

1-1 By: Carona S.B. No. 1124
1-2 (In the Senate - Filed March 3, 2011; March 16, 2011, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 March 24, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; March 24, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1124 By: Carona

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

1-10 relating to licensing and regulation of certain persons involved in
1-11 residential mortgage lending pursuant to the Texas Secure and Fair
1-12 Enforcement for Mortgage Licensing Act of 2009; providing
1-13 penalties.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Section 11.306, Finance Code, is amended to read
1-16 as follows:

1-17 Sec. 11.306. RESIDENTIAL MORTGAGE LOAN ORIGINATION
1-18 [MORTGAGE BROKER] RULES. The finance commission may adopt
1-19 residential mortgage loan origination [mortgage broker] rules as
1-20 provided by Chapter 156.

1-21 SECTION 2. Chapter 13, Finance Code, is amended by adding
1-22 Section 13.016 to read as follows:

1-23 Sec. 13.016. RECOVERY FUND. (a) The savings and mortgage
1-24 lending commissioner shall establish, administer, and maintain one
1-25 recovery fund for the purposes of Chapters 156 and 157. The
1-26 recovery fund shall be administered and maintained under Subchapter
1-27 F, Chapter 156.

1-28 (b) The savings and mortgage lending commissioner's
1-29 authority under this section includes the authority to:

1-30 (1) set fee amounts under Chapters 156 and 157 for
1-31 deposit in the recovery fund; and

1-32 (2) enforce disciplinary action as provided by
1-33 Chapters 156 and 157 for a person's failure to comply with the
1-34 applicable provisions of those chapters relating to the recovery
1-35 fund and with applicable rules adopted under those chapters.

1-36 SECTION 3. The heading to Chapter 156, Finance Code, is
1-37 amended to read as follows:

1-38 CHAPTER 156. RESIDENTIAL MORTGAGE LOAN COMPANIES AND RESIDENTIAL
1-39 MORTGAGE LOAN ORIGINATORS [MORTGAGE BROKERS]

1-40 SECTION 4. Section 156.001, Finance Code, is amended to
1-41 read as follows:

1-42 Sec. 156.001. SHORT TITLE. This chapter may be cited as the
1-43 Residential Mortgage Loan Company and Residential Mortgage Loan
1-44 Originator Licensing and Registration [Mortgage Broker License]
1-45 Act.

1-46 SECTION 5. Section 156.002, Finance Code, is amended by
1-47 amending Subdivisions (1), (2), (7), and (8) and adding
1-48 Subdivisions (1-a), (1-b), (1-c), (4-a), (6-a), (8-a), (10-a),
1-49 (10-b), (10-c), (12), (13), (14), and (15) to read as follows:

1-50 (1) "Auxiliary mortgage loan activity company" means a
1-51 political subdivision of this state or the federal government doing
1-52 business for consumers in this state, or an organization that
1-53 qualifies for an exemption from state franchise and sales and use
1-54 tax as a 501(c)(3) organization, that is involved in affordable
1-55 home ownership lending programs.

1-56 (1-a) "Commissioner" means the savings and mortgage
1-57 lending commissioner.

1-58 (1-b) "Credit union subsidiary organization" has the
1-59 meaning assigned by Section 180.002.

1-60 (1-c) "Department" means the Department of Savings and
1-61 Mortgage Lending.

1-62 (2) "Disciplinary action" means an order by the
1-63 commissioner that requires one or more of the following:

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

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

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

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

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

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

(7) "Mortgage applicant" means:

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

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

(8) "Mortgage banker" has the meaning assigned by Section 157.002 [means a person who is:

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

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

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

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

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

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

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

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

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

(13) "Residential mortgage loan company" means a person, other than an individual, that engages in the business of residential mortgage loan origination on residential real estate located in this state. The term includes a credit union subsidiary organization, auxiliary mortgage loan activity company, mortgage company, independent contractor loan processor or underwriter company, and financial services company.

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

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

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

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

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

3-1 Sec. 156.004. DISCLOSURE TO APPLICANT. (a) At the time an
 3-2 applicant submits an application to a residential mortgage loan
 3-3 originator [~~mortgage broker~~], the residential mortgage loan
 3-4 originator [~~mortgage broker~~] shall provide to the applicant a
 3-5 disclosure that specifies:

3-6 (1) the nature of the relationship between the
 3-7 applicant and the residential mortgage loan originator;

3-8 (2) [~~broker,~~] the duties the residential mortgage loan
 3-9 originator [~~broker~~] has to the applicant; [~~7~~] and

3-10 (3) how the residential mortgage loan originator
 3-11 [~~mortgage broker~~] will be compensated.

3-12 (b) The finance commission, by rule, shall adopt
 3-13 [~~promulgate~~] a standard disclosure form to be used by the
 3-14 residential mortgage loan originator [~~mortgage broker~~].

3-15 SECTION 8. Section 156.005, Finance Code, is amended to
 3-16 read as follows:

3-17 Sec. 156.005. AFFILIATED BUSINESS ARRANGEMENTS. Unless
 3-18 prohibited by federal or state law, this chapter may not be
 3-19 construed to prevent affiliated or controlled business
 3-20 arrangements or loan origination services by or between residential
 3-21 mortgage loan originators [~~mortgage brokers~~] and other
 3-22 professionals if the residential mortgage loan originator
 3-23 [~~mortgage broker~~] complies with all applicable federal and state
 3-24 laws permitting those arrangements or services.

3-25 SECTION 9. Subsections (b) and (b-1), Section 156.102,
 3-26 Finance Code, are amended to read as follows:

3-27 (b) The finance commission may adopt rules to prohibit
 3-28 false, misleading, or deceptive practices by residential mortgage
 3-29 loan originators [~~mortgage brokers and loan officers~~] but may not
 3-30 adopt any other rules restricting competitive bidding or
 3-31 advertising by residential mortgage loan originators [~~mortgage~~
 3-32 ~~brokers or loan officers~~]. When adopting rules under this
 3-33 subsection, the finance commission may not restrict:

3-34 (1) the use of any medium for an advertisement;

3-35 (2) the personal appearance of or voice of a person in
 3-36 an advertisement;

3-37 (3) the size or duration of an advertisement; or

3-38 (4) a residential mortgage loan originator's [~~mortgage~~
 3-39 ~~broker's or loan officer's~~] advertisement under a trade name.

3-40 (b-1) The finance commission on the commissioner's
 3-41 recommendation may adopt rules to promote a fair and orderly
 3-42 administration of the recovery fund consistent with the purposes of
 3-43 Subchapter F.

3-44 SECTION 10. Subsections (b-1) and (h), Section 156.104,
 3-45 Finance Code, are amended to read as follows:

3-46 (b-1) The members of the committee must include six [~~+~~
 3-47 [~~(1) three~~] individuals licensed by the department as
 3-48 residential mortgage loan originators [~~under this chapter~~], two
 3-49 [~~one~~] of whom must hold an active real estate broker or salesperson
 3-50 license issued under Chapter 1101, Occupations Code[, and

3-51 [~~(2) three individuals licensed as residential~~
 3-52 ~~mortgage loan originators under Chapter 157, one of whom must hold~~
 3-53 ~~an active real estate broker or salesperson license issued under~~
 3-54 ~~Chapter 1101, Occupations Code].~~

3-55 (h) In addition to other powers and duties delegated to the
 3-56 advisory committee [~~it~~] by the commissioner, the advisory committee
 3-57 shall advise the commissioner with respect to:

3-58 (1) the proposal and adoption of rules relating to:

3-59 (A) the licensing of residential mortgage loan
 3-60 originators or residential mortgage loan companies [~~mortgage~~
 3-61 ~~brokers and loan officers~~];

3-62 (B) the education and experience requirements
 3-63 for licensing residential mortgage loan originators [~~mortgage~~
 3-64 ~~brokers and loan officers~~]; and

3-65 (C) the conduct and ethics of residential
 3-66 mortgage loan originators [~~mortgage brokers and loan officers~~];

3-67 (2) the form of or format for any applications or other
 3-68 documents under this chapter; and

3-69 (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 in the capacity of, engage in the business of, or advertise or hold that person out as engaging in or conducting the business of a residential mortgage loan company [~~mortgage broker~~] in this state unless the person holds an active residential mortgage loan company [~~mortgage broker~~] license, is registered under Section 156.214, or is exempt under Section 156.202.

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

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

(2) exempt under Section 156.202.

(b-1) Unless exempt under Section 180.003(b), an exclusive agent of a registered financial services company may not act or attempt to act as a residential mortgage loan originator unless the exclusive agent at the time is licensed under this chapter and sponsored by a registered financial services company and is acting for the company.

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

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

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

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

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

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

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

(A) a depository institution;
(B) a subsidiary of a depository institution that

is:
(i) owned and controlled by the depository institution; and
(ii) regulated by a federal banking agency;

5-1 or
 5-2 (C) an institution regulated by the Farm Credit
 5-3 Administration;
 5-4 (2) an individual who offers or negotiates the terms
 5-5 of a residential mortgage loan with or on behalf of an immediate
 5-6 family member of the individual;
 5-7 (3) a licensed attorney who negotiates the terms of a
 5-8 residential mortgage loan on behalf of a client as an ancillary
 5-9 matter to the attorney's representation of the client, unless the
 5-10 attorney:
 5-11 (A) takes a residential mortgage loan
 5-12 application; and
 5-13 (B) offers or negotiates the terms of a
 5-14 residential mortgage loan;
 5-15 (4) an individual who offers or negotiates terms of a
 5-16 residential mortgage loan secured by a dwelling that serves as the
 5-17 individual's residence;
 5-18 (5) a nonprofit organization providing self-help
 5-19 housing that originates zero interest residential mortgage loans
 5-20 for borrowers who have provided part of the labor to construct the
 5-21 dwelling securing the loan;
 5-22 (6) a mortgage banker registered under Chapter 157;
 5-23 (7) any owner of residential real estate who in any
 5-24 12-consecutive-month period makes no more than five residential
 5-25 mortgage loans to purchasers of the property for all or part of the
 5-26 purchase price of the residential real estate against which the
 5-27 mortgage is secured;
 5-28 (8) an entity that is:
 5-29 (A) a depository institution;
 5-30 (B) a subsidiary of a depository institution that
 5-31 is:
 5-32 (i) owned and controlled by the depository
 5-33 institution; and
 5-34 (ii) regulated by a federal banking agency;
 5-35 or
 5-36 (C) an institution regulated by the Farm Credit
 5-37 Administration; and
 5-38 (9) an individual who is exempt as provided by Section
 5-39 180.003(b) [any of the following entities or an employee of any of
 5-40 the following entities provided the employee is acting for the
 5-41 benefit of the employer:
 5-42 [(A) a bank, savings bank, or savings and loan
 5-43 association, or a subsidiary or an affiliate of a bank, savings
 5-44 bank, or savings and loan association;
 5-45 [(B) a state or federal credit union, or a
 5-46 subsidiary, affiliate, or credit union service organization of a
 5-47 state or federal credit union;
 5-48 [(C) an insurance company licensed or authorized
 5-49 to do business in this state under the Insurance Code;
 5-50 [(D) a mortgage banker registered under Chapter
 5-51 157;
 5-52 [(E) an organization that qualifies for an
 5-53 exemption from state franchise and sales tax as a 501(c)(3)
 5-54 organization;
 5-55 [(F) a Farm Credit System institution; or
 5-56 [(G) a political subdivision of this state
 5-57 involved in affordable home ownership programs;
 5-58 [(2) an individual who makes a mortgage loan from the
 5-59 individual's own funds to a spouse, former spouse, or persons in the
 5-60 lineal line of consanguinity of the individual lending the money;
 5-61 [(3) an owner of real property who in any
 5-62 12-consecutive-month period makes no more than five mortgage loans
 5-63 to purchasers of the property for all or part of the purchase price
 5-64 of the real estate against which the mortgage is secured;
 5-65 [(4) an individual who:
 5-66 [(A) makes a mortgage loan from the individual's
 5-67 own funds;
 5-68 [(B) is not an authorized lender under Chapter
 5-69 342, 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 mortgage loan activity 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;
- (4) submit a completed branch application through the Nationwide Mortgage Licensing System and Registry for each branch office that engages in residential mortgage loan activity on residential real estate located in this state;
- (5) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant;
- (6) have the company name or assumed name properly filed with either the secretary of state or with the appropriate county clerk's office;
- (7) maintain a physical office in this state; and
- (8) provide financial statements and any other

information required by the commissioner.

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

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

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

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

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

(5) demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as 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. 156.2042. QUALIFICATIONS AND REQUIREMENTS FOR LICENSES: CREDIT UNION SUBSIDIARY ORGANIZATION AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS. (a) To be issued a credit union subsidiary organization 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 organization 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;

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

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

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

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

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

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

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

(5) demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as 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 loan activity residential mortgage loan originator, an individual must submit a completed application through the Nationwide Mortgage Licensing System and Registry together with the payment of applicable fees and must establish to the satisfaction of the commissioner that the applicant:

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

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

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

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

(5) demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as 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. 156.2044. QUALIFICATIONS AND REQUIREMENTS FOR LICENSES: INDEPENDENT CONTRACTOR LOAN PROCESSOR OR UNDERWRITER COMPANY AND INDIVIDUAL LOAN PROCESSORS OR UNDERWRITERS. (a) To be issued an independent contractor loan processor or underwriter company license under this chapter, 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) An independent contractor loan processor or underwriter company is not authorized to originate residential mortgage loans with a license issued under Subsection (a).

(c) To be issued a license to act as an independent contractor loan processor or underwriter, an individual must submit a completed application through the Nationwide Mortgage Licensing System and Registry together with the payment of applicable fees and must establish to the satisfaction of the commissioner that the applicant:

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

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

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

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

(5) demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as 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. 156.2045. QUALIFICATIONS AND REQUIREMENTS FOR REGISTRATION AND LICENSE: FINANCIAL SERVICES COMPANY AND EXCLUSIVE AGENTS. (a) To be issued a financial services company registration under Section 156.214(c), an applicant must:

(1) obtain preapproval from the commissioner that the company meets the eligibility requirements for registration as a financial services company under Section 156.214(b);

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

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

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

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

(b) To be issued a license to act as a financial services company exclusive agent, an individual must submit a completed application through the Nationwide Mortgage Licensing System and Registry and must establish to the satisfaction of the commissioner that the applicant:

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

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

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

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

(5) demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as 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 supervision, including deferred adjudication or community service; or

(3) the court deferred final disposition of the person's case.

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

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

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

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

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

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

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

(b) The commissioner shall conduct criminal background and credit history checks in accordance with Section 180.054, and, in connection with each application for a residential mortgage loan originator license or other individual license, the commissioner may conduct a criminal background check through the Department of Public Safety [obtain criminal history record information on an applicant that is maintained by the Department of Public Safety and shall obtain criminal history record information from the Federal Bureau of Investigation on each applicant. Each applicant must submit with the application fingerprint and other information necessary to implement this section. The commissioner may submit the fingerprint and other information to the Federal Bureau of Investigation, and the Department of Public Safety is designated to be the recipient of the criminal history record information. The commissioner may also obtain criminal history record information from any court or any local, state, or national governmental agency].

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

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

(2) the commissioner releases the information:

(A) under order from a court;

(B) with the permission of the applicant;

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

(D) to a governmental agency.

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

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

SECTION 21. Subsections (a) and (b), Section 156.207, Finance Code, are amended to read as follows:

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

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

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

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

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

(2) has not shown a pattern or practice of abusive mortgage activity and has no civil judgments or liens that, in the commissioner's opinion, directly impact the ability of the residential mortgage loan company to conduct business while safeguarding and protecting the public interest ~~[has not been convicted of a criminal offense the commissioner determines is directly related to the occupation of a mortgage broker as provided by Chapter 53, Occupations Code; and~~

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

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

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

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

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

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

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

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

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

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

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

(4) the residential mortgage loan originator ~~[mortgage broker or loan officer]~~ is in default on a student loan administered by the Texas Guaranteed Student Loan Corporation, pursuant to Section 57.491, 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. Subsections (b) and (c), Section 156.2081, 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. Subsections (a), (b), (b-1), (b-2), and (b-3), Section 156.211, Finance Code, are amended to read as follows:

(a) Before the 10th day preceding the effective date of an address change, a residential mortgage loan company ~~[mortgage broker]~~ shall notify the commissioner in writing of the new address accompanied by a change of address fee of \$25. ~~[A new license certificate must be obtained before the mortgage broker may conduct business at the new location.]~~

(b) ~~[A loan officer may act only for the mortgage broker sponsoring the loan officer. A loan officer may be sponsored by only one mortgage broker at a time.]~~ When the sponsorship of a residential mortgage loan originator ~~[loan officer]~~ is terminated, the residential mortgage loan originator ~~[loan officer]~~ and the residential mortgage loan company ~~[mortgage broker]~~ shall immediately notify the commissioner ~~[and the mortgage broker shall return the loan officer license to the commissioner]~~. The residential mortgage loan originator's ~~[loan officer's]~~ license then becomes inactive. The residential mortgage loan originator ~~[loan officer]~~ license may be activated if, before the license expires, a residential mortgage loan company ~~[mortgage broker]~~ files a request, accompanied by a \$25 fee, notifying the commissioner that the residential mortgage loan company ~~[mortgage broker]~~ will sponsor the residential mortgage loan originator ~~[loan officer]~~

~~officer]~~ and will assume responsibility for the actions of the residential mortgage loan originator ~~[loan officer]~~.

(b-1) Not later than the 10th day before a residential mortgage loan company ~~[mortgage broker]~~ begins doing business under an assumed name, the residential mortgage loan company ~~[mortgage broker]~~ shall file with the commissioner a copy of an assumed name certificate for each assumed name under which the residential mortgage loan company ~~[mortgage broker]~~ intends to conduct business and pay a \$25 registration fee for each assumed name. A residential mortgage loan originator ~~[loan officer]~~ may not conduct business under any assumed name that is not the registered assumed name of the sponsoring residential mortgage loan company ~~[mortgage broker]~~.

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

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

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

Sec. 156.212. MAINTENANCE AND LOCATION OF OFFICES.

(a) Each residential mortgage loan company ~~[mortgage broker]~~ licensed under this chapter shall maintain a physical office in this state.

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

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

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

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

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

SECTION 29. Subsections (a) through (d), Section 156.214, Finance Code, are amended to read as follows:

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

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

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

(2) provide the commissioner with satisfactory evidence of an undertaking of accountability in a form acceptable to the commissioner, supported by a surety bond equal to \$1 million to cover the person's responsibility for 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 in this state, \$250,000;

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

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

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

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

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

SECTION 30. Subsections (b) and (h), Section 156.301,

Finance Code, are amended to read as follows:

(b) On the signed written complaint of a person, the commissioner shall investigate the actions and records of a person licensed under this chapter if the complaint, or the complaint and 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. Subsection (b), Section 156.302, 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. Subsections (a), (a-1), (g), and (i), Section 156.303, 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 is convicted of, a criminal offense that is a felony or that involves fraud or moral turpitude in a court of this or another state or in a federal court;

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

(6) charged or received, directly or indirectly, a fee for assisting a mortgage applicant in obtaining a residential mortgage loan before all of the services that the person agreed to perform for the mortgage applicant are completed, and the proceeds

of the residential mortgage loan have been disbursed to or on behalf of the mortgage applicant, except as provided by Section 156.304;

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

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

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

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

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

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

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

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

(15) failed or refused on demand to:

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

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

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

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

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

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

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

(g) If a person fails to pay an administrative penalty that

has become final or fails to comply with an order of the commissioner that has become final, in addition to any other remedy provided under law the commissioner, on not less than 10 days' notice to the person, may without a prior hearing suspend the person's residential mortgage loan company [~~mortgage broker~~] license or registration or residential mortgage loan originator [~~loan officer~~] license. The suspension shall continue until the person has complied with the order or paid the administrative penalty. During the period of suspension, the person may not originate a residential mortgage loan and all compensation received by the person during the period of suspension is subject to forfeiture as provided by Section 156.406(b).

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

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

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

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

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

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 may, in the commissioner's discretion, 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 under this chapter; or

(3) violating any other state or federal law.

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

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

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

(d) If a hearing has not been requested under Subsection (c) not later than the 30th day after the date the order is made, the order is considered final and not appealable. The commissioner, after giving notice, may impose against a person who violates a cease and desist order, an administrative penalty in an amount not to exceed \$1,000 for each day of a violation. In addition to any other remedy provided by law, the commissioner may institute in district court a suit for injunctive relief and to collect the administrative penalty. A bond is not required of the commissioner with respect to injunctive relief granted under this section. 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 and expenses incurred with regard to applications filed under Section 156.504.

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

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

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

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

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

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

SECTION 41. Subsections (a), (b), and (d), Section 156.504, 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 number of claimants; and

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

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

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

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

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

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

(c) A person on whose behalf payment was made from the

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

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

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

Sec. 156.507. SUBROGATION. When the commissioner has paid an applicant an amount from the recovery fund under Section 156.504, the commissioner is subrogated to all of the rights of the applicant to the extent of the amount paid. The applicant shall assign all of the applicant's right, title, and interest in any subsequent judgment against the license holder, up to the amount paid by the commissioner. Any amount, including interest, recovered by the commissioner on the assignment shall be deposited to the credit of the fund.

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

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

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

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

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

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

(b) To register under this chapter, a mortgage banker shall:
(1) enroll with the Nationwide Mortgage Licensing System and Registry;

(2) be in good standing with the secretary of state;
(3) have a valid federal employer identification number;

(4) meet the qualification requirements for a mortgage banker; and

(5) provide to the commissioner a list of any offices that are separate and distinct from the primary office identified on the mortgage banker registration and that conduct residential mortgage loan business relating to this state, regardless of whether the offices are located in this state ~~[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 if the commissioner determines the mortgage banker does not meet the requirements of Subsection (b). If registration is denied, the mortgage banker may appeal the determination in the same manner as an applicant for a residential mortgage loan originator license may appeal a denial of issuance of a license under Section 157.017.

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

(g) The registration may be ~~[until]~~ withdrawn or revoked. ~~[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 by rule shall adopt a standard disclosure form to be used by the mortgage banker. The form must:

(1) include the name, address, and toll-free telephone number for the Department of Savings and Mortgage Lending;

(2) contain information on how to file a complaint or recovery fund claim; and

(3) prescribe a method for proof of delivery to the consumer. ~~[+]~~

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

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

23-1 Sec. 157.012. LICENSE REQUIRED FOR CERTAIN EMPLOYEES OF
 23-2 MORTGAGE BANKERS. (a) ~~[In this section, "Nationwide Mortgage~~
 23-3 ~~Licensing System and Registry" and "residential mortgage loan~~
 23-4 ~~originator" have the meanings assigned by Section 180.002.~~

23-5 ~~[(b)]~~ An employee of a mortgage banker may not act in the
 23-6 capacity of a residential mortgage loan originator unless the
 23-7 employee:

23-8 (1) is licensed under this chapter, sponsored by a
 23-9 registered mortgage banker, and enrolled with the Nationwide
 23-10 Mortgage Licensing System and Registry as required by Section
 23-11 180.052; and

23-12 (2) complies with other applicable requirements of
 23-13 Chapter 180 and rules adopted by the finance commission under that
 23-14 chapter.

23-15 (b) ~~[(c)]~~ The finance commission may adopt rules under this
 23-16 chapter as required to carry out the intentions of the federal
 23-17 Secure and Fair Enforcement for Mortgage Licensing Act of 2008
 23-18 (Pub. L. No. 110-289).

23-19 (c) ~~[(d)]~~ To be eligible to be licensed as a residential
 23-20 mortgage loan originator, an employee of a mortgage banker, in
 23-21 addition to the requirements of Subsection (a) ~~[(b)]~~, must:

23-22 (1) satisfy the commissioner as to the employee's good
 23-23 moral character, including the employee's honesty,
 23-24 trustworthiness, and integrity;

23-25 (2) not be in violation of this chapter, Chapter 180,
 23-26 or any rules [a rule] adopted under this chapter or Chapter 180;
 23-27 [and]

23-28 (3) provide the commissioner with satisfactory
 23-29 evidence that the employee meets the qualifications provided by
 23-30 Chapter 180; and

23-31 (4) be a citizen of the United States or a lawfully
 23-32 admitted alien.

23-33 (d) A mortgage banker employee who is not a residential
 23-34 mortgage loan originator is not required to enroll with the
 23-35 Nationwide Mortgage Licensing System and Registry or be licensed
 23-36 under this chapter.

23-37 SECTION 52. Subsection (b), Section 157.013, Finance Code,
 23-38 is amended to read as follows:

23-39 (b) An application for a residential mortgage loan
 23-40 originator license must be accompanied by an application fee in an
 23-41 amount determined by the commissioner, not to exceed \$500, and by a
 23-42 recovery fund fee in an amount determined by the commissioner, not
 23-43 to exceed \$20.

23-44 SECTION 53. The heading to Section 157.016, Finance Code,
 23-45 is amended to read as follows:

23-46 Sec. 157.016. REINSTATEMENT ~~[RENEWAL]~~ AFTER EXPIRATION OF
 23-47 LICENSE; NOTICE.

23-48 SECTION 54. Section 157.019, Finance Code, is amended by
 23-49 adding Subsection (c) to read as follows:

23-50 (c) A mortgage banker employee who is a residential mortgage
 23-51 loan originator shall notify the commissioner or authorized
 23-52 designee in writing of a change of sponsorship. The notice must be
 23-53 accompanied by a fee of \$25.

23-54 SECTION 55. Section 157.020, Finance Code, is amended to
 23-55 read as follows:

23-56 Sec. 157.020. MORTGAGE ~~[ANNUAL]~~ CALL REPORT. (a) Each
 23-57 mortgage banker shall file a mortgage ~~[an annual]~~ call report with
 23-58 the commissioner or the commissioner's authorized designee on a
 23-59 form prescribed by the commissioner or authorized designee. The
 23-60 report must be filed as frequently as required by the Nationwide
 23-61 Mortgage Licensing System and Registry. The report is a statement
 23-62 of condition of the mortgage banker and the mortgage banker's
 23-63 operations, including financial statements and production activity
 23-64 volumes, and any other similar information required by the
 23-65 Nationwide Mortgage Licensing System and Registry.

23-66 (b) The information contained in the mortgage call report
 23-67 related to residential mortgage loan origination volume or other
 23-68 trade information is confidential and may not be disclosed by the
 23-69 commissioner, the commissioner's ~~[or]~~ authorized designee, or any

other employee of the Department of Savings and Mortgage Lending.

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

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

SECTION 57. Subsections (a) and (b), Section 157.023, Finance Code, are amended to read as follows:

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

(b) The amount of the penalty may not exceed \$25,000 for each violation ~~[\$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 58. Section 157.024, Finance Code, is amended by amending Subsection (j) and adding Subsection (l) to read as follows:

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

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

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

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

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

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

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

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

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

(d) A person on whose behalf payment was made from the

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

(e) This section does not limit the authority of the commissioner to take disciplinary action against a residential mortgage loan originator for a violation of this chapter or the rules adopted by the finance commission under this chapter. The 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. Subdivision (19), Section 180.002, 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. (a) 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;

(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; and

(7) an owner of a dwelling who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the dwelling against which the mortgage or security interest is secured.

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

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

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

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

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

SECTION 63. Chapter 180, Finance Code, is amended by adding Subchapter D-1 to read as follows:

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

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

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

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

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

(b) Before conducting business in this state with respect to a residential mortgage loan, an individual to whom this section applies must enroll as a financial exclusive agent with the Department of Savings and Mortgage Lending until the time any registration with the Nationwide Mortgage License System and

Registry is required for the individual by federal law or regulation and a suitable category is created for that registration with that nationwide registry.

(c) An enrollment under this section must be renewed annually.

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

SECTION 64. Section 342.051, Finance Code, is amended by adding Subsection (c-1) to read as follows:

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

SECTION 65. (a) The following provisions of the Finance Code are repealed:

(1) Subdivisions (4), (5), (6), (9), and (10), Section 156.002;

(2) Section 156.2011;

(3) Subsection (a), Section 156.2015;

(4) Subsection (b), Section 156.202;

(5) Section 156.204;

(6) Section 156.2071;

(7) Subsections (f), (g), (h), and (i), Section 156.208;

(8) Subsections (d) and (e), Section 156.2081;

(9) Subsections (e), (f), and (g), Section 156.214;

(10) Section 156.215;

(11) Subsections (b-1), (c), and (d), Section 157.003;

(12) Subsection (b), Section 157.009;

(13) Subsection (d), Section 157.016;

(14) Section 157.018; and

(15) Subsection (f), Section 342.051.

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

SECTION 66. The provisions of this Act or the applications of those provisions are severable as provided by Subsection (c), Section 311.032, Government Code. If the secretary of the United States Department of Housing and Urban Development or the director of the federal Bureau of Consumer Financial Protection by final administrative decision determines that any provision of this Act or application of this Act to any person or circumstance is considered to be inconsistent with or in conflict with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289), or any rules or regulations adopted under that federal Act, that provision of this Act shall be held invalid; however, the remainder of this Act or the application of the provision to other persons or circumstances is not affected.

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

SECTION 68. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2011.

(b) Section 180.171, Finance Code, as added by this Act, takes effect November 1, 2011.

* * * * *