

By: Carona

S.B. No. 1124

A BILL TO BE ENTITLED

AN ACT

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; providing penalties.

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

SECTION 1. Section 11.306, Finance Code, is amended to read as follows:

Sec. 11.306. RESIDENTIAL MORTGAGE LOAN ORIGINATION ~~[MORTGAGE BROKER]~~ RULES. The finance commission may adopt residential mortgage loan origination ~~[mortgage broker]~~ rules as provided by Chapter 156.

SECTION 2. Chapter 13, Finance Code, is amended by adding Section 13.016 to read as follows:

Sec. 13.016. RECOVERY FUND. (a) The savings and mortgage lending commissioner shall establish, administer, and maintain one recovery fund for the purposes of Chapters 156 and 157. The recovery fund shall be administered and maintained under Subchapter F, Chapter 156.

(b) The savings and mortgage lending 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

1 Chapters 156 and 157 for a person's failure to comply with the  
2 applicable provisions of those chapters relating to the recovery  
3 fund and with applicable rules adopted under those chapters.

4 SECTION 3. The heading to Chapter 156, Finance Code, is  
5 amended to read as follows:

6 CHAPTER 156. RESIDENTIAL MORTGAGE LOAN COMPANIES AND RESIDENTIAL  
7 MORTGAGE LOAN ORIGINATORS [~~MORTGAGE BROKERS~~]

8 SECTION 4. Section 156.001, Finance Code, is amended to  
9 read as follows:

10 Sec. 156.001. SHORT TITLE. This chapter may be cited as the  
11 Residential Mortgage Loan Company and Residential Mortgage Loan  
12 Originator Licensing and Registration [~~Mortgage Broker License~~]  
13 Act.

14 SECTION 5. Section 156.002, Finance Code, is amended by  
15 amending Subdivisions (1), (2), (7), and (8) and adding  
16 Subdivisions (1-a), (1-b), (1-c), (4-a), (6-a), (8-a), (10-a),  
17 (10-b), (10-c), (12), (13), (14), and (15) to read as follows:

18 (1) "Auxiliary mortgage loan activity company" means a  
19 political subdivision of this state or the federal government doing  
20 business for consumers in this state, or an organization that  
21 qualifies for an exemption from state franchise and sales and use  
22 tax as a 501(c)(3) organization, that is involved in affordable  
23 home ownership lending programs.

24 (1-a) "Commissioner" means the savings and mortgage  
25 lending commissioner.

26 (1-b) "Credit union subsidiary organization" has the  
27 meaning assigned by Section 180.002.

1           (1-c) "Department" means the Department of Savings and  
2 Mortgage Lending.

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

5           (A) suspension or revocation of a license or  
6 registration under this chapter;

7           (B) probation of a suspension or revocation of a  
8 license or registration under this chapter on terms and conditions  
9 that the commissioner determines appropriate;

10          (C) a reprimand of a person licensed or  
11 registered under this chapter; or

12          (D) an administrative penalty imposed on a person  
13 licensed or registered under this chapter under Section 156.302.

14          (4-a) "Independent contractor loan processor or  
15 underwriter company" means a corporation, company, partnership, or  
16 sole proprietorship that receives compensation for an individual  
17 performing clerical or support duties as an independent contractor  
18 loan processor or underwriter at the direction of a licensed  
19 residential mortgage loan originator.

20          (6-a) "Loan processor or underwriter" has the meaning  
21 assigned by Section 180.002.

22          (7) "Mortgage applicant" means:

23           (A) an applicant for a residential mortgage loan;  
24 or

25           (B) a person who is solicited to [use or who uses  
26 a mortgage broker to] obtain a residential mortgage loan.

27          (8) "Mortgage banker" has the meaning assigned by

1 Section 157.002 ~~[means a person who is:~~

2 ~~[(A) approved or authorized by the United States~~  
3 ~~Department of Housing and Urban Development as a mortgagee with~~  
4 ~~direct endorsement underwriting authority;~~

5 ~~[(B) an approved seller or servicer of the~~  
6 ~~Federal National Mortgage Association;~~

7 ~~[(C) an approved seller or servicer of the~~  
8 ~~Federal Home Loan Mortgage Association; or~~

9 ~~[(D) an approved issuer for the Governmental~~  
10 ~~National Mortgage Association].~~

11 (8-a) "Mortgage company" means a corporation,  
12 company, partnership, or sole proprietorship that engages in the  
13 business of residential mortgage loan origination on residential  
14 real estate located in this state.

15 (10-a) "Nationwide Mortgage Licensing System and  
16 Registry" has the meaning assigned by Section 180.002.

17 (10-b) "Qualifying individual" means an individual  
18 who is licensed under this chapter as a residential mortgage loan  
19 originator and is designated by a residential mortgage loan company  
20 as the company's representative for purposes of the Nationwide  
21 Mortgage Licensing System and Registry.

22 (10-c) "Recovery fund" means the fund established and  
23 maintained by the commissioner under Subchapter F and Section  
24 13.016.

25 (12) "Residential mortgage loan" has the meaning  
26 assigned by Section 180.002.

27 (13) "Residential mortgage loan company" means a

1 person, other than an individual, that engages in the business of  
2 residential mortgage loan origination on residential real estate  
3 located in this state. The term includes a credit union subsidiary  
4 organization, auxiliary mortgage loan activity company, mortgage  
5 company, independent contractor loan processor or underwriter  
6 company, and financial services company.

7 (14) "Residential mortgage loan originator" has the  
8 meaning assigned by Section 180.002.

9 (15) "Residential real estate" has the meaning  
10 assigned by Section 180.002.

11 SECTION 6. Section 156.003, Finance Code, is amended to  
12 read as follows:

13 Sec. 156.003. SECONDARY MARKET TRANSACTIONS. This chapter  
14 does not prohibit a residential mortgage loan originator [~~mortgage~~  
15 ~~broker~~] from receiving compensation from a party other than the  
16 mortgage applicant for the sale, transfer, assignment, or release  
17 of rights on the closing of a mortgage transaction.

18 SECTION 7. Section 156.004, Finance Code, is amended to  
19 read as follows:

20 Sec. 156.004. DISCLOSURE TO APPLICANT. (a) At the time an  
21 applicant submits an application to a residential mortgage loan  
22 originator [~~mortgage broker~~], the residential mortgage loan  
23 originator [~~mortgage broker~~] shall provide to the applicant a  
24 disclosure that specifies:

25 (1) the nature of the relationship between the  
26 applicant and the residential mortgage loan originator;

27 (2) [~~broker~~] the duties the residential mortgage loan

1 originator ~~[broker]~~ has to the applicant; ~~[7]~~ and

2           (3) how the residential mortgage loan originator  
3 ~~[mortgage broker]~~ will be compensated.

4           (b) The finance commission, by rule, shall adopt  
5 ~~[promulgate]~~ a standard disclosure form to be used by the  
6 residential mortgage loan originator ~~[mortgage broker]~~.

7           SECTION 8. Section 156.005, Finance Code, is amended to  
8 read as follows:

9           Sec. 156.005. AFFILIATED BUSINESS ARRANGEMENTS. Unless  
10 prohibited by federal or state law, this chapter may not be  
11 construed to prevent affiliated or controlled business  
12 arrangements or loan origination services by or between residential  
13 mortgage loan originators ~~[mortgage brokers]~~ and other  
14 professionals if the residential mortgage loan originator  
15 ~~[mortgage broker]~~ complies with all applicable federal and state  
16 laws permitting those arrangements or services.

17           SECTION 9. Sections 156.102(b) and (b-1), Finance Code, are  
18 amended to read as follows:

19           (b) The finance commission may adopt rules to prohibit  
20 false, misleading, or deceptive practices by residential mortgage  
21 loan originators ~~[mortgage brokers and loan officers]~~ but may not  
22 adopt any other rules restricting competitive bidding or  
23 advertising by residential mortgage loan originators ~~[mortgage~~  
24 ~~brokers or loan officers]~~. When adopting rules under this  
25 subsection, the finance commission may not restrict:

26               (1) the use of any medium for an advertisement;

27               (2) the personal appearance of or voice of a person in

1 an advertisement;

2 (3) the size or duration of an advertisement; or

3 (4) a residential mortgage loan originator's [~~mortgage~~  
4 ~~broker's or loan officer's~~] advertisement under a trade name.

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

9 SECTION 10. Sections 156.104(b-1) and (h), Finance Code,  
10 are amended to read as follows:

11 (b-1) The members of the committee must include six[+  
12 [~~(1) three~~] individuals licensed by the department as  
13 residential mortgage loan originators [~~under this chapter~~], two  
14 [~~one~~] of whom must hold an active real estate broker or salesperson  
15 license issued under Chapter 1101, Occupations Code[, and

16 [~~(2) three individuals licensed as residential~~  
17 ~~mortgage loan originators under Chapter 157, one of whom must hold~~  
18 ~~an active real estate broker or salesperson license issued under~~  
19 ~~Chapter 1101, Occupations Code~~].

20 (h) In addition to other powers and duties delegated to the  
21 advisory committee [~~it~~] by the commissioner, the advisory committee  
22 shall advise the commissioner with respect to:

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

24 (A) the licensing of residential mortgage loan  
25 originators or residential mortgage loan companies [~~mortgage~~  
26 ~~brokers and loan officers~~];

27 (B) the education and experience requirements

for licensing residential mortgage loan originators [~~mortgage brokers and loan officers~~]; and

(C) the conduct and ethics of residential mortgage loan originators [~~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. Section 156.105, Finance Code, is amended to read as follows:

Sec. 156.105. STANDARD FORMS. (a) The finance commission, by rule, shall adopt one or more standard forms for use by a residential mortgage loan originator [~~mortgage broker or loan officer~~] in representing that an applicant for a residential mortgage loan is preapproved or has prequalified for the loan.

(b) The finance commission shall adopt rules requiring a residential mortgage loan originator [~~mortgage broker or loan officer~~] licensed under this chapter to use the forms adopted by the finance commission under Subsection (a).

SECTION 12. The heading to Subchapter C, Chapter 156, Finance Code, is amended to read as follows:

SUBCHAPTER C. RESIDENTIAL MORTGAGE LOAN COMPANY AND RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSES AND REGISTRATION [~~MORTGAGE BROKER LICENSE AND LOAN OFFICER LICENSE~~]

SECTION 13. Section 156.201, Finance Code, is amended to read as follows:

Sec. 156.201. LICENSES REQUIRED. (a) A person may not act



1 in the capacity of, engage in the business of, or advertise or hold  
2 that person out as engaging in or conducting the business of a  
3 residential mortgage loan company [~~mortgage broker~~] in this state  
4 unless the person holds an active residential mortgage loan company  
5 [~~mortgage broker~~] license, is registered under Section 156.214, or  
6 is exempt under Section 156.202.

7 (b) Except as provided by Subsection (b-1), an [~~An~~]  
8 individual may not act or attempt to act as a residential mortgage  
9 loan originator [~~loan officer~~] unless the individual at the time  
10 is:

11 (1) licensed under this chapter and sponsored by a  
12 licensed residential mortgage loan company [~~mortgage broker~~] and is  
13 acting for the residential mortgage loan company [~~mortgage broker~~];  
14 or

15 (2) exempt under Section 156.202.

16 (b-1) An exclusive agent of a registered financial services  
17 company may not act or attempt to act as a residential mortgage loan  
18 originator unless the exclusive agent at the time is licensed under  
19 this chapter and sponsored by a registered financial services  
20 company and is acting for the company.

21 (b-2) A residential mortgage loan originator must be  
22 sponsored by at least one residential mortgage loan company.

23 (c) Each residential mortgage loan company and the  
24 company's qualifying individual [~~mortgage broker~~] licensed under  
25 this chapter is responsible to the commissioner and members of the  
26 public for any act or conduct performed by the residential mortgage  
27 loan originator [~~mortgage broker or a loan officer~~] sponsored by or

1 acting for the residential mortgage loan company [~~mortgage~~  
2 ~~broker~~] in connection with:

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

4 (2) a transaction that is related to the origination  
5 of a residential mortgage loan in which the qualifying individual  
6 [~~mortgage broker~~] knew or should have known of the transaction.

7 SECTION 14. Section 156.202, Finance Code, is amended by  
8 amending Subsection (a) and adding Subsection (a-1) to read as  
9 follows:

10 (a) In this section, "depository institution," "dwelling,"  
11 "federal banking agency," and "immediate family member" have the  
12 meanings assigned by Section 180.002.

13 (a-1) The following persons are exempt from this chapter:

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

16 (A) a depository institution;

17 (B) a subsidiary that is:

18 (i) owned and controlled by a depository  
19 institution; and

20 (ii) regulated by a federal banking agency;  
21 or

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

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

27 (3) a licensed attorney who negotiates the terms of a

1 residential mortgage loan on behalf of a client as an ancillary  
2 matter to the attorney's representation of the client, unless the  
3 attorney:

4 (A) takes a residential mortgage loan  
5 application; and

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

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

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

15 (6) a mortgage banker registered under Chapter 157;  
16 and

17 (7) any owner of residential real estate who in any  
18 12-consecutive-month period makes no more than five residential  
19 mortgage loans to purchasers of the property for all or part of the  
20 purchase price of the residential real estate against which the  
21 mortgage is secured ~~[any of the following entities or an employee of~~  
22 ~~any of the following entities provided the employee is acting for~~  
23 ~~the benefit of the employer.]~~

24 ~~[(A) a bank, savings bank, or savings and loan~~  
25 ~~association, or a subsidiary or an affiliate of a bank, savings~~  
26 ~~bank, or savings and loan association,~~

27 ~~[(B) a state or federal credit union, or a~~

~~subsidiary, affiliate, or credit union service organization of a state or federal credit union;~~

~~[(C) an insurance company licensed or authorized to do business in this state under the Insurance Code;~~

~~[(D) a mortgage banker registered under Chapter 157;~~

~~[(E) an organization that qualifies for an exemption from state franchise and sales tax as a 501(c)(3) organization;~~

~~[(F) a Farm Credit System institution; or~~

~~[(G) a political subdivision of this state involved in affordable home ownership programs;~~

~~[(2) an individual who makes a mortgage loan from the individual's own funds to a spouse, former spouse, or persons in the lineal line of consanguinity of the individual lending the money;~~

~~[(3) an owner of real property who in any 12-consecutive-month period makes no more than five mortgage loans to purchasers of the property for all or part of the purchase price of the real estate against which the mortgage is secured;~~

~~[(4) an individual who:~~

~~[(A) makes a mortgage loan from the individual's own funds;~~

~~[(B) is not an authorized lender under Chapter 342, Finance Code; and~~

~~[(C) does not regularly engage in the business of making or brokering mortgage loans; or~~

~~[(5) an individual who is an exclusive agent of a~~

~~registered financial services company under a written agreement prohibiting the individual from soliciting, processing, negotiating, or placing a mortgage loan with a person other than the registered financial services company or an affiliate of that company].~~

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

(a) For purposes of this section, an application for a residential mortgage loan company license means an application for:

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

(a-1) An application for a residential mortgage loan company license and a residential mortgage loan originator  
~~[mortgage broker or loan officer]~~ license must be:

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

(a-2) An application for a financial services company registration under Section 156.214 must be:

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

(b) An application for a residential mortgage loan company  
~~[mortgage broker]~~ license must be accompanied by[+]

~~[(1)]~~ an application fee in an amount determined by  
the commissioner not to exceed \$375[+and

~~[(2) a recovery fund fee as provided by Section~~  
~~156.502].~~

(c) An application for a residential mortgage loan  
originator ~~[loan officer]~~ license must be accompanied by:

(1) an application fee in an amount determined by the  
commissioner not to exceed \$375 ~~[\$275]~~; and

(2) a recovery fund fee as provided by Section  
156.502.

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

Sec. 156.2041. QUALIFICATIONS AND REQUIREMENTS FOR  
LICENSES: MORTGAGE COMPANY AND RESIDENTIAL MORTGAGE LOAN  
ORIGINATORS. (a) To be issued a mortgage company license, an  
applicant must:

(1) submit a completed application together with the  
payment of applicable fees through the Nationwide Mortgage  
Licensing System and Registry;

(2) designate control persons for the mortgage company  
through the Nationwide Mortgage Licensing System and Registry;

(3) designate an individual licensed as a residential  
mortgage loan originator under this chapter as the company's  
qualifying individual;

1           (4) submit a completed branch application through the  
2 Nationwide Mortgage Licensing System and Registry for each branch  
3 office that engages in residential mortgage loan activity on  
4 residential real estate located in this state;

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

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

11           (7) maintain a physical office in this state.

12           (b) To be issued a license to act as a mortgage company  
13 residential mortgage loan originator, an individual must submit a  
14 completed application through the Nationwide Mortgage Licensing  
15 System and Registry together with the payment of applicable fees  
16 and must establish to the satisfaction of the commissioner that the  
17 applicant:

18           (1) has not had a residential mortgage loan originator  
19 license revoked in any governmental jurisdiction;

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

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

26           (4) at any time preceding the date of the application,  
27 has not been convicted of, or pled guilty or no contest to, a felony

1 in a domestic, foreign, or military court involving fraud,  
2 dishonesty, breach of trust, or money laundering;

3 (5) demonstrates the financial responsibility, good  
4 moral character, and general fitness necessary to operate in an  
5 honest, trustworthy, fair, and efficient manner as a residential  
6 mortgage loan originator under this chapter;

7 (6) has successfully completed at least 20 hours of  
8 prelicensing education courses approved by the Nationwide Mortgage  
9 Licensing System and Registry;

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

12 (8) has paid a recovery fund fee as required by Section  
13 156.502(a); and

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

16 Sec. 156.2042. QUALIFICATIONS AND REQUIREMENTS FOR  
17 LICENSES: CREDIT UNION SUBSIDIARY ORGANIZATION AND RESIDENTIAL  
18 MORTGAGE LOAN ORIGINATORS. (a) To be issued a credit union  
19 subsidiary organization license, an applicant must:

20 (1) submit a completed application together with the  
21 payment of applicable fees through the Nationwide Mortgage  
22 Licensing System and Registry;

23 (2) designate control persons for the organization  
24 through the Nationwide Mortgage Licensing System and Registry;

25 (3) designate an individual licensed as a residential  
26 mortgage loan originator under this chapter as the company's  
27 qualifying individual;



1           (4) submit a completed branch application through the  
2 Nationwide Mortgage Licensing System and Registry for each branch  
3 office that engages in residential mortgage loan activity on  
4 residential real estate located in this state; and

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

8           (b) To be issued a license to act as a credit union  
9 subsidiary organization residential mortgage loan originator, an  
10 individual must submit a completed application through the  
11 Nationwide Mortgage Licensing System and Registry together with the  
12 payment of applicable fees and must establish to the satisfaction  
13 of the commissioner that the applicant:

14           (1) has not had a residential mortgage loan originator  
15 license revoked in any governmental jurisdiction;

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

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

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

26           (5) demonstrates the financial responsibility, good  
27 moral character, and general fitness necessary to operate in an

honest, trustworthy, fair, and efficient manner as a residential mortgage loan originator under this chapter;

(6) has successfully completed at least 20 hours of prelicensing education courses approved by the Nationwide Mortgage Licensing System and Registry;

(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 RESIDENTIAL MORTGAGE LOAN ORIGINATORS. (a) To be issued an auxiliary mortgage loan activity company license, an applicant must:

(1) submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;

(2) designate control persons for the company through the Nationwide Mortgage Licensing System and Registry;

(3) designate an individual licensed as a residential mortgage loan originator 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) To be issued a license to act as an auxiliary mortgage

1 loan activity residential mortgage loan originator, an individual  
2 must submit a completed application through the Nationwide Mortgage  
3 Licensing System and Registry together with the payment of  
4 applicable fees and must establish to the satisfaction of the  
5 commissioner that the applicant:

6 (1) has not had a residential mortgage loan originator  
7 license revoked in any governmental jurisdiction;

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

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

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

18 (5) demonstrates the financial responsibility, good  
19 moral character, and general fitness necessary to operate in an  
20 honest, trustworthy, fair, and efficient manner as a residential  
21 mortgage loan originator under this chapter;

22 (6) has successfully completed at least 20 hours of  
23 prelicensing education courses approved by the Nationwide Mortgage  
24 Licensing System and Registry;

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

27 (8) has paid a recovery fund fee as required by Section

1 156.502(a); and

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

4 Sec. 156.2044. QUALIFICATIONS AND REQUIREMENTS FOR  
5 LICENSES: INDEPENDENT CONTRACTOR LOAN PROCESSOR OR UNDERWRITER  
6 COMPANY AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS. (a) To be issued  
7 an independent contractor loan processor or underwriter company  
8 license under this chapter, an applicant must:

9 (1) submit a completed application together with the  
10 payment of applicable fees through the Nationwide Mortgage  
11 Licensing System and Registry;

12 (2) designate control persons for the company through  
13 the Nationwide Mortgage Licensing System and Registry;

14 (3) designate an individual licensed as a residential  
15 mortgage loan originator under this chapter as the company's  
16 qualifying individual; and

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

20 (b) An independent contractor loan processor or underwriter  
21 company is not authorized to originate residential mortgage loans  
22 with a license issued under Subsection (a).

23 (c) To be issued a license to act as an independent  
24 contractor loan processor or underwriter residential mortgage loan  
25 originator, an individual must submit a completed application  
26 through the Nationwide Mortgage Licensing System and Registry  
27 together with the payment of applicable fees and must establish to

1 the satisfaction of the commissioner that the applicant:

2 (1) has not had a residential mortgage loan originator  
3 license revoked in any governmental jurisdiction;

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

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

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

14 (5) demonstrates the financial responsibility, good  
15 moral character, and general fitness necessary to operate in an  
16 honest, trustworthy, fair, and efficient manner as a residential  
17 mortgage loan originator under this chapter;

18 (6) has successfully completed at least 20 hours of  
19 prelicensing education courses approved by the Nationwide Mortgage  
20 Licensing System and Registry;

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

23 (8) has paid a recovery fund fee as required by Section  
24 156.502(a); and

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

27 Sec. 156.2045. QUALIFICATIONS AND REQUIREMENTS FOR

1 REGISTRATION AND LICENSE: FINANCIAL SERVICES COMPANY AND EXCLUSIVE  
2 AGENTS. (a) To be issued a financial services company registration  
3 under Section 156.214(c), an applicant must:

4 (1) obtain pre-approval from the commissioner that the  
5 company meets the eligibility requirements for registration as a  
6 financial services company under Section 156.214(b);

7 (2) submit a completed application through the  
8 Nationwide Mortgage Licensing System and Registry together with  
9 applicable fees required by Section 156.214(b)(4);

10 (3) provide evidence to the commissioner that the  
11 company has obtained surety bond coverage in an amount equal to \$1  
12 million;

13 (4) designate an officer of the company to be  
14 responsible for the activities of the company's exclusive agents;  
15 and

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

19 (b) To be issued a license to act as a financial services  
20 company exclusive agent, an individual must submit a completed  
21 application through the Nationwide Mortgage Licensing System and  
22 Registry together with the payment of applicable fees and must  
23 establish to the satisfaction of the commissioner that the  
24 applicant:

25 (1) has not had a residential mortgage loan originator  
26 license revoked in any governmental jurisdiction;

27 (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 a residential  
mortgage loan originator under this chapter;

(6) has successfully completed at least 20 hours of  
prelicensing education courses approved by the Nationwide Mortgage  
Licensing System and Registry;

(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. 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

1 supervision, including deferred adjudication or community service;  
2 or  
3 (3) the court deferred final disposition of the  
4 person's case.

5 SECTION 17. Section 156.205, Finance Code, is amended to  
6 read as follows:

7 Sec. 156.205. FINANCIAL REQUIREMENTS. (a) Except as  
8 provided by Subsection (b), financial ~~[Financial]~~ requirements  
9 for holding a residential mortgage loan originator ~~[mortgage broker~~  
10 ~~or loan officer]~~ license shall be met through participation in the  
11 recovery fund.

12 (b) An exclusive agent of a financial services company meets  
13 the agent's financial requirements for holding a residential  
14 mortgage loan originator license by obtaining surety bond coverage  
15 in an amount equal to \$1 million.

16 SECTION 18. The heading to Section 156.206, Finance Code,  
17 is amended to read as follows:

18 Sec. 156.206. CRIMINAL AND OTHER BACKGROUND CHECKS ~~[CHECK]~~.

19 SECTION 19. Sections 156.206(a), (b), and (c), Finance  
20 Code, are amended to read as follows:

21 (a) On receipt of an application for a residential mortgage  
22 loan originator ~~[mortgage broker license or a loan officer]~~  
23 license, the commissioner shall, at a minimum, conduct a criminal  
24 background and credit history check of the applicant.

25 (b) The commissioner shall conduct criminal background and  
26 credit history checks in accordance with Section 180.054, and, in  
27 connection with each application for a residential mortgage loan



1 originator license, the commissioner may conduct a criminal  
2 background check through the Department of Public Safety [~~obtain~~  
3 ~~criminal history record information on an applicant that is~~  
4 ~~maintained by the Department of Public Safety and shall obtain~~  
5 ~~criminal history record information from the Federal Bureau of~~  
6 ~~Investigation on each applicant. Each applicant must submit with~~  
7 ~~the application fingerprint and other information necessary to~~  
8 ~~implement this section. The commissioner may submit the~~  
9 ~~fingerprint and other information to the Federal Bureau of~~  
10 ~~Investigation, and the Department of Public Safety is designated to~~  
11 ~~be the recipient of the criminal history record information. The~~  
12 ~~commissioner may also obtain criminal history record information~~  
13 ~~from any court or any local, state, or national governmental~~  
14 ~~agency]~~.

15 (c) The commissioner shall keep confidential any [~~criminal~~  
16 background information obtained under this section [~~subsection~~  
17 and may not release or disclose the information unless:

18 (1) the information is a public record at the time the  
19 commissioner obtains the information; or

20 (2) the commissioner releases the information:

21 (A) under order from a court;

22 (B) with the permission of the applicant;

23 (C) to a person through whom the applicant is  
24 conducting or will conduct business; or

25 (D) to a governmental agency.

26 SECTION 20. The heading to Section 156.207, Finance Code,  
27 is amended to read as follows:

1           Sec. 156.207. ISSUANCE OF LICENSE ~~[CERTIFICATE]~~;  
2 PROVISIONAL LICENSE.

3           SECTION 21. Sections 156.207(a) and (b), Finance Code, are  
4 amended to read as follows:

5           (a) The commissioner shall issue a license ~~[certificate]~~ to  
6 an applicant for a residential mortgage loan company ~~[mortgage~~  
7 ~~broker]~~ license if the commissioner finds that the applicant meets  
8 all requirements and conditions for the license.

9           (b) When an applicant for a residential mortgage loan  
10 originator ~~[loan officer]~~ license has met all requirements and  
11 conditions for the license, the commissioner shall issue a license  
12 ~~[certificate]~~ to the individual ~~[mortgage broker sponsoring the~~  
13 ~~loan officer]~~.

14          SECTION 22. Section 156.208, Finance Code, is amended by  
15 amending Subsections (a-1), (b-1), (c), and (j) and adding  
16 Subsection (b-2) to read as follows:

17          (a-1) A residential mortgage loan company ~~[mortgage broker]~~  
18 license issued under this chapter is valid through December 31 of  
19 the year of issuance ~~[for a term of not more than two years]~~ and may  
20 be renewed on or before its expiration date if the residential  
21 mortgage loan company ~~[mortgage broker]~~:

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

25               (2) has not shown a pattern or practice of abusive  
26 mortgage activity and has no civil judgments or liens that, in the  
27 commissioner's opinion, directly impact the ability of the

1 residential mortgage loan company to conduct business while  
2 safeguarding and protecting the public interest ~~[has not been~~  
3 ~~convicted of a criminal offense the commissioner determines is~~  
4 ~~directly related to the occupation of a mortgage broker as provided~~  
5 ~~by Chapter 53, Occupations Code, and~~

6 ~~[(3) provides the commissioner with satisfactory~~  
7 ~~evidence that the mortgage broker has attended, during the term of~~  
8 ~~the current license, continuing education courses in accordance~~  
9 ~~with the applicable requirements of Chapter 180].~~

10 (b-1) Except as provided by Subsection (b-2), a [A]  
11 residential mortgage loan originator ~~[loan officer]~~ license issued  
12 under this chapter is valid through December 31 of the year of  
13 issuance ~~[for a term of not more than two years]~~ and may be renewed  
14 on or before its expiration date if the residential mortgage loan  
15 originator ~~[loan officer]~~:

16 (1) pays to the commissioner a renewal fee in an amount  
17 determined by the commissioner not to exceed \$375 ~~[\$275]~~ and a  
18 recovery fund fee provided by Section 156.502;

19 (2) continues to meet the minimum requirements for  
20 license issuance ~~[has not been convicted of a criminal offense the~~  
21 ~~commissioner determines is directly related to the occupation of a~~  
22 ~~loan officer as provided by Chapter 53, Occupations Code]~~; and

23 (3) provides the commissioner with satisfactory  
24 evidence that the residential mortgage loan originator ~~[loan~~  
25 ~~officer]~~ has attended, during the term of the current license,  
26 continuing education courses in accordance with the applicable  
27 requirements of Chapter 180.

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

6        (c) The commissioner may require residential mortgage loan  
7 originators [~~mortgage brokers or loan officers~~] to submit requests  
8 for renewal on a form prescribed by the commissioner.

9        (j) The commissioner may deny the renewal of a residential  
10 mortgage loan originator [~~mortgage broker license or a loan~~  
11 ~~officer~~] license if:

12            (1) the residential mortgage loan originator  
13 [~~mortgage broker or loan officer~~] is in violation of this chapter, a  
14 rule adopted under this chapter, or any order previously issued to  
15 the individual by the commissioner;

16            (2) the residential mortgage loan originator  
17 [~~mortgage broker or loan officer~~] is in default in the payment of  
18 any administrative penalty, fee, charge, or other indebtedness owed  
19 under this title;

20            (3) during the current term of the license, the  
21 commissioner becomes aware of any fact that would have been grounds  
22 for denial of an original license if the fact had been known by the  
23 commissioner on the date the license was granted; or

24            (4) the residential mortgage loan originator  
25 [~~mortgage broker or loan officer~~] is in default on a student loan  
26 administered by the Texas Guaranteed Student Loan Corporation,  
27 pursuant to Section 57.491, Education Code.

SECTION 23. The heading to Section 156.2081, Finance Code, is amended to read as follows:

Sec. 156.2081. REINSTATEMENT [~~RENEWAL~~] AFTER EXPIRATION[~~+~~ ~~NOTICE~~].

SECTION 24. Sections 156.2081(b) and (c), Finance Code, are amended to read as follows:

(b) A person who is otherwise eligible to renew a license, but has not done so before January 1, may renew the license before March 1 by paying the commissioner a reinstatement fee in an amount equal to 150 percent of the [~~whose license has been expired for 90 days or less but who is otherwise eligible to renew a license may 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) A person whose residential mortgage loan originator license has not been renewed before March 1 [~~has been expired for 91 days or more~~] may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

SECTION 25. Section 156.210, Finance Code, is amended to read as follows:

Sec. 156.210. CONDITIONAL [~~PROBATIONARY~~] LICENSE. The commissioner may issue a conditional [~~probationary~~] license. The finance commission by rule shall adopt reasonable terms and conditions for a conditional [~~probationary~~] license.

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

(a) Before the 10th day preceding the effective date of an

1 address change, a residential mortgage loan company [~~mortgage~~  
2 ~~broker~~] shall notify the commissioner in writing of the new address  
3 accompanied by a change of address fee of \$25. [~~A new license~~  
4 ~~certificate must be obtained before the mortgage broker may conduct~~  
5 ~~business at the new location.~~]

6 (b) [~~A loan officer may act only for the mortgage broker~~  
7 ~~sponsoring the loan officer. A loan officer may be sponsored by~~  
8 ~~only one mortgage broker at a time.~~] When the sponsorship of a  
9 residential mortgage loan originator [~~loan officer~~] is terminated,  
10 the residential mortgage loan originator [~~loan officer~~] and the  
11 residential mortgage loan company [~~mortgage broker~~] shall  
12 immediately notify the commissioner [~~and the mortgage broker shall~~  
13 ~~return the loan officer license to the commissioner~~]. The  
14 residential mortgage loan originator's [~~loan officer's~~] license  
15 then becomes inactive. The residential mortgage loan originator  
16 [~~loan officer~~] license may be activated if, before the license  
17 expires, a residential mortgage loan company [~~mortgage broker~~]  
18 files a request, accompanied by a \$25 fee, notifying the  
19 commissioner that the residential mortgage loan company [~~mortgage~~  
20 ~~broker~~] will sponsor the residential mortgage loan originator [~~loan~~  
21 ~~officer~~] and will assume responsibility for the actions of the  
22 residential mortgage loan originator [~~loan officer~~].

23 (b-1) Not later than the 10th day before a residential  
24 mortgage loan company [~~mortgage broker~~] begins doing business under  
25 an assumed name, the residential mortgage loan company [~~mortgage~~  
26 ~~broker~~] shall file with the commissioner a copy of an assumed name  
27 certificate for each assumed name under which the residential

1 mortgage loan company [~~mortgage broker~~] intends to conduct business  
2 [~~and pay a \$25 registration fee for each assumed name~~]. A  
3 residential mortgage loan originator [~~loan officer~~] may not conduct  
4 business under any assumed name that is not the registered assumed  
5 name of the sponsoring residential mortgage loan company [~~mortgage~~  
6 ~~broker~~].

7 (b-2) A person licensed under this chapter must notify the  
8 commissioner not later than the 10th day after the date of any  
9 change of the person's name [~~and pay to the commissioner a change of~~  
10 ~~name fee of \$25~~] for the issuance of an amended license  
11 [~~certificate~~].

12 (b-3) A residential mortgage loan company [~~business entity~~]  
13 licensed under this chapter that changes the company's qualifying  
14 individual shall notify the commissioner not later than the 10th  
15 business day after the date of the change [~~of any change of its~~  
16 ~~designated representative. The commissioner may charge a fee of~~  
17 ~~\$25 for each change of a designated representative~~].

18 SECTION 27. Section 156.212, Finance Code, is amended to  
19 read as follows:

20 Sec. 156.212. MAINTENANCE AND LOCATION OF OFFICES. (a)  
21 Each residential mortgage loan company [~~mortgage broker~~] licensed  
22 under this chapter shall maintain a physical office in this state.

23 (a-1) If a residential mortgage loan company's main office  
24 is outside this state, the requirement of Subsection (a) is  
25 satisfied if the company has a branch office located in this state.  
26 [~~The address of the office shall be designated on the license~~  
27 ~~certificate.~~]

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

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

Sec. 156.213. MORTGAGE CALL ~~[ANNUAL]~~ REPORT. (a) Each licensed residential mortgage loan company or licensed residential mortgage loan originator, as required by the commissioner, ~~[mortgage broker]~~ shall file a mortgage call ~~[an annual]~~ report with the commissioner or the commissioner's authorized designee on a form prescribed by the commissioner or authorized designee ~~[Savings and Loan Department]~~. The report ~~[must include]~~:

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

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



1           (3) must be filed as frequently as required by the  
2 commissioner ~~[data on loan originations in this state for the~~  
3 ~~mortgage broker,~~

4           ~~[(2) information on each loan officer sponsored by the~~  
5 ~~mortgage broker, and~~

6           ~~[(3) any other information required by finance~~  
7 ~~commission rule].~~

8           (b) Information contained in the mortgage call report  
9 related to residential mortgage loan origination volume or other  
10 trade ~~[Trade]~~ information, including information used to determine  
11 statistical entries in the report related to loan origination  
12 volume, is confidential and may not be disclosed by the  
13 commissioner, the commissioner's authorized designee, or any other  
14 employee of the department ~~[Savings and Loan Department].~~

15           SECTION 29. Sections 156.214(a), (b), (c), and (d), Finance  
16 Code, are amended to read as follows:

17           (a) A registered financial services company may perform the  
18 services of another residential mortgage loan company ~~[a mortgage~~  
19 ~~broker]~~ as if the company were licensed as a residential mortgage  
20 loan company ~~[mortgage broker]~~ under this chapter, through  
21 individuals who are the exclusive agents of the registered  
22 financial services company.

23           (b) To be eligible to register as a registered financial  
24 services company, a person must:

25           (1) be a depository institution exempt from this  
26 chapter under Section 156.201(a-1)(1)(A) or (B) ~~[156.202(1)(A) or~~  
27 ~~(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 residential mortgage loan company [~~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 as follows:

(A) if the registered financial services company has 2,000 or fewer exclusive agents acting in this state, an amount equal to the lesser of:

(i) one-half of the license fee for a residential mortgage loan originator [~~loan officer~~] under Section 156.203(c)(1), multiplied by the number of exclusive agents under contract to act for the person in this state; or

(ii) \$200,000;

(B) if the registered financial services company has at least 2,001 but not more than 2,500 exclusive agents acting in this state, \$225,000;

(C) if the registered financial services company has at least 2,501 but not more than 3,000 exclusive agents acting

1 in this state, \$250,000;

2 (D) if the registered financial services company  
3 has at least 3,001 but not more than 5,000 exclusive agents acting  
4 in this state, \$300,000; or

5 (E) if the registered financial services company  
6 has at least 5,001 exclusive agents acting in this state, \$350,000;  
7 and

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

10 (c) If the commissioner determines that a person has met the  
11 requirements of Subsection (b) and Section 156.2045(a), the  
12 commissioner shall issue a registration to the person. The  
13 registration is valid for one year, expires on December 31 of each  
14 year, and must ~~[may]~~ be renewed annually ~~[on or before its~~  
15 ~~expiration date]~~. A person must ~~[may]~~ renew an expired  
16 registration in the ~~[same]~~ manner determined by the commissioner  
17 ~~[as a person may renew an expired license under Section~~  
18 ~~156.2081(b)]~~.

19 (d) A registered financial services company is subject to  
20 Subchapters D and E as if the company were licensed as a residential  
21 mortgage loan company ~~[mortgage broker]~~.

22 SECTION 30. Sections 156.301(b) and (h), Finance Code, are  
23 amended to read as follows:

24 (b) On the signed written complaint of a person, the  
25 commissioner shall investigate the actions and records of a person  
26 licensed under this chapter if the complaint, or the complaint and  
27 documentary or other evidence presented in connection with the

complaint, provides reasonable cause. The commissioner, before commencing an investigation, shall notify a residential mortgage loan company [~~mortgage broker or loan officer~~] in writing of the complaint and that the commissioner intends to investigate the matter.

(h) The commissioner may require reimbursement in an amount not to exceed \$325 for each examiner a day for on-site examination or investigation of a residential mortgage loan company [~~mortgage broker~~] if records are located out of state or if the review is considered necessary beyond the routine examination process.

SECTION 31. Section 156.302(b), Finance Code, is amended to read as follows:

(b) The amount of the penalty may not exceed \$25,000 for [~~\$2,500, and~~] each [~~day a~~] violation [~~continues or occurs is a separate violation for the purpose of imposing a penalty~~]. The amount shall be based on:

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

(2) the economic harm to property caused by the violation;

(3) the history of previous violations;

(4) [~~(3)~~] the amount necessary to deter a future violation;

(5) [~~(4)~~] efforts to correct the violation; and

(6) [~~(5)~~] any other matter that justice may require.

SECTION 32. Sections 156.303(a), (a-1), (g), and (i), Finance Code, are amended to read as follows:

(a) The commissioner may order disciplinary action against a licensed or registered residential mortgage loan company [~~mortgage broker~~] or a licensed residential mortgage loan originator [~~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 a residential mortgage loan company [~~mortgage broker~~] or residential mortgage loan originator [~~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 a residential mortgage loan company [~~mortgage broker~~] or residential mortgage loan originator [~~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

1 is convicted of, a criminal offense that is a felony or that  
2 involves fraud or moral turpitude in a court of this or another  
3 state or in a federal court;

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

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

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

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

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

24 (10) published or circulated an unjustified or  
25 unwarranted threat of legal proceedings in matters related to the  
26 person's actions or services as a residential mortgage loan company  
27 [~~mortgage broker~~] or residential mortgage loan originator [~~loan~~

1 ~~officer~~], as applicable;

2           (11) established an association, by employment or  
3 otherwise, with a person not licensed, registered, or exempt under  
4 this chapter who was expected or required to act as a residential  
5 mortgage loan company [~~mortgage broker~~] or residential mortgage  
6 loan originator [~~loan officer~~];

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

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

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

18           (15) failed or refused on demand to:

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

24                   (B) give the commissioner or the commissioner's  
25 authorized personnel or representative free access to the books or  
26 records relating to the person's business kept by an officer,  
27 agent, or employee of the person or any business entity through

1 which the person conducts residential mortgage loan origination  
2 [~~mortgage brokerage~~] activities, including a subsidiary or holding  
3 company affiliate; or

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

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

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

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

17 (a-1) The commissioner may also order disciplinary action  
18 after notice and opportunity for hearing against a licensed or  
19 registered residential mortgage loan company [~~mortgage broker~~] or a  
20 licensed residential mortgage loan originator [~~loan officer~~] if the  
21 commissioner becomes aware during the term of the license of any  
22 fact that would have been grounds for denial of an original license  
23 if the fact had been known by the commissioner on the date the  
24 license was issued.

25 (g) If a person fails to pay an administrative penalty that  
26 has become final or fails to comply with an order of the  
27 commissioner that has become final, in addition to any other remedy



1 provided under law the commissioner, on not less than 10 days'  
 2 notice to the person, may without a prior hearing suspend the  
 3 person's residential mortgage loan company [~~mortgage broker~~]  
 4 license or registration or residential mortgage loan originator  
 5 [~~loan officer~~] license. The suspension shall continue until the  
 6 person has complied with the order or paid the administrative  
 7 penalty. During the period of suspension, the person may not  
 8 originate a residential mortgage loan and all compensation received  
 9 by the person during the period of suspension is subject to  
 10 forfeiture as provided by Section 156.406(b).

11 (i) An order revoking the license or registration of a  
 12 residential mortgage loan company [~~mortgage broker~~] or the license  
 13 of a residential mortgage loan originator [~~loan officer~~] may  
 14 provide that the person is prohibited, without obtaining prior  
 15 written consent of the commissioner, from:

16 (1) engaging in the business of originating or making  
 17 residential mortgage loans;

18 (2) being an employee, officer, director, manager,  
 19 shareholder, member, agent, contractor, or processor of a  
 20 residential mortgage loan company [~~mortgage broker~~] or residential  
 21 mortgage loan originator [~~loan officer~~]; or

22 (3) otherwise affiliating with a person for the  
 23 purpose of engaging in the business of originating or making  
 24 residential mortgage loans.

25 SECTION 33. Section 156.304, Finance Code, is amended to  
 26 read as follows:

27 Sec. 156.304. FEE ASSESSMENT AND DISCLOSURE. (a) Before

the completion of all services to be performed, a residential mortgage loan originator [~~mortgage broker~~] may charge and receive, unless prohibited by law, the following fees for services in assisting a mortgage applicant to obtain a residential mortgage loan:

- (1) a fee to obtain a credit report;
- (2) a fee for the appraisal of the real estate;
- (3) a fee for processing a residential mortgage loan application;
- (4) a fee for taking a residential mortgage loan application;
- (5) a fee for automated underwriting;
- (6) a fee for a courier service;
- (7) a fee to issue a loan commitment; or
- (8) subject to Subsection (b), a fee for locking in an interest rate.

(b) A residential mortgage loan originator [~~mortgage broker or loan officer~~] may not charge or receive a fee for locking in an interest rate unless there is a written agreement signed by the mortgage applicant and residential mortgage loan originator [~~mortgage broker~~] that contains a statement of whether the fee to lock in the interest rate is refundable and, if so, the terms and conditions necessary to obtain the refund.

SECTION 34. Section 156.305, Finance Code, is amended to read as follows:

Sec. 156.305. RESTITUTION. The commissioner may order a person to make restitution for any amount received by that person in

violation of this chapter. A residential mortgage loan company  
[~~mortgage broker~~] may be required to make restitution for any  
amount received by a sponsored residential mortgage loan originator  
[~~loan officer~~] in violation of this chapter.

SECTION 35. Section 156.401, Finance Code, is amended by  
adding Subsection (e) to read as follows:

(e) The commissioner has sole discretion to amend, rescind,  
or vacate any previously issued revocation order.

SECTION 36. Section 156.405, Finance Code, is amended to  
read as follows:

Sec. 156.405. COMPLETION OF RESIDENTIAL MORTGAGE LOAN  
ORIGINATOR [~~MORTGAGE BROKER~~] SERVICES. (a) On disbursement of  
mortgage proceeds to or on behalf of the mortgage applicant, the  
residential mortgage loan originator [~~mortgage broker and loan  
officer~~] who assisted the mortgage applicant in obtaining the  
residential mortgage loan is [~~are~~] considered to have completed the  
performance of the residential mortgage loan originator's  
[~~mortgage broker's and loan officer's~~] services for the mortgage  
applicant and owes [~~owe~~] no additional duties or obligations to the  
mortgage applicant with respect to the residential mortgage loan.

(b) This section does not limit or preclude the liability of  
a residential mortgage loan originator [~~mortgage broker or loan  
officer~~] for:

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

(2) failing to comply with a provision of or duty  
arising under an agreement with a mortgage applicant or lender

1 under this chapter; or

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

3 SECTION 37. Sections 156.406(a), (b), and (d), Finance  
4 Code, are amended to read as follows:

5 (a) A person who is not exempt under this chapter and who  
6 acts as a residential mortgage loan originator [~~mortgage broker or~~  
7 ~~loan officer~~] without first obtaining a license required under this  
8 chapter commits an offense. An offense under this subsection is a  
9 Class B misdemeanor. A second or subsequent conviction for an  
10 offense under this subsection shall be punished as a Class A  
11 misdemeanor.

12 (b) A person who received money, or the equivalent of money,  
13 as a fee or profit because of or in consequence of the person acting  
14 as a residential mortgage loan originator [~~mortgage broker or loan~~  
15 ~~officer~~] without an active license or being exempt under this  
16 chapter is liable for damages in an amount that is not less than the  
17 amount of the fee or profit received and not to exceed three times  
18 the amount of the fee or profit received, as may be determined by  
19 the court. An aggrieved person may recover damages under this  
20 subsection in a court.

21 (d) If a hearing has not been requested under Subsection (c)  
22 not later than the 30th day after the date the order is made, the  
23 order is considered final and not appealable. The commissioner,  
24 after giving notice, may impose against a person who violates a  
25 cease and desist order, an administrative penalty in an amount not  
26 to exceed \$1,000 for each day of a violation. In addition to any  
27 other remedy provided by law, the commissioner may institute in

district court a suit for injunctive relief and to collect the administrative penalty. A bond is not required of the commissioner with respect to injunctive relief granted under this section. A penalty collected under this subsection shall be deposited in the recovery fund.

SECTION 38. Section 156.501, Finance Code, is amended to read as follows:

Sec. 156.501. [~~MORTGAGE BROKER~~] RECOVERY FUND. (a) The commissioner shall establish, administer, and maintain a [~~mortgage broker~~] recovery fund as provided by Section 13.016 and this subchapter. The amounts received by the commissioner for deposit in the fund shall be held by the commissioner in trust for carrying out the purposes of the fund.

(b) Subject to this subsection, the recovery fund shall be used to reimburse residential mortgage loan applicants for actual damages incurred because of acts committed by a residential mortgage loan originator [~~mortgage broker or loan officer~~] who was licensed under this chapter or under Chapter 157 when the act was committed. The use of the fund is limited to reimbursement for out-of-pocket losses caused by an act by:

(1) a residential mortgage loan originator licensed under this chapter [~~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) a residential mortgage loan originator licensed under Chapter 157 that constitutes a violation of Section 157.024(a)(2), (3), (5), (7), (8), (9), (10), (13), or (16).

(b-1) Payments from the recovery fund may not be made to a lender who makes a residential mortgage loan originated by the residential mortgage loan originator [~~mortgage broker or loan officer~~] or who acquires a residential mortgage loan originated by the residential mortgage loan originator [~~mortgage broker or loan officer~~].

(c) Amounts in the recovery fund may be invested and reinvested in the same manner as funds of the [~~Texas State~~] Employees Retirement System of Texas, and the interest from these investments shall be deposited to the credit of the fund. An investment may not be made under this subsection if the investment will impair the necessary liquidity required to satisfy judgment payments awarded under this subchapter.

(d) The recovery fund may 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 the department.

(e) Payments from the recovery fund shall be reduced by the amount of any recovery from the residential mortgage loan originator [~~mortgage broker or loan officer~~] or from any surety, insurer, or other person or entity making restitution to the applicant on behalf of the residential mortgage loan originator [~~mortgage broker or loan officer~~].

(f) The commissioner, as manager of the recovery fund, is entitled to reimbursement for reasonable and necessary costs and expenses incurred in the management of the fund, including costs

1 and expenses incurred with regard to applications filed under  
2 Section 156.504.

3 SECTION 39. Section 156.502, Finance Code, is amended to  
4 read as follows:

5 Sec. 156.502. FUNDING. (a) On an application for an  
6 original license or for renewal of a license issued under this  
7 chapter, the applicant, in addition to paying the original  
8 application fee or renewal fee, shall pay a fee in an amount  
9 determined by the commissioner, not to exceed \$20. The fee shall  
10 be deposited in the recovery fund.

11 (b) If the balance remaining in the recovery fund at the end  
12 of a calendar year is more than \$3.5 million, the amount of money in  
13 excess of that amount shall be available to the commissioner to  
14 offset the expenses of participating in and sharing information  
15 with the Nationwide Mortgage Licensing System and Registry in  
16 accordance with Chapter 180.

17 SECTION 40. Section 156.503, Finance Code, is amended to  
18 read as follows:

19 Sec. 156.503. STATUTE OF LIMITATIONS. (a) An application  
20 for the recovery of actual damages from the recovery fund under  
21 Section 156.504 may not be filed after the second anniversary of the  
22 date of the alleged act or omission causing the actual damages or  
23 the date the act or omission should reasonably have been  
24 discovered.

25 (b) This section does not apply to a subrogation claim  
26 brought by the commissioner for recovery of money paid out of the  
27 recovery fund.

SECTION 41. Sections 156.504(a), (b), and (d), Finance Code, are amended to read as follows:

(a) To recover from the recovery fund, a residential mortgage loan applicant must file a written sworn application with the commissioner in the form prescribed by the commissioner, subject to Section 156.503. A person who knowingly makes a false statement in connection with applying for money out of the fund may be subject to criminal prosecution under Section 37.10, Penal Code.

(b) The residential mortgage loan applicant is required 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 residential mortgage loan originator ~~[mortgage broker or loan officer]~~;

(B) is not a child, parent, grandchild, grandparent, or sibling, including relationships by adoption, of the licensed residential mortgage loan originator ~~[mortgage broker or loan officer]~~;

(C) is not a person sharing living quarters with the licensed residential mortgage loan originator ~~[mortgage broker or loan officer]~~ or a current or former employer, employee, or associate of the licensed residential mortgage loan originator ~~[mortgage broker or loan officer]~~;

(D) is not a person who has aided, abetted, or participated other than as a victim with the licensed residential mortgage loan originator ~~[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), ~~or~~ 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 residential mortgage loan originator ~~[mortgage broker or loan officer]~~; and

(E) is not licensed as a residential mortgage loan originator ~~[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) If the preliminary determination under Subsection (c)(2) 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. Section 156.505, Finance Code, is amended to read as follows:

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

(b) A payment from the recovery fund may be made as provided by Section 156.504 and this section. A payment for claims:

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

1 number of claimants; and

2 (2) against a single person licensed as a residential  
3 mortgage loan originator [~~mortgage broker or loan officer~~] under  
4 this chapter or Chapter 157 arising out of separate transactions,  
5 including interest, is limited in the aggregate to \$50,000 until  
6 the fund has been reimbursed for all amounts paid.

7 (c) In the event there are concurrent claims under  
8 Subsections (b)(1) and (2) that exceed the amounts available under  
9 the recovery fund, the commissioner shall prorate recovery based on  
10 the amount of damage suffered by each claimant.

11 SECTION 43. Section 156.506, Finance Code, is amended to  
12 read as follows:

13 Sec. 156.506. REVOCATION OR SUSPENSION OF LICENSE FOR  
14 PAYMENT FROM RECOVERY FUND. (a) The commissioner may revoke or  
15 suspend a license issued under this chapter on proof that the  
16 commissioner has made a payment from the recovery fund of any amount  
17 toward satisfaction of a claim against a residential mortgage loan  
18 originator [~~mortgage broker or loan officer~~] under this chapter.

19 (a-1) The commissioner may seek to collect from a  
20 residential mortgage loan originator [~~mortgage broker or loan~~  
21 ~~officer~~] the amount paid from the recovery fund on behalf of the  
22 residential mortgage loan originator [~~mortgage broker or loan~~  
23 ~~officer~~] and any costs associated with investigating and processing  
24 the claim against the fund or with collection of reimbursement for  
25 payments from the recovery fund, plus interest at the current legal  
26 rate until the amount has been repaid in full. Any amount,  
27 including interest, recovered by the commissioner shall be

1 deposited to the credit of the fund.

2 (b) The commissioner may probate an order revoking or  
3 suspending a license under this section.

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

11 (d) This section does not limit the authority of the  
12 commissioner to take disciplinary action against a residential  
13 mortgage loan originator [~~mortgage broker or loan officer~~] for a  
14 violation of this chapter or the rules adopted by the finance  
15 commission under this chapter. The repayment in full to the  
16 recovery fund of all obligations of a residential mortgage loan  
17 originator [~~mortgage broker or loan officer~~] does not nullify or  
18 modify the effect of any other disciplinary proceeding brought  
19 under this chapter.

20 SECTION 44. Sections 156.507 and 156.508, Finance Code, are  
21 amended to read as follows:

22 Sec. 156.507. SUBROGATION. When the commissioner has paid  
23 an applicant an amount from the recovery fund under Section  
24 156.504, the commissioner is subrogated to all of the rights of the  
25 applicant to the extent of the amount paid. The applicant shall  
26 assign all of the applicant's right, title, and interest in any  
27 subsequent judgment against the license holder, up to the amount

1 paid by the commissioner. Any amount, including interest,  
2 recovered by the commissioner on the assignment shall be deposited  
3 to the credit of the fund.

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

10       SECTION 45. Section 157.002, Finance Code, is amended by  
11 adding Subdivisions (4-a) and (4-b) and amending Subdivision (5) to  
12 read as follows:

13               (4-a) "Nationwide Mortgage Licensing System and  
14 Registry" has the meaning assigned by Section 180.002.

15               (4-b) "Recovery fund" means the fund established and  
16 maintained by the commissioner under Subchapter F, Chapter 156, and  
17 Section 13.016.

18               (5) "Residential mortgage loan" has the meaning  
19 assigned by Section 180.002 [~~means a debt secured by a lien on~~  
20 ~~residential real property designed principally for occupancy by one~~  
21 ~~to four families that is created by a deed of trust, security deed,~~  
22 ~~or other security instrument~~].

23       SECTION 46. Sections 157.003(b) and (e), Finance Code, are  
24 amended to read as follows:

25       (b) To register under this chapter, a mortgage banker shall  
26 enroll with the Nationwide Mortgage Licensing System and Registry  
27 and comply with all other applicable rules adopted by the finance

commission under this chapter ~~[file with the commissioner a statement that contains:~~

~~[(1) the name and address of the mortgage banker,~~

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

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

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

(e) The registration of a mortgage banker is valid on approval of the commissioner and may be denied, ~~[until]~~ withdrawn, or revoked. Registration is valid for a term not to exceed one year following the date of approval ~~[Periodic renewal of the registration is not required].~~

SECTION 47. Section 157.005, Finance Code, is amended to read as follows:

Sec. 157.005. UPDATE OF REGISTRATION ~~[STATEMENT]~~. A mortgage banker shall update information contained in the registration ~~[statement]~~ not later than the 30th day after the date the information changes.

SECTION 48. Section 157.006, Finance Code, is amended to read as follows:

Sec. 157.006. REGISTRATION AND ADMINISTRATION FEE. The commissioner may charge a mortgage banker a reasonable fee to cover the costs of ~~[filing]~~ the registration ~~[statement]~~ and of administering this chapter. The fee may not exceed \$500 a year.

SECTION 49. Chapter 157, Finance Code, is amended by adding Sections 157.0061 and 157.0062 to read as follows:

Sec. 157.0061. RENEWAL OF REGISTRATION. (a) The registration of a mortgage banker expires on December 31 of the year in which the registration is approved and must be renewed annually.

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

Sec. 157.0062. REINSTATEMENT AFTER EXPIRATION OF REGISTRATION. (a) A mortgage banker whose registration has expired may not engage in an activity for which registration is required under this chapter until the registration is renewed.

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

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

SECTION 50. Section 157.007, Finance Code, is amended to read as follows:

Sec. 157.007. DISCLOSURE STATEMENT. A mortgage banker that is a residential mortgage loan originator shall include a [the following] notice to a residential mortgage loan applicant with an application for a residential mortgage loan. The finance commission

1 by rule shall adopt a standard disclosure form to be used by the  
2 mortgage banker. [+

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

9 SECTION 51. Section 157.012, Finance Code, as added by  
10 Chapters 1104 (H.B. 10) and 1147 (H.B. 2779), Acts of the 81st  
11 Legislature, Regular Session, 2009, is reenacted and amended to  
12 read as follows:

13 Sec. 157.012. LICENSE REQUIRED FOR CERTAIN EMPLOYEES OF  
14 MORTGAGE BANKERS. (a) [~~In this section, "Nationwide Mortgage~~  
15 ~~Licensing System and Registry" and "residential mortgage loan~~  
16 ~~originator" have the meanings assigned by Section 180.002.~~

17 [~~(b)~~] An employee of a mortgage banker may not act in the  
18 capacity of a residential mortgage loan originator unless the  
19 employee:

20 (1) is licensed under this chapter, sponsored by a  
21 registered mortgage banker, and enrolled with the Nationwide  
22 Mortgage Licensing System and Registry as required by Section  
23 180.052; and

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

27 (b) [~~(c)~~] The finance commission may adopt rules under this

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

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

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

(2) not be in violation of this chapter, Chapter 180, or any rules ~~[a rule]~~ adopted under this chapter or Chapter 180; ~~[and]~~

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

(4) be a citizen of the United States or a lawfully admitted alien.

(d) A mortgage banker employee who is not a residential mortgage loan originator is not required to enroll with the Nationwide Mortgage Licensing System and Registry or be licensed under this chapter.

SECTION 52. Section 157.013(b), Finance Code, is amended to read as follows:

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



1 to exceed \$20.

2 SECTION 53. The heading to Section 157.016, Finance Code,  
3 is amended to read as follows:

4 Sec. 157.016. REINSTATEMENT [~~RENEWAL~~] AFTER EXPIRATION OF  
5 LICENSE; NOTICE.

6 SECTION 54. Section 157.019, Finance Code, is amended by  
7 adding Subsection (c) to read as follows:

8 (c) A mortgage banker employee who is a residential mortgage  
9 loan originator shall notify the commissioner or authorized  
10 designee in writing of a change of sponsorship. The notice must be  
11 accompanied by a fee of \$25.

12 SECTION 55. Section 157.020, Finance Code, is amended to  
13 read as follows:

14 Sec. 157.020. MORTGAGE [~~ANNUAL~~] CALL REPORT. (a) Each  
15 mortgage banker shall file a mortgage [~~an annual~~] call report with  
16 the commissioner or the commissioner's authorized designee on a  
17 form prescribed by the commissioner or authorized designee. The  
18 report must be filed as frequently as required by the Nationwide  
19 Mortgage Licensing System and Registry. The report is a statement  
20 of condition of the mortgage banker and the mortgage banker's  
21 operations, including financial statements and production activity  
22 volumes, and any other similar information required by the  
23 Nationwide Mortgage Licensing System and Registry.

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

1 other employee of the Department of Savings and Mortgage Lending.

2 SECTION 56. Chapter 157, Finance Code, is amended by adding  
3 Section 157.0201 to read as follows:

4 Sec. 157.0201. RECOVERY FUND. The recovery fund  
5 established, administered, and maintained under Section 13.016 and  
6 Subchapter F, Chapter 156, shall be used as provided by Subchapter  
7 F, Chapter 156, to reimburse residential mortgage loan applicants  
8 for actual damages incurred because of acts committed by  
9 residential mortgage loan originators licensed under this chapter  
10 when the act was committed.

11 SECTION 57. Sections 157.023(a) and (b), Finance Code, are  
12 amended to read as follows:

13 (a) The commissioner, after notice and opportunity for a  
14 hearing, may impose an administrative penalty on an individual who  
15 is [a person] licensed or required to be licensed under this chapter  
16 as a residential mortgage loan originator and [under this chapter]  
17 who violates this chapter or a rule or order adopted under this  
18 chapter.

19 (b) The amount of the penalty may not exceed \$25,000 for  
20 each violation [~~\$2,500, and each day a violation continues or~~  
21 ~~occurs is a separate violation for the purpose of imposing a~~  
22 ~~penalty~~]. The amount shall be based on:

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

25 (2) the economic harm to property caused by the  
26 violation;

27 (3) the history of previous violations;

1           (4) [~~(3)~~] the amount necessary to deter a future  
2 violation;

3           (5) [~~(4)~~] efforts to correct the violation; and

4           (6) [~~(5)~~] any other matter that justice may require.

5           SECTION 58. Section 157.024, Finance Code, is amended by  
6 amending Subsection (j) and adding Subsection (l) to read as  
7 follows:

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

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

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

16           (3) being an employee, officer, director, manager,  
17 shareholder, member, agent, contractor, or processor of a mortgage  
18 banker, residential mortgage loan company [~~mortgage broker~~], or  
19 residential mortgage loan originator for a residential mortgage  
20 loan company [~~mortgage broker loan officer~~].

21           (l) The commissioner has sole discretion to amend, rescind,  
22 or vacate any previously issued order under this chapter.

23           SECTION 59. Chapter 157, Finance Code, is amended by adding  
24 Section 157.0241 to read as follows:

25           Sec. 157.0241. REVOCATION OR SUSPENSION OF LICENSE FOR  
26 PAYMENT FROM RECOVERY FUND. (a) The commissioner may revoke or  
27 suspend a license issued under this chapter on proof that the

1 commissioner has made a payment from the recovery fund of any amount  
2 toward satisfaction of a claim against a residential mortgage loan  
3 originator licensed under this chapter.

4 (b) The commissioner may seek to collect from a residential  
5 mortgage loan originator the amount paid from the recovery fund on  
6 behalf of the residential mortgage loan originator and any costs  
7 associated with investigating and processing the claim against the  
8 recovery fund or with collection of reimbursement for payments from  
9 the recovery fund, plus interest at the current legal rate until the  
10 amount has been repaid in full. Any amount, including interest,  
11 recovered by the commissioner shall be deposited to the credit of  
12 the recovery fund.

13 (c) The commissioner may probate an order revoking or  
14 suspending a license under this section.

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

23 (e) This section does not limit the authority of the  
24 commissioner to take disciplinary action against a residential  
25 mortgage loan originator for a violation of this chapter or the  
26 rules adopted by the finance commission under this chapter. The  
27 repayment in full to the recovery fund of all obligations of a

residential mortgage loan originator does not nullify or modify the effect of any other disciplinary proceeding brought under this chapter.

SECTION 60. Section 180.002(19), Finance Code, is amended to read as follows:

(19) "Residential mortgage loan originator":

(A) means an individual who for compensation or gain or in the expectation of compensation or gain:

(i) takes a residential mortgage loan application; or

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

(B) does not include:

(i) an individual who performs solely administrative or clerical tasks on behalf of an individual licensed as a residential mortgage loan originator or exempt from licensure under Section 180.003, except as otherwise provided by Section 180.051;

(ii) an individual who performs only real estate brokerage activities and is licensed or registered by the state as a real estate broker or salesperson, unless the individual is compensated by:

(a) a lender[~~mortgage broker~~] or other residential mortgage loan originator; or

(b) an agent of a lender[~~mortgage broker~~] or other residential mortgage loan originator;

(iii) an individual licensed under Chapter

1201, Occupations Code, unless the individual is directly compensated for arranging financing for activities regulated under that chapter by:

(a) a lender[~~, mortgage broker,~~] or other residential mortgage loan originator; or

(b) an agent of a lender[~~, mortgage broker,~~] or other residential mortgage loan originator;

(iv) an individual who receives the same benefits from a financed transaction as the individual would receive if the transaction were a cash transaction; or

(v) an individual who is involved solely in providing extensions of credit relating to timeshare plans, as defined by 11 U.S.C. Section 101(53D).

SECTION 61. Section 180.003, Finance Code, is amended to read as follows:

Sec. 180.003. EXEMPTION. The following persons are exempt from this chapter:

(1) a registered mortgage loan originator when acting for an entity described by Section 180.002(16)(A)(i), (ii), or (iii);

(2) an individual who offers or negotiates 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:  
(A) is an exclusive agent of a registered financial services company;~~

~~(B) is exempt from regulation under Chapter 156 as provided by Section 156.202(5); and~~

~~(C) is individually enrolled as a registered mortgage loan originator with the Nationwide Mortgage Licensing System and Registry;~~

~~(5)]~~ an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence; ~~and~~

(5) [(6)] 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; and

(6) 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.

SECTION 62. Section 180.056, Finance Code, is amended by adding Subsection (h) to read as follows:

(h) An individual who fails to maintain a residential

1 mortgage loan originator license for at least five consecutive  
2 years must retake the prelicensing education requirements  
3 prescribed by the S.A.F.E. Mortgage Licensing Act.

4 SECTION 63. Section 342.051, Finance Code, is amended by  
5 adding Subsection (c-1) to read as follows:

6 (c-1) A person who is licensed or registered under Chapter  
7 156 or 157 is not required to obtain a license under this section to  
8 make, negotiate, or transact a residential mortgage loan, as  
9 defined by Section 180.002.

10 SECTION 64. (a) The following provisions of the Finance  
11 Code are repealed:

- 12 (1) Sections 156.002(4), (5), (6), (9), and (10);
- 13 (2) Section 156.2011;
- 14 (3) Section 156.2015(a);
- 15 (4) Section 156.202(b);
- 16 (5) Section 156.204;
- 17 (6) Section 156.2071;
- 18 (7) Sections 156.208(f), (g), (h), and (i);
- 19 (8) Sections 156.2081(d) and (e);
- 20 (9) Sections 156.214(e), (f), and (g);
- 21 (10) Section 156.215;
- 22 (11) Sections 157.003(b-1), (c), and (d);
- 23 (12) Section 157.009(b);
- 24 (13) Section 157.016(d); and
- 25 (14) Section 157.018.

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



1 is repealed.

2       SECTION 65. To the extent of any conflict, this Act prevails  
3 over another Act of the 82nd Legislature, Regular Session, 2011,  
4 relating to nonsubstantive additions to and corrections in enacted  
5 codes.

6       SECTION 66. This Act takes effect September 1, 2011.