9), (10), (11), (12), (13), or (16), Section 156.304, or Section 157.024(a)(2), (3), (5), (7), (8), (9), (10), (13), or (16), or is not the personal representative of a licensed RMLO, rather than the licensed mortgage broker or loan officer; and

(E) is not licensed as an RMLO, rather than a mortgage broker or loan officer, under this chapter who is seeking to recover any compensation in the transaction or transactions for which the application for payment is made.

(d) Provides that, if the preliminary determination under Subsection (c)(2) (relating to requiring the commissioner's staff to investigate the application and issue a preliminary determination) is not otherwise resolved by agreement and is not disputed by written notice to the commissioner before the 31st day after the notification date, the preliminary determination automatically becomes final and the commissioner shall make payment from the recovery fund, subject to the limits of Section 156.505.

SECTION 42. Amends Section 156.505, Finance Code, as follows:

Sec. 156.505. RECOVERY LIMITS. (a) Entitles a person entitled to receive payment out of the recovery fund to receive reimbursement of actual, out-of-pocket damages as provided by this section.

(b) Authorizes a payment from the recovery fund to be made as provided by Section 156.504 and this section. Provides that a payment for claims:

(1) arising out of the same transaction, including interest, is limited in the aggregate to \$25,000, regardless of the number of claimants; and

(2) against a single person licensed as an RMLO, rather than a mortgage broker or loan officer, under this chapter or Chapter 157 arising out of separate transactions, including interest, is limited in the aggregate to \$50,000 until the fund has been reimbursed for all amounts paid.

(c) Requires the commissioner, in the event there are concurrent claims under Subsections (b)(1) and (2) that exceed the amounts available under the recovery fund, to prorate recovery based on the amount of damage suffered by each claimant.

SECTION 43. Amends Section 156.506, Finance Code, as follows:

Sec. 156.506. New heading: REVOCATION OR SUSPENSION OF LICENSE FOR PAYMENT FROM RECOVERY FUND. (a) Authorizes the commissioner to revoke or suspend a license issued under this chapter on proof that the commissioner has made a payment from the recovery fund of any amount toward satisfaction of a claim against an RMLO, rather than a mortgage broker or loan officer, under this chapter.

(a-1) Authorizes the commissioner to seek to collect from an RMLO, rather than a mortgage broker or loan officer, the amount paid from the recovery fund on behalf of the RMLO, rather than the mortgage broker or loan officer, and any costs associated with investigating and processing the claim against the fund or with collection of reimbursement for payments from the recovery fund, plus interest at the current legal rate until the amount has been repaid in full.

(b) Authorizes the commissioner to probate an order revoking or suspending a license under this section.

(c) Provides that a person on whose behalf payment was made from the recovery fund is not eligible to receive a new license or have a suspension lifted under this chapter until the person has repaid in full, plus interest at the current legal rate, the amount paid from the fund on the person's behalf and any costs associated with investigating and processing the claim against the fund or with collection of reimbursement for payments from the fund.

(d) Provides that this section does not limit the authority of the commissioner to take disciplinary action against an RMLO, rather than a mortgage broker or loan officer, for a violation of this chapter or the rules adopted by the finance commission under this chapter. Provides that the repayment in full to the recovery fund of all obligations of an RMLO, rather than a mortgage broker or loan officer, does not nullify or modify the effect of any other disciplinary proceeding brought under this chapter.

SECTION 44. Amends Sections 156.507 and 156.508, Finance Code, as follows:

Sec. 156.507. SUBROGATION. Provides that, when the commissioner has paid an applicant an amount from the recovery fund under Section 156.504, the commissioner is subrogated to all of the rights of the applicant to the extent of the amount paid.

Sec. 156.508. FAILURE TO COMPLY WITH SUBCHAPTER OR RULE ADOPTED BY THE FINANCE COMMISSION. Provides that the failure of an applicant under Section 156.504 to comply with a provision of this subchapter relating to the recovery fund or with a rule adopted by the finance commission relating to the fund constitutes a waiver of any rights under this subchapter.

SECTION 45. Amends Section 157.002, Finance Code, by adding Subdivisions (4-a) and (4-b) and amending Subdivision (5) to define, respectively, "Nationwide Mortgage Licensing System and Registry" and "recovery fund" and to redefine "residential mortgage loan."

SECTION 46. Amends Section 157.003, Finance Code, by amending Subsections (b) and (e) and adding Subsections (f) and (g), as follows:

(b) Requires a mortgage banker, to register under this chapter, to:

- (1) enroll with NMLSR;
- (2) be in good standing with the secretary of state;
- (3) have a valid federal employer identification number;
- (4) meet the qualification requirements for a mortgage banker; and
- (5) provide to the commissioner a list of any offices that are separate and distinct from the primary office identified on the mortgage banker registration and that conduct residential mortgage loan business relating to this state, regardless of whether the offices are located in this state, rather than file with the commissioner a statement that contains certain information.

(e) Provides that the registration of a mortgage banker is valid on approval of the commissioner and may be denied if the commissioner determines the mortgage banker does not meet the requirements of Subsection (b). Authorizes the mortgage banker, if registration is denied, to appeal the determination in the same manner as an applicant for an RMLO license may appeal a denial of issuance of a license under Section 157.017 (Denial of Applications and Renewals).

(f) Provides that a mortgage banker registration is valid through December 31 of the year in which registration is approved.

(g) Provides that the registration may be withdrawn or revoked. Deletes existing text providing that the registration is valid until withdrawn or revoked. Deletes existing text providing that periodic renewal of the registration is not required.

SECTION 47. Amends Section 157.005, Finance Code, as follows:

Sec. 157.005. New heading: UPDATE OF REGISTRATION. Requires a mortgage banker to update information contained in the registration, rather than statement, not later than the 30th day after the date the information changes.

SECTION 48. Amends Section 157.006, Finance Code, to authorize the commissioner to charge a mortgage banker a reasonable fee to cover the costs of the registration and of administering this chapter, rather than the costs of filing the registration statement and administering this chapter.

SECTION 49. Amends Chapter 157, Finance Code, by adding Sections 157.0061 and 157.0062, as follows:

Sec. 157.0061. RENEWAL OF REGISTRATION. (a) Provides that the registration of a mortgage banker expires on December 31 of the year in which the registration is approved, and requires that it be renewed annually.

(b) Requires a mortgage banker, to renew a registration, to comply with the requirements of Section 157.003 (Registration Required) and pay a renewal fee in an amount not to exceed \$500.

Sec. 157.0062. REINSTATEMENT AFTER EXPIRATION OF REGISTRATION. (a) Prohibits a mortgage banker whose registration has expired from engaging in an activity for which registration is required under this chapter until the registration is renewed.

(b) Authorizes a mortgage banker who is otherwise eligible to renew a registration, but has not done so before January 1, to renew the registration before March 1 by paying the commissioner a reinstatement fee in an amount not to exceed \$500.

(c) Prohibits a mortgage banker whose registration has not been renewed before March 1 from renewing the registration. Authorizes the mortgage banker to obtain a new registration by complying with the requirements and procedures for obtaining an original registration.

SECTION 50. Amends Section 157.007, Finance Code, as follows:

Sec. 157.007. DISCLOSURE STATEMENT. Requires a mortgage banker that is an RMLO to include a notice to a residential mortgage loan applicant with an application for a residential mortgage loan. Requires the finance commission by rule to adopt a standard disclosure form to be used by the mortgage banker. Requires that the form:

- (1) include the name, address, and toll-free telephone number for the Department of Savings and Mortgage Lending (SML);
- (2) contain information on how to file a complaint or recovery fund claim; and
- (3) prescribe a method for proof of delivery to the consumer.

Deletes existing text setting forth the required language of the notice.

SECTION 51. Reenacts Section 157.012, Finance Code, as added by Chapters 1104 (H.B. 10) and 1147 (H.B. 2779), Acts of the 81st Legislature, Regular Session, 2009, and amends it as follows:

Sec. 157.012. LICENSE REQUIRED FOR CERTAIN EMPLOYEES OF MORTGAGE BANKERS. (a) Redesignates existing Subsection (b) as Subsection (a). Deletes existing text defining "Nationwide Mortgage Licensing System and Registry" and "residential mortgage loan originator." Prohibits an employee of a mortgage banker from acting in the capacity of an RMLO unless the employee:

- (1) is licensed under this chapter, sponsored by a registered mortgage banker, and enrolled with NMLSR as required by Section 180.052 (Enrollment or Registration with Nationwide Mortgage Licensing System and Registry); and
- (2) complies with other applicable requirements of Chapter 180 and rules adopted by the finance commission under that chapter.

(b) Redesignates existing Subsection (c) as Subsection (b). Makes no further changes.

(c) Redesignates existing Subsection (d) as Subsection (c). Requires an employee of a mortgage banker, to be eligible to be licensed as a residential mortgage loan originator, in addition to the requirements of Subsection (a), to meet certain criteria, including to not be in violation of this chapter, Chapter 180, or any rules adopted under this chapter or Chapter 180, and to be a citizen of the United States or a lawfully admitted alien.

(d) Provides that a mortgage banker employee who is not an RMLO is not required to enroll with NMLSR or be licensed under this chapter.

SECTION 52. Amends Section 157.013(b), Finance Code, to require that an application for an RMLO license be accompanied by an application fee in an amount determined by the commissioner, not to exceed \$500, and by a recovery fund fee in an amount determined by the commissioner, not to exceed \$20.

SECTION 53. Amends the heading to Section 157.016, Finance Code, to read as follows:

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

SECTION 54. Amends Section 157.019, Finance Code, by adding Subsection (c) as follows:

(c) Requires a mortgage banker employee who is an RMLO to notify the commissioner or authorized designee in writing of a change of sponsorship. Requires that the notice be accompanied by a fee of \$25.

SECTION 55. Amends Section 157.020, Finance Code, as follows:

Sec. 157.020. New heading: MORTGAGE CALL REPORT. (a) Requires each mortgage banker to file a mortgage call report, rather than an annual call report, with the commissioner or the commissioner's authorized designee on a form prescribed by the commissioner or authorized designee. Requires that the report be filed as frequently as required by NMLSR. Provides that the report is a statement of condition of the mortgage banker and the mortgage banker's operations, including financial statements and production activity volumes, and any other similar information required by NMLSR.

(b) Provides that the information contained in the mortgage call report related to residential mortgage loan origination volume or other trade information is confidential and may not be disclosed by the commissioner, the commissioner's authorized designee, or any other employee of SML.

SECTION 56. Amends Chapter 157, Finance, Code by adding Section 157.0201, as follows:

Sec. 157.0201. RECOVERY FUND. Requires that the recovery fund established, administered, and maintained under Section 13.016 and Subchapter F, Chapter 156, be used as provided by Subchapter F, Chapter 156, to reimburse residential mortgage loan applicants for actual damages incurred because of acts committed by RMLOs licensed under this chapter when the act was committed.

SECTION 57. Amends Sections 157.023(a) and (b), Finance Code, as follows:

(a) Authorizes the commissioner, after notice and opportunity for a hearing, to impose an administrative penalty on an individual who is licensed or required to be licensed under this chapter as an RMLO and who violates this chapter or a rule or order adopted under this chapter. Makes nonsubstantive changes.

(b) Prohibits the amount of the penalty from exceeding \$25,000 for each violation. Deletes existing text prohibiting the amount of the penalty from exceeding \$2,500, and providing that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. Requires that the amount be based on certain factors,

including the economic harm to property caused by the violation. Makes nonsubstantive changes.

SECTION 58. Amends Section 157.024, Finance Code, by amending Subsection (j) and adding Subsection (l), as follows:

(j) Authorizes an order revoking the license of an RMLO to provide that the person is prohibited, without previously obtaining written consent of the commissioner, from performing certain actions, including being an employee, officer, director, manager, shareholder, member, agent, contractor, or processor of a mortgage banker, RMLC, rather than a mortgage broker, or RMLO for an RMLC, rather than a mortgage broker loan officer.

(l) Authorizes the commissioner, in the commissioner's discretion, to rescind or vacate any previously issued order.

SECTION 59. Amends Chapter 157, Finance Code, by adding Section 157.0241, as follows:

Sec. 157.0241. REVOCATION OR SUSPENSION OF LICENSE FOR PAYMENT FROM RECOVERY FUND. (a) Authorizes the commissioner to revoke or suspend a license issued under this chapter on proof that the commissioner has made a payment from the recovery fund of any amount toward satisfaction of a claim against an RMLO licensed under this chapter.

(b) Authorizes the commissioner to seek to collect from an RMLO the amount paid from the recovery fund on behalf of the RMLO and any costs associated with investigating and processing the claim against the recovery fund or with collection of reimbursement for payments from the recovery fund, plus interest at the current legal rate until the amount has been repaid in full. Requires that any amount, including interest, recovered by the commissioner be deposited to the credit of the recovery fund.

(c) Authorizes the commissioner to probate an order revoking or suspending a license under this section.

(d) Provides that a person on whose behalf payment was made from the recovery fund is not eligible to receive a new license or have a suspension lifted under this chapter until the person has repaid in full, plus interest at the current legal rate, the amount paid from the recovery fund on the person's behalf and any costs associated with investigating and processing the claim against the recovery fund or with collection of reimbursement for payments from the recovery fund.

(e) Provides that this section does not limit the authority of the commissioner to take disciplinary action against an RMLO for a violation of this chapter or the rules adopted by the finance commission under this chapter. Provides that the repayment in full to the recovery fund of all obligations of an RMLO does not nullify or modify the effect of any other disciplinary proceeding brought under this chapter.

SECTION 60. Amends Section 180.002(19), Finance Code, to redefine "residential mortgage loan originator."

SECTION 61. Amends Section 180.003, Finance Code, as follows:

Sec. 180.003. EXEMPTION. (a) Creates this subsection from existing text. Provides that certain persons are exempt from this chapter, including an owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured, and an owner of a dwelling who in any 12-consecutive-month period makes no more than five residential mortgage

loans to purchasers of the property for all or part of the purchase price of the dwelling against which the mortgage or security interest is secured. Deletes existing text providing that an individual who is an exclusive agent of a registered financial services company, is exempt from regulation under Chapter 156 as provided by Section 156.202(5) (relating to exempting an individual who is an exclusive agent of a registered financial services company under a written agreement prohibiting certain actions), and is individually enrolled as an RMLO with NMLSR is exempt from this chapter.

(b) Provides that an individual is exempt from this chapter, other than Section 180.171, if the individual:

(1) in any 12-consecutive-month period originates five or fewer closed residential mortgage loans exclusively for a single federally chartered depository institution and the loans are closed within that period;

(2) is contractually prohibited from soliciting, processing, negotiating, or placing a residential mortgage loan with a person other than the depository institution described by Subdivision (1); and

(3) is sponsored by a life insurance company, or an affiliate of the company, authorized to engage in business in this state.

(c) Authorizes the finance commission to grant an exemption from the licensing requirements of this chapter to a municipality, county, community development corporation, or public or private grant administrator to the extent the entity is administering the Texas HOME Investment Partnerships program if the finance commission determines that granting the exemption is not inconsistent with the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

SECTION 62. Amends Section 180.056, Finance Code, by adding Subsection (h), to require an individual who fails to maintain an RMLO license for at least five consecutive years to retake the preclicensing education requirements prescribed by the S.A.F.E. Mortgage Licensing Act.

SECTION 63. Amends Chapter 180, Finance Code, by adding Subchapter D-1, as follows:

SUBCHAPTER D-1. REQUIREMENT FOR INDIVIDUALS ORIGINATING RESIDENTIAL MORTGAGE LOANS EXCLUSIVELY FOR CERTAIN DEPOSITORY INSTITUTION

Sec. 180.171. ENROLLMENT WITH DEPARTMENT OF SAVINGS AND MORTGAGE LENDING. (a) Provides that this section applies only to an individual who:

(1) in any 12-consecutive-month period originates five or fewer residential mortgage loans exclusively for a single federally chartered depository institution and the loans are closed within that period;

(2) is contractually prohibited from soliciting, processing, negotiating, or placing a residential mortgage loan with a person other than the depository institution described by Subdivision (1); and

(3) is sponsored by a life insurance company, or an affiliate of the company, authorized to engage in business in this state.

(b) Requires an individual to whom this section applies, before conducting business in this state with respect to a residential mortgage loan, to enroll as a financial exclusive agent with SML until the time any registration with the NMLSR is required for the individual by federal law or regulation and a suitable category is created for that registration with that nationwide registry.

(c) Requires that an enrollment under this section be renewed annually.

(d) Requires an individual required under this section to enroll as a financial exclusive agent to pay to the commissioner an annual fee in an amount not to exceed \$40 as prescribed by the commissioner.

SECTION 64. Amends Section 342.051, Finance Code, by adding Subsection (c-1), to provide that a person who is licensed or registered under Chapter 156 or 157 is not required to obtain a license under this section to make, negotiate, or transact a residential mortgage loan, as defined by Section 180.002 (Definitions).

SECTION 65. (a) Repealers: (1) Sections 156.002(4) (defining "fund"), (5) (defining "loan officer"), (6) (defining "loan processor"), (9) (defining "mortgage broker"), and (10) (defining "mortgage loan"), Finance Code;

(2) Section 156.2011 (Provisional Loan Officer License), Finance Code;

(3) Section 156.2015(a) (defining "credit union subsidiary organization," "Nationwide Mortgage Licensing System and Registry," and "residential mortgage loan originator"), Finance Code;

(4) Section 156.202(b) (relating to an exclusive agent being considered an employee of the registered financial services company), Finance Code;

(5) Section 156.204 (Qualifications), Finance Code;

(6) Section 156.2071 (Person Licensed in Other Jurisdiction), Finance Code;

(7) Sections 156.208(f) (relating to adopting a system under which licenses expire on certain dates), (g) (relating to adopting rules related to the approval of courses for continuing education credit), (h) (relating to the conditions under which a person is considered convicted), and (i) (relating to adopting a rule to require a mortgage broker or loan officer to attend not less than eight hours of continuing education courses before renewing a license), Finance Code;

(8) Sections 156.2081(d) (relating to obtaining a new license for a certain person previously licensed in this state) and (e) (relating to requiring the commissioner to send written notice of an impending expiration), Finance Code;

(9) Sections 156.214(e) (relating to restrictions to being an exclusive agent of a registered financial services company), (f) (relating to requiring a registered financial services company to submit certain information to the commissioner), and (g) (relating to requiring the commissioner to notify a person and the registered financial services company as to whether or not the person is eligible to be an exclusive agent), Finance Code;

(10) Section 156.215 (Approval of Courses), Finance Code;

(11) Sections 157.003(b-1) (relating to requiring the list of mortgage banker employees to be promptly updated to reflect any changes), (c) (relating to an employee of a mortgage banker who is not an RMLO not being required to register or be licensed), and (d) (relating to prohibiting the commissioner from requiring a mortgage banker to provide certain information), Finance Code;

(12) Section 157.009(b) (relating to authorizing the commissioner to revoke registration of a mortgage banker under certain conditions), Finance Code;

(13) Section 157.016(d) (relating to requiring the commissioner or an authorized representative to send written notice of an impending expiration), Finance Code;

(14) Section 157.018 (Probationary and Provisional Licenses), Finance Code; and

(15) Section 342.051(f) (relating to a mortgage broker not being required to obtain a license to make, negotiate, or transact a mortgage loan), Finance Code.

(b) Repealer: Section 156.213 (Annual Report), Finance Code, as added by Chapter 407 (H.B. 1493), Acts of the 77th Legislature, Regular Session, 2001.

SECTION 66. Severability clause.

SECTION 67. Provides that, to the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 68. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2011.

(b) Effective date, Section 180.171, Finance Code, as added by this Act: November 1, 2011.