

BILL ANALYSIS

Senate Research Center

S.B. 1004
By: Carona
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2008, following the United States housing crisis, Congress passed the Secure and Fair Enforcement for Mortgage Licensing ACT (SAFE Act). The SAFE Act was meant to regulate the mortgage industry by requiring states to license mortgage originators, who are individuals who for compensation or gain, take a residential mortgage loan application or offer or negotiate the terms of a residential mortgage loan. The Texas version of the SAFE Act passed in 2009 and seeks to ensure adequate consumer protection in the residential mortgage lending industry.

Residential mortgage loan originators who are employed by mortgage bankers are licensed under Chapter 157 (Registration of Mortgage Bankers), Finance Code, and residential mortgage loan originators employed by a mortgage company are governed by Chapter 156 (Residential Mortgage Loan Companies), Finance Code. Together, Chapters 156 and 157 of the Finance Code contain six individual types of licenses. Each of these licenses require the same set of qualifications; however, an originator licensed under Chapter 156 must get a separate license to be qualified under Chapter 157 and vice versa. This licensing structure is inefficient and overly complex for the entity, the individual obtaining the origination license, and the Texas Department of Savings and Mortgage Lending (SML), which oversees the whole process.

There are several other areas in the Finance Code that require modification and updates including mortgage banker registration, examination authority for credit union subsidiary organizations, and participation in multistate examinations as scheduled by the Consumer Financial Protection Bureau (CFPB).

S.B. 1004 simplifies the mortgage originator licensing process by creating one license type for mortgage origination which will enable a qualified individual to originate for a mortgage company or a mortgage banker, so long as the individual meets the statutory licensure requirements. This does not include individuals sponsored by an independent loan contractor processor or underwriter as the job functions of both professions differ from mortgage originators, and therefore require separate licensure. S.B. 1004 also gives the SML commissioner the authority to revoke the registration or license of a mortgage banker if the mortgage banker's credentials have been revoked in another state; however, this revocation is subject to appeal.

S.B. 1004 also adds statute to the Finance Code enabling the SML commissioner to participate in multistate examinations as scheduled by the CFPB, which will ensure that the industry is in compliance with Texas's laws. At the request of the Credit Union Department (CUD), S.B. 1004 additionally transitions examination authority for credit union subsidiary organizations from CUD to SML. Finally, S.B. 1004 makes other technical changes to clean-up and clarify sections of the Finance Code.

S.B. 1004 amends current law relating to the regulation of residential mortgage loan originators, residential mortgage loan companies, mortgage bankers, and residential mortgage loan servicers under the jurisdiction of the Department of Savings and Mortgage Lending and changes a fee.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Finance Commission of Texas (finance commission) is modified in SECTION 9 (Section 156.102, Finance Code), SECTION 11

(Section 156.105, Finance Code), SECTION 29 (Section 156.209, Finance Code), SECTION 33 (Section 156.301, Finance Code), SECTION 45 (Section 156.506, Finance Code), and SECTION 66 (Section 157.017, Finance Code) of this bill.

Rulemaking authority is expressly granted to the finance commission in SECTION 63 (Section 157.0141, Finance Code), SECTION 70 (Sections 157.02012 and 157.02015, Finance Code), SECTION 72 (Section 157.021, Finance Code), and SECTION 85 (Section 180.056, Finance Code) of this bill.

Rulemaking authority previously granted to the Credit Union Commission is rescinded in SECTION 87 (Section 15.4024, Finance Code) of this bill.

Rulemaking authority previously granted to the finance commission is rescinded in SECTION 87 (Sections 15.4024, 156.2015, 156.102, and 156.207 Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 156, Finance Code, to read as follows:

CHAPTER 156. RESIDENTIAL MORTGAGE LOAN COMPANIES

SECTION 2. Amends Section 156.001, Finance Code, to authorize that this chapter be cited as the Residential Mortgage Loan Company Licensing and Registration Act, rather than the Residential Mortgage Loan Company and Residential Mortgage Loan Originator Licensing and Registration Act.

SECTION 3. Amends Section 156.002, Finance Code, by adding Subdivision (4-b) to define "inspection" and amending Subdivision (10-b) to redefine "qualifying individual" and Subdivision (11) to redefine "registered financial services company."

SECTION 4. Amends Section 156.003, Finance Code, to provide that this chapter does not prohibit a residential mortgage loan originator sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter 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 5. Amends Section 156.004(a), Finance Code, to require the residential mortgage loan originator, at the time an applicant submits an application to a residential mortgage loan originator sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter, to provide to the applicant a disclosure that specifies certain information.

SECTION 6. Amends Section 156.005, Finance Code, to prohibit this chapter, unless prohibited by federal or state law, from being construed to prevent affiliated or controlled business arrangements or loan origination services by or between residential mortgage loan originators, sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter, and other professionals if the residential mortgage loan originator complies with all applicable federal and state laws permitting those arrangements or services.

SECTION 7. Amends the heading to Section 156.101, Finance Code, to read as follows:

Sec. 156.101. ADMINISTRATION AND ENFORCEMENT OF CHAPTER; PARTICIPATION IN NATIONWIDE REGISTRY.

SECTION 8. Reenacts Section 156.101(a), Finance Code, as amended by Chapters 1104 (H.B. 10) and 1317 (H.B. 2774), Acts of the 81st Legislature, Regular Session, 2009, and amends it to require the savings and mortgage lending commissioner (commissioner) to administer and enforce this chapter, rather than requiring the commissioner, except as provided by Subsection (a-2) (relating to the responsibility of the credit union commissioner for certain examination,

inspection, or investigation and certain enforcement of compliance) to administer and enforce this chapter.

SECTION 9. Amends Section 156.102(a), Finance Code, to authorize the Finance Commission of Texas (finance commission) to adopt and enforce rules necessary for the intent of or to ensure compliance with this chapter, rather than authorizing the finance commissioner to adopt and enforce rules necessary for the intent of or to ensure compliance with this chapter, except as provided by Section 15.4024 (Rules Relating to Certain Employees of Credit Union Subsidiary Organizations) with respect to employees of credit union subsidiary organizations subject to regulation under Section 156.2015 (Residential Mortgage Loan Origination Activities).

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

(f) Authorizes the commissioner to remove a member of the mortgage industry advisory committee (advisory committee) if the member does not maintain the qualifications required by Subsection (b) (relating to who the advisory committee is made up of and the criteria they must fulfill), rather than if the member does not have at the time of appointment the qualifications required by Subsection (b).

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

- (1) the proposal and adoption of rules relating to the mortgage industry;
- (2) the form of or format for any applications or other documents under this chapter or Chapter 157 (Registration of Mortgage Bankers); and
- (3) the interpretation, implementation, and enforcement of this chapter and Chapter 157.

Deletes text of existing Subdivision (1) requiring the advisory committee to advise the commissioner with respect to the proposal and adoption of rules relating to the licensing of residential mortgage loan originators, the education and experience requirements for licensing residential mortgage loan originators, and the conduct and ethics of residential mortgage loan originators.

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

Sec. 156.105. STANDARD FORMS. (a) Requires the finance commission by rule to adopt one or more standard forms for use by a residential mortgage loan originator sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter in representing that an applicant for a residential mortgage loan is preapproved or has prequalified for the loan.

(b) Requires the finance commission to adopt rules requiring a residential mortgage loan originator licensed under Chapter 157, rather than under this chapter, to use the forms adopted by the finance commission under Subsection (a).

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

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

SECTION 13. Amends Sections 156.201(a) and (c), Finance Code, as follows:

(a) Prohibits a person from acting in the capacity of, engaging in the business of, or advertising or holding that person out as engaging in or conducting the business of a residential mortgage loan company in this state unless the person holds an active

residential mortgage loan company license, is registered under Section 156.2012, rather than Section 156.214, or is exempt under Section 156.202 (Exemptions).

(c) Provides that each residential mortgage loan company and the company's qualifying individual licensed under Chapter 157, rather than this chapter, is responsible to the commissioner and members of the public for any act or conduct performed by the residential mortgage loan originator sponsored by or acting for the residential mortgage loan company in connection with a certain origination or transaction.

SECTION 14. Amends Sections 156.202(a) and (a-1), Finance Code, as follows:

(a) Redefines "depository institution," "dwelling," and "federal banking agency" in this section. Deletes existing definition of "immediate family member."

(a-1) Provides that certain entities, rather than certain individuals or entities and employees of those entities when acting for the benefit of those entities, are exempt from this chapter. Deletes existing text providing that certain individuals are exempt from this chapter, including a registered mortgage loan originator when acting for a certain institution; an individual who offers or negotiates the terms of a residential mortgage loan with or on behalf of an immediate family member of the individual; 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 performs certain activities; an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence; and an individual who is exempt as provided by Section 180.003(b) (relating to a certain exemption for an individual under certain circumstances). Makes nonsubstantive changes.

SECTION 15. Amends the heading to Section 156.203, Finance Code, to read as follows:

Sec. 156.203. APPLICATION; FEES.

SECTION 16. Amends Sections 156.203(a-1) and (a-2), Finance Code, as follows:

(a-1) Requires that an application for a residential mortgage loan company license, rather than an application for a residential mortgage loan company license and a residential mortgage loan originator license, meet certain criteria.

(a-2) Requires that an application for a financial services company registration under Section 156.2012, rather than Section 156.214, meet certain criteria.

SECTION 17. Amends the heading to Section 156.2041, Finance Code, to read as follows:

Sec. 156.2041. QUALIFICATIONS AND REQUIREMENTS FOR LICENSE: MORTGAGE COMPANY.

SECTION 18. Amends Section 156.2041(a), Finance Code, to require an applicant, to be issued a mortgage company license, to comply with certain requirements, including designating an individual licensed as a residential mortgage loan originator under Chapter 157, rather than this chapter, as the company's qualifying individual.

SECTION 19. Amends the heading to Section 156.2042, Finance Code, to read as follows:

Sec. 156.2042. QUALIFICATIONS AND REQUIREMENTS FOR LICENSE: CREDIT UNION SUBSIDIARY ORGANIZATION.

SECTION 20. Amends Section 156.2042(a), Finance Code, to require an applicant, to be issued a credit union subsidiary organization license, to comply with certain requirements, including designating an individual licensed as a residential mortgage loan originator under Chapter 157, rather than this chapter, as the company's qualifying individual, and maintaining a physical office in this state.

SECTION 21. Amends the heading to Section 156.2043, Finance Code, to read as follows:

Sec. 156.2043. QUALIFICATIONS AND REQUIREMENTS FOR LICENSE:
AUXILIARY MORTGAGE LOAN ACTIVITY COMPANY.

SECTION 22. Amends Section 156.2043(a), Finance Code, to require an applicant, to be issued an auxiliary mortgage loan activity company license, to comply with certain requirements, including designating an individual licensed as a residential mortgage loan originator under Chapter 157, rather than this chapter, as the company's qualifying individual.

SECTION 23. Amends the heading to Section 156.2044, Finance Code, to read as follows:

Sec. 156.2044. QUALIFICATIONS AND REQUIREMENTS FOR LICENSE:
INDEPENDENT CONTRACTOR LOAN PROCESSOR OR UNDERWRITER
COMPANY.

SECTION 24. Amends Sections 156.2044(a) and (b), Finance Code, as follows:

(a) Requires an applicant, to be issued an independent contractor loan processor or underwriter company license under this chapter, to comply with certain requirements, including designating an individual licensed as a residential mortgage loan originator under Chapter 157, rather than this chapter, as the company's qualifying individual.

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

SECTION 25. Amends Section 156.2046, Finance Code, to provide that a person is considered to have been convicted of a criminal offense under certain circumstances, rather than providing that for the purposes of Section 156.2041 (Qualifications and Requirements for Licenses: Mortgage Company and Residential Mortgage Loan Originators), 156.2042 (Qualifications and Requirements for Registration and Licenses: Credit Union Subsidiary Organization and Residential Mortgage Loan Originators), 156.2043 (Qualifications and Requirements for Licenses: Auxiliary Mortgage Loan Activity Company and Residential Mortgage Loan Originators), 156.2044 (Qualifications and Requirements for Registration and Licenses; Independent Contractor Loan Processor or Underwriter Company and Individual Loan Processors or Underwriters), or 156.2045 (Qualifications and Requirements for Registration and License: Financial Services Company and Exclusive Agents), a person is considered to have been convicted of a criminal offense under certain circumstances.

SECTION 26. Amends Sections 156.206(b) and (c), Finance Code, as follows:

(b) Requires the commissioner to conduct criminal background and credit history checks on a person required to be licensed under this chapter, rather than providing that the commissioner is required to conduct criminal background and credit history checks in accordance with Section 180.054 (Criminal and Other Background Checks), and, in connection with each application for a residential mortgage loan originator license or other individual license, the commissioner is authorized to conduct a criminal background check through the Department of Public Safety of the State of Texas (DPS).

(c) Deletes existing text requiring the commissioner to keep confidential any background information obtained under this section and is prohibited from releasing or disclosing the information unless the commissioner releases the information with the permission of the applicant or to a person through whom the applicant is conducting or will conduct business.

SECTION 27. Amends the heading to Section 156.207, Finance Code, to read as follows:

Sec. 156.207. ISSUANCE OF LICENSE.

SECTION 28. Amends Sections 156.208(a-1) and (c), Finance Code, as follows:

(a-1) Provides that a residential mortgage loan company license issued under this chapter is valid through December 31 of the year of issuance and is authorized to be renewed on or before its expiration date, if the residential mortgage loan company complies with certain conditions, including continues to meet the minimum requirements for license issuance.

(c) Requires that an application for renewal be in the form prescribed by the commissioner, rather than authorizing the commissioner to require residential mortgage loan originators to submit requests for renewal on a form prescribed by the commissioner.

SECTION 29. Amends Section 156.209(g), Finance Code, as follows:

(g) Provides that a person whose application for or request to renew a license has been denied is not eligible to be licensed for a period of two years after the date the denial becomes final, or a shorter period as determined by the commissioner after evaluating the specific circumstances of the denial, rather than after evaluating the specific circumstances of the person's subsequent application. Authorizes the finance commission to adopt rules to provide conditions for which the commissioner is authorized to shorten the period of ineligibility, rather than the time of disqualification.

SECTION 30. Amends Sections 156.211(b) and (b-1), Finance Code, as follows:

(b) Requires the residential mortgage loan originator or the residential mortgage loan company, rather than the residential mortgage loan originator and the residential mortgage loan company, when the sponsorship of a residential mortgage loan originator is terminated, to immediately notify the commissioner. Deletes existing text providing that the residential mortgage loan originator's license then becomes inactive and authorizing that the residential mortgage loan originator license to be activated if certain procedures are followed.

(b-1) Deletes existing text prohibiting a residential mortgage loan originator from conducting business under any assumed name that is not the registered assumed name of the sponsoring residential mortgage loan company.

SECTION 31. Amends Section 156.213(a), Finance Code, as follows:

(a) Requires each licensed residential mortgage loan company, rather than each licensed residential mortgage loan company or licensed residential mortgage loan originator as required by the commissioner, to file a mortgage call report with the commissioner or the commissioner's authorized designee on a form prescribed by the commissioner or authorized designee. Provides that the report:

(1) is a statement of condition of the residential mortgage loan company and the company's operations, rather than 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; and

(2)-(3) Makes no change to these subdivisions.

SECTION 32. Redesignates Section 156.214, Finance Code, as Section 156.2012, Finance Code, and amends it as follows:

Sec. 156.2012. REGISTERED FINANCIAL SERVICES COMPANY. Redesignates existing Section 156.214 as Section 156.2012. (a) Authorizes a financial services company to perform the services of a residential mortgage loan company if the company

is registered under this chapter, rather than authorizing a registered financial services company to perform the services of another residential mortgage loan company as if the company were licensed as a residential mortgage loan company under this chapter, through individuals who are the exclusive agents of the registered financial services company.

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

(1) be a depository institution exempt from this chapter under Section 156.202(a-1)(4)(A), rather than Section 156.202(a-1)(8)(A), 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 a business plan satisfactory to the commissioner that sets forth the person's plan to provide education to its sponsored residential mortgage loan originators, handle consumer complaints relating to its sponsored residential mortgage loan originators, and supervise the residential mortgage loan origination activities of its sponsored residential mortgage loan originators, rather than 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;

(3) pay a registration fee in an amount not to exceed \$500, rather than pay an annual registration fee if the registered financial services company has 2,000 or fewer exclusive agents acting in this state, an amount equal to the lesser of one-half of the license fee for a residential mortgage loan originator under Section 156.203(c)(1), multiplied by the number of exclusive agents under contract to act for the person in this state or \$200,000; 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; 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; 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 if the registered financial services company has at least 5,001 exclusive agents acting in this state, \$350,000;

(4) designate an officer of the person to be responsible for the activities of its sponsored residential mortgage loan originators, rather than designate an officer of the person to be responsible for the activities of the exclusive agents;

(5) submit a completed application through the Nationwide Mortgage Licensing System and Registry together with the applicable fee required by Subdivision (3) or Subsection (c);

(6) obtain preapproval from the commissioner that the person meets the eligibility requirements for registration as a financial services company; and

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

Deletes existing text requiring a person, to be eligible to register as a registered financial services company, to 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 activities of each exclusive agent and to pay an annual registration fee in an amount determined as follows: if the registered financial services company has 2,000 or fewer exclusive agents acting in this state, an amount equal to the lesser of one-half of the license fee for a residential mortgage loan under Section 156.203(c)(1), multiplied by the number of exclusive agents under contract to act for the person in this state or \$200,000; 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; 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; 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 if the registered financial services company has at least 5,001 exclusive agents acting in this state, \$350,000. Makes conforming and nonsubstantive changes.

(c) Requires the commissioner, if the commissioner determines that a person has met the requirements of Subsection (b), rather than Subsection (b) and Section 156.2045(a) (relating to requiring an applicant, to be issued a financial services company registration, to fulfill certain criteria), to issue a registration to the person. Provides that the registration is valid for one year, expires on December 31 of each year, and is required to be renewed annually by meeting the requirements under Subsection (b) and paying a renewal fee in an amount not to exceed \$500.

(d) Makes no change to this subsection.

SECTION 33. Amends Sections 156.301(a), (b), (c), and (h), Finance Code, as follows:

(a) Authorizes the commissioner to conduct inspections of a person licensed under this chapter or a residential mortgage loan originator who is licensed under Chapter 157 and sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter as the commissioner determines necessary to determine whether the person or the residential mortgage loan originator is complying with this chapter and applicable rules. Authorizes the inspections to include inspection of the books, records, documents, operations, and facilities of the person or the residential mortgage loan originator and access to any documents required under rules adopted under this chapter.

(b) Requires the commissioner, on the signed written complaint of a person, to investigate the actions and records of a person licensed under this chapter or a residential mortgage loan originator who is licensed under Chapter 157 and sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter if the complaint, or the complaint and documentary or other evidence presented in connection with the complaint, provides reasonable cause. Requires the commissioner, before commencing an investigation, to notify the residential mortgage loan company or the residential mortgage loan originator in writing of the complaint and that the commissioner intends to investigate the matter.

(c) Authorizes the commissioner at any time, for reasonable cause, to investigate a person licensed under this chapter or a residential mortgage loan originator who is licensed under Chapter 157 and sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter to determine whether the person or the residential mortgage loan originator is complying with this chapter and applicable rules.

(h) Authorizes the commissioner to require reimbursement of expenses for each examiner for on-site examination or investigation of a license holder if records are located out of state or if the review is considered necessary beyond the routine examination process, rather than authorizing the commissioner to 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 if records are located out of state or if the review is considered necessary beyond the routine examination process. Requires the finance commission by rule to set the maximum amount for the reimbursement of expenses authorized under this subsection.

SECTION 34. Amends Sections 156.303, Finance Code, by amending Subsections (a), (a-1), (g), and (i) and adding Subsection (k), as follows:

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

(1) Makes no change to this subdivision;

(2) published or caused to be published an advertisement related to the business of a residential mortgage loan company, rather than a residential mortgage loan company or residential mortgage loan originator, that is misleading; is likely to deceive the public; in any manner tends to create a misleading impression; fails to identify as a residential mortgage loan company, rather than a residential mortgage loan company or residential mortgage loan originator, the person causing the advertisement to be published; or violates federal or state law;

(3)-(5) Makes no change to these subdivisions;

(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, rather than disbursed to or on behalf of the mortgage applicant, except as provided by Section 156.304 (Fee Assessment and Disclosure);

(7) failed within a reasonable time to honor a credit card charge back or a check issued to the commissioner after the commissioner has mailed a request for payment, including payment of any applicable fees, to the person's last known business address as reflected by the commissioner's records, rather than 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 or Chapter 157 for acts for which a license or registration under this chapter or Chapter 157;

(9) Makes no change to this subdivision;

(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, rather than a residential mortgage loan company or residential mortgage loan originator, as applicable;

(11) established an association, by employment or otherwise, with a person not licensed, registered, or exempt under this chapter or Chapter 157 who was expected or required to act as a residential mortgage loan company or residential mortgage loan originator;

(12) aided, abetted, or conspired with a person to circumvent the requirements of this chapter or Subchapter D, Chapter 157, rather than under this chapter;

(13) acted in the dual capacity of a residential mortgage loan company, rather than a residential mortgage loan company or residential mortgage loan originator, 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) Makes no change to this subdivisions;

(15) Makes a nonsubstantive change; or

(16)-(18) Makes no change to these subdivisions.

(a-1) Authorizes the commissioner to also order disciplinary action after notice and opportunity for hearing against a licensed or registered residential mortgage loan company, rather than a registered residential mortgage loan originator, 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) Authorizes the commissioner, 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, to, on not less than 10 days' notice to the person, without a prior hearing suspend the person's residential mortgage loan company license or registration, rather than the person's residential mortgage loan company license or registration or residential mortgage loan originator license. Deletes existing text prohibiting a certain person, during a certain period of suspension, from originating a residential mortgage loan and providing that all compensation received by the person during the period of suspension is subject to forfeiture as provided by Section 156.406(b) (relating to a person who received money as a fee or profit is liable for damages in a certain amount).

(i) Authorizes an order revoking the license or registration of a residential mortgage loan company, rather than an order revoking the license or registration of a residential mortgage loan company or the license of a residential mortgage loan originator, to provide that the person is prohibited, without obtaining prior written consent of the commissioner, from engaging in the business of originating or making residential mortgage loans or otherwise affiliating with a person for the purpose of engaging in the business of originating or making residential mortgage loans. Deletes existing text authorizing the order to provide that the person is prohibited from being an employee, officer, director, manager, shareholder, member, agent, contractor, or processor of a residential mortgage loan company or residential mortgage loan originator. Makes nonsubstantive changes.

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

SECTION 35. Amends Section 156.304(a), Finance Code, to authorize a residential mortgage loan originator sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter, before the completion of all services to be performed, to charge and receive, unless prohibited by law, certain fees for services in assisting a mortgage applicant to obtain a residential mortgage loan.

SECTION 36. Amends Section 156.305, Finance Code, to authorize a residential mortgage loan company to be required to make restitution for any amount received by a sponsored residential mortgage loan originator in violation of Chapter 157, rather than this chapter.

SECTION 37. Amends Section 156.401(d), Finance Code, to provide that a person, rather than an individual, aggrieved by a ruling, order, or decision of the commissioner has the right to appeal to a district court in the county in which the hearing was held.

SECTION 38. Amends Section 156.406(a), Finance Code, as follows:

(a) Provides that a person, unless otherwise exempt, commits an offense if the person conducts regulated activities under this chapter without first obtaining a license or registration as required by Section 156.201 (Licenses Required), 156.2012, or 157.012, as applicable. Deletes existing text providing that a person who is not exempt under this chapter and who acts as a residential mortgage loan originator without first obtaining a license required under this chapter commits an offense.

SECTION 39. Amends the heading to Subchapter F, Chapter 156, Finance Code, to read as follows:

SUBCHAPTER F. RECOVERY FUND

SECTION 40. Amends Section 156.501(b), Finance Code, as follows:

(b) Requires that the recovery fund, subject to this subsection, be used to reimburse residential mortgage loan applicants for actual damages incurred because of acts committed by a residential mortgage loan originator who was licensed under Chapter 157, rather than under this chapter or under Chapter 157, when the act was committed. Provides that the use of the fund is limited to reimbursement for out-of-pocket losses caused by an act by 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), (16), (17), or (18) or 156.304(b) (relating to prohibiting a residential mortgage loan originator from charging or receiving a fee for locking in an interest rate), rather than a residential mortgage loan originator licensed under this chapter 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 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).

SECTION 41. Amends Section 156.502(a), Finance Code, to require the applicant, on an application for an original license or for a renewal of a license issued under Chapter 157, rather than under this chapter, in addition to paying the original application fee or renewal fee, to pay a fee in an amount determined by the commissioner, not to exceed \$20.

SECTION 42. Amends Section 156.503(a), Finance Code, to prohibit an application for the recovery of actual damages from the recovery fund under Section 156.504 (Procedure for Recovery) from being filed after the fourth, rather than 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.

SECTION 43. Amends Section 156.504(b), Finance Code, as follows:

(b) Provides that the residential mortgage loan applicant is required to show:

(1) Makes no change to this subdivision; and

(2) that the applicant:

(A)-(C) Makes no change to these paragraphs;

(D) is not a person who has aided, abetted, or participated other than as a victim with the licensed residential mortgage loan originator in any activity that is illegal under Section 157.024(a)(2), (3), (5), (7), (8), (9), (10), (13), (16), (17), or (18) or 156.304(b), rather than under Section 156.303(a)(2), (3), (5), (6), (8), (9), (10), (11), (12), (13), or (16), Section

156.304, or Section 157.024(a)(2), (3), (5), (7), (8), (9), (10), (13), or (16), or is not the personal representative of a licensed residential mortgage loan originator; and

(E) is not licensed as a residential mortgage loan originator under Chapter 157, rather than this chapter, who is seeking to recover any compensation in the transaction or transactions for which the application for payment is made.

SECTION 44. Amends Section 156.505(b), Finance Code, as follows:

(b) Provides that a payment from the recovery fund for claims:

(1) Makes no change to this subdivision; and

(2) against a single person licensed as a residential mortgage loan originator under Chapter 157, rather than 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.

SECTION 45. Amends Sections 156.506(a), (c), and (d), Finance Code, as follows:

(a) Authorizes the commissioner to revoke or suspend a license issued under Chapter 157, rather than 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 under Chapter 157. Makes nonsubstantive changes.

(c) Provides that a person on whose behalf payment was made from the recovery fund is not eligible to receive a new license or have a suspension lifted under this chapter or Chapter 157 until the person has repaid in full, plus interest at the current legal rate, the amount paid from the fund on the person's behalf and any costs associated with investigating and processing the claim against the fund or with collection of reimbursement for payments from the fund.

(d) Provides that this section does not limit the authority of the commissioner to take disciplinary action against a residential mortgage loan originator for a violation of Chapter 157 or the rules adopted by the finance commission under that chapter. Provides that 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 Chapter 157. Makes nonsubstantive changes.

SECTION 46. Amends the heading to Chapter 157, Finance Code, to read as follows:

CHAPTER 157. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

SECTION 47. Designates Sections 157.001 and 157.002, Finance Code, as Subchapter A, Chapter 157, Finance Code, and adds a heading to that subchapter to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 48. Amends Section 157.002, Finance Code, by adding Subdivisions (3-a) and (5-a) to define "inspection" and "residential mortgage loan company."

SECTION 49. Amends Chapter 157, Finance Code, by adding Subchapter B, to read as follows:

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 157.0024. MORTGAGE INDUSTRY ADVISORY COMMITTEE. Requires the mortgage industry advisory committee to advise and assist the commissioner with respect to this chapter as provided by Section 156.104.

SECTION 50. Designates Sections 157.003, 157.004, 157.005, 157.006, 157.0061, 157.0062, 157.009, and 157.010, Finance Code, as Subchapter C, Chapter 157, Finance Code, and adds a heading to that subchapter to read as follows:

SUBCHAPTER C. REGISTRATION OF MORTGAGE BANKERS

SECTION 51. Amends Section 157.003(b), Finance Code, to require a mortgage banker, to register under this chapter, to meet certain criteria, including that the mortgage banker not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant.

SECTION 52. Amends Section 157.004, Finance Code, to provide that this chapter does not apply to a residential mortgage loan company licensed under Chapter 156, rather than a person licensed as a mortgage broker under Chapter 156.

SECTION 53. Amends Section 157.005, Finance Code, to require a mortgage banker to update information contained in the registration not later than the 10th day, rather than not later than the 30th day, after the date the information changes.

SECTION 54. Transfers Sections 157.007 and 157.008, Finance Code, to Subchapter B, Chapter 157, Finance Code, as added by this Act, redesignates them as Sections 157.0021 and 157.0022, Finance Code, and makes no further changes to these sections.

SECTION 55. Amends Section 157.009, Finance Code, by adding Subsection (d-1) and amending Subsection (e), as follows:

(d-1) Authorizes the commissioner, after review of certain circumstances, to revoke the registration of a mortgage banker if the mortgage banker has had a license, registration, or other certification revoked in another state by a state or federal regulatory authority.

(e) Provides that if the commissioner proposes to revoke a registration under Subsection (c) (relating to authorizing the commissioner to revoke the registration of a mortgage banker if the banker fails to comply with a request for a response to a complain), (d) (relating to authorizing the commissioner to revoke the registration of a mortgage banker after considering a complaint), or (d-1), rather than under Subsection (c) or (d), the mortgage banker is entitled to a hearing before the commissioner or a hearings officer, who is required to propose a decision to the commissioner.

SECTION 56. Transfers Section 157.011, Finance Code, to Subchapter B, Chapter 157, Finance Code, as added by this Act, and redesignates it as Section 157.0023, Finance Code, and makes no further change to this section (Rulemaking Authority).

SECTION 57. Designates Sections 157.012, 157.013, 157.014, 157.015, 157.016, 157.017, 157.019, 157.020, and 157.0201, Finance Code, as Subchapter D, Chapter 157, Finance Code, and adds a heading to that subchapter to read as follows:

SUBCHAPTER D. LICENSING OF RESIDENTIAL MORTGAGE LOAN ORIGINATORS; DISCLOSURES AND REQUIREMENTS

SECTION 58. Amends the heading to Section 157.012, Finance Code, to read as follows:

Sec. 157.012. LICENSE REQUIRED FOR RESIDENTIAL MORTGAGE LOAN ORIGINATORS.

SECTION 59. Amends Section 157.012, Finance Code, by amending Subsections (a) and (c) and adding Subsection (e), as follows:

(a) Prohibits an individual, rather than an employee of a mortgage banker, from acting or attempting to act in the capacity of a residential mortgage loan originator unless the individual is exempt under Section 180.003(b) or:

(1) is licensed under this chapter, sponsored by an appropriate entity, rather than a registered mortgage banker, and enrolled with the Nationwide Mortgage Licensing System and Registry as required by Section 180.052 (Enrollment or Registration with Nationwide Mortgage Licensing System and Registry); and

(2) Makes no change to this subdivision.

(c) Requires the individual, rather than an employee of a mortgage banker, to be eligible to be licensed as a residential mortgage loan originator, in addition to meeting the requirements of Subsection (a), to satisfy the commissioner as to the individual's good moral character, including the individual's honesty, trustworthiness, and integrity and provide the commissioner with satisfactory evidence that the individual meets the qualifications provided by Chapter 180 (Residential Mortgage Loan Originators). Makes conforming changes.

(e) Defines "appropriate entity" in this section.

SECTION 60. Amends Subchapter D, Chapter 157, Finance Code, as added by this Act, by adding Section 157.0121, as follows:

Sec. 157.0121. EXEMPTIONS FROM RESIDENTIAL MORTGAGE LOAN ORIGINATOR REQUIREMENTS. (a) Defines "depository institution," "dwelling," "federal banking agency," and "immediate family member" in this section.

(b) Provides that the following individuals 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; or

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

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

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

(A) takes a residential mortgage loan application; and

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

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

(5) any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers

of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured; and

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

(c) Provides that employees of the following entities, when acting for the benefit of those entities, are exempt from the licensing and other requirements of this chapter applicable to residential mortgage loan originators:

(1) 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;

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

(3) an entity that is:

(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; or

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

(d) Provides that a person is not required to obtain a license under this chapter to originate a loan subject to Chapter 342 or a loan governed by Section 50(a)(6), Article XVI, Texas Constitution, if the person:

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

(2) is licensed under Chapter 342; and

(3) makes consumer loans subject to:

(A) Subchapter G, Chapter 342; and

(B) Subchapter E or F, Chapter 342.

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

SECTION 61. Amends Section 157.013, Finance Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires that an application for a residential mortgage loan originator license be accompanied by an application fee in an amount determined by the commissioner, not to exceed \$500 and a recovery fund fee in an amount determined by the commissioner, not to exceed \$20.

(d) Authorizes the commissioner, in addition to the disciplinary action by the commissioner authorized under Section 157.024(a)(6) (relating to authorizing disciplinary action against a person who failed to honor a check after a certain request for payment was made), to collect a fee in an amount not to exceed \$50 for any returned check or credit card charge back.

SECTION 62. Amends Subchapter D, Chapter 157, Finance Code, as added by this Act, by adding Sections 157.0131 and 157.0132, as follows:

Sec. 157.0131. **CONVICTION OF OFFENSE.** Provides that 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.

Sec. 157.0132. **CRIMINAL AND OTHER BACKGROUND CHECKS.** (a) Requires the commissioner, on receipt of an application for a residential mortgage loan originator license, to, at a minimum, conduct a criminal background and credit history check of the applicant.

(b) Requires the commissioner to conduct criminal background and credit history checks in accordance with Section 180.054, and authorizes the commissioner, in connection with each application for a residential mortgage loan originator license or other individual license, to conduct a criminal background check through the Department of Public Safety of the State of Texas (DPS).

(c) Requires the commissioner to keep confidential any background information obtained under this section and prohibits the commissioner from releasing or disclosing 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; or
 - (B) to a governmental agency.

(d) Authorizes criminal history record information obtained from the Federal Bureau of Investigation, notwithstanding Subsection (c), to be released or disclosed only to a governmental entity or as authorized by federal statute, federal rule, or federal executive order.

SECTION 63. Amends Subchapter D, Chapter 157, Finance Code, as added by this Act, by adding Section 157.0141, as follows:

Sec. 157.0141. **CONDITIONAL LICENSE.** Authorizes the commissioner to issue a conditional license. Requires the finance commission by rule to adopt reasonable terms and conditions for a conditional license.

SECTION 64. Amends Section 157.015, Finance Code, by amending Subsections (a), (c), (d), and (g) and adding Subsections (d-1) and (h), as follows:

(a) Provides that a residential mortgage loan originator license issued under this chapter is valid through December 31 of the year of issuance and is authorized to be renewed on or before its expiration date if the residential mortgage loan originator:

(1) pays to the commissioner a renewal fee in an amount determined by the commissioner not to exceed \$500 and a recovery fund fee as provided by Section 156.502 (Funding);

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

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

Deletes existing text providing that a residential mortgage loan originator license issued under this chapter is valid for one year and is authorized to be renewed on or before its expiration date.

(c) Requires that an application for renewal, rather than an application for renewal of a residential mortgage loan originator license, be in the form prescribed by the commissioner, rather than meet the requirements of Section 157.013.

(d) Authorizes the commissioner, on receipt of a request for a renewal of a license issued under this subchapter, to conduct a criminal background check under Section 157.0132. Deletes existing text requiring that an application for renewal of a residential mortgage loan originator license meet all of the standards and qualifications for license renewal under Chapter 180.

(d-1) Provides that a renewal fee is not refundable and is prohibited from being credited or applied to any other fee or indebtedness owed by the person paying the fee.

(g) Authorizes the commissioner to deny the renewal application for a residential mortgage loan originator license under certain circumstances, including if the person seeking the renewal of the residential mortgage loan originator license is in violation of this chapter, Chapter 156, or Chapter 180, an applicable rule adopted under this chapter, Chapter 156, or Chapter 180, or any order previously issued to the person by the commissioner.

(h) Authorizes the commissioner, in addition to the disciplinary action by the commissioner authorized under Section 157.024(a)(6), to collect a fee in an amount not to exceed \$50 for any returned check or credit card charge back.

SECTION 65. Amends Section 157.016, Finance Code, to prohibit a person whose residential mortgage loan originator license has expired from engaging in activities that require a license until the license has been reinstated or a new license has been issued, rather than until the license has been renewed.

SECTION 66. Amends Section 157.017(g), Finance Code, as follows:

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

SECTION 67. Amends the heading to Section 157.019, Finance Code, to read as follows:

Sec. 157.019. MODIFICATION OF LICENSE; CHANGE OF SPONSORSHIP.

SECTION 68. Amends Section 157.019, Finance Code, by amending Subsections (a) and (c) and adding Subsections (d) and (e), as follows:

(a) Requires a residential mortgage loan originator, rather than a mortgage banker employee who is a residential mortgage loan originator, before the 10th day preceding the effective date of an address change, to notify the commissioner or authorized designee in writing of the new address.

(c) Requires the residential mortgage loan originator the former sponsoring entity licensed or registered under this chapter or Chapter 156, when the sponsorship of a residential mortgage loan originator is terminated, to immediately notify the commissioner. Provides that the residential mortgage loan originator's license then becomes inactive. Authorizes the residential mortgage loan originator license to be activated if, before the license expires, an entity licensed or registered under this Chapter or Chapter 156 files a request, accompanied by a \$25 fee, notifying the commissioner that the entity will sponsor the residential mortgage loan originator and will assume responsibility for the actions of the residential mortgage loan originator. Deletes existing text requiring a mortgage banker employee who is a residential mortgage loan originator to notify the commissioner or authorized designee in writing of a change of sponsorship. Deletes existing text requiring that the notice be accompanied by a fee of \$25.

(d) Prohibits a residential mortgage loan originator from conducting business under any assumed name that is not the registered assumed name of the entity licensed or registered under this chapter or Chapter 156 that is sponsoring the originator.

(e) Provides that a fee under this section is not refundable and is prohibited from being credited or applied to any other fee or indebtedness owed by the person paying the fee.

SECTION 69. Amends Section 157.020, Finance Code, by adding Subsection (a-1), as follows:

(a-1) Requires each licensed residential mortgage loan originator, as required by the commissioner, to file a mortgage call report with the commissioner or the commissioner's authorized designee on a form prescribed by the commissioner or authorized designee. Provides that the report:

- (1) is a statement of condition of the residential mortgage loan originator;
- (2) is required to include any other information required by the commissioner; and
- (3) is required to be filed as frequently as required by the commissioner.

SECTION 70. Amends Subchapter D, Chapter 157, Finance Code, as added by this Act, by adding Sections 157.02012, 157.02013, 157.02014, 157.02015, and 157.02016, as follows:

Sec. 157.02012. STANDARD FORMS. (a) Requires the finance commission by rule to adopt one or more standard forms for use by a residential mortgage loan originator, sponsored by and conducting business for a registered mortgage banker under this chapter, in representing that an applicant for a residential mortgage loan is preapproved or has prequalified for the loan.

(b) Requires the finance commission to adopt rules requiring a residential mortgage loan originator licensed under this chapter to use the forms adopted by the finance commission under Subsection (a).

Sec. 157.02013. SECONDARY MARKET TRANSACTIONS. Provides that this chapter does not prohibit a residential mortgage loan originator sponsored by and conducting business for a registered mortgage banker under this chapter 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.

Sec. 157.02014. **AFFILIATED BUSINESS ARRANGEMENTS.** Prohibits this chapter, unless prohibited by federal or state law, from being construed to prevent affiliated or controlled business arrangements or loan origination services by or between residential mortgage loan originators sponsored by and conducting business for a registered mortgage banker under this chapter and other professionals if the residential mortgage loan originator complies with all applicable federal and state laws permitting those arrangements or services.

Sec. 157.02015. **RULEMAKING AUTHORITY WITH RESPECT TO RESIDENTIAL MORTGAGE LOAN ORIGINATORS.** (a) Provides that the finance commission is authorized to adopt rules to prohibit false, misleading, or deceptive practices by residential mortgage loan originators but prohibited from adopting any other rules restricting competitive bidding or advertising by residential mortgage loan originators. Prohibits the finance commission, when adopting rules under this subsection, from restricting:

- (1) the use of any medium for an advertisement;
- (2) the personal appearance of or voice of a person in an advertisement;
- (3) the size or duration of an advertisement; or
- (4) a residential mortgage loan originator's advertisement under a trade name.

(b) Authorizes the finance commission to adopt rules regarding books and records that a residential mortgage loan originator licensed under this chapter is required to keep, including the location at which the books and records are required to be kept.

(c) Requires the finance commission to consult with the commissioner when proposing and adopting rules under this section.

Sec. 157.02016. **ADMINISTRATION OF SUBCHAPTER.** Requires the commissioner to administer and enforce this subchapter.

SECTION 71. Designates Sections 157.021, 157.0211, 157.022, 157.023, 157.024, 157.0241, 157.025, 157.026, 157.027, 157.028, 157.029, 157.030, and 157.031, Finance Code, as Subchapter E, Chapter 157, Finance Code, and adds a heading to that subchapter to read as follows:

SUBCHAPTER E. ENFORCEMENT

SECTION 72. Amends Section 157.021, Finance Code, by amending Subsection (a) and adding Subsection (h), as follows:

(a) Authorizes the commissioner in conducting an inspection of a person licensed as a residential mortgage loan originator to request the assistance and cooperation of the sponsoring mortgage banker in providing needed documents and records. Prohibits the commissioner from making a request of the sponsoring mortgage banker for documents and records unrelated to the person being investigated or inspected.

(h) Authorizes the commissioner to require reimbursement of expenses for each examiner for an on-site examination or inspection of a licensed residential mortgage loan originator if records are located out of state and are not made available for examination or inspection by the examiner in this state. Requires the finance commission by rule to set

the maximum amount for the reimbursement of expenses authorized under this subsection.

SECTION 73. Amends Section 157.0211, Finance Code, to authorize the commissioner or the commissioner's designee, to ensure that certain mortgage bankers operate in this state in compliance with this chapter and with other law in accordance with this chapter, to participate in multi-state mortgage examinations as scheduled by the Conference of State Bank Supervisors Multi-State Mortgage Committee or by the Consumer Financial Protection Bureau in accordance with the protocol for such examinations, rather than by the Conference of State Bank Supervisors Multi-State Mortgage Committee in accordance with the Conference of State Bank Supervisors protocol for such examinations.

SECTION 74. Amends Section 157.023(a), Finance Code, to authorize the commissioner, after notice and opportunity for a hearing, to impose an administrative penalty on an individual who is licensed or required to be licensed under this chapter as a residential mortgage loan originator and who violates this chapter, Chapter 156, or a rule or order adopted under this chapter or Chapter 156.

SECTION 75. Amends Sections 157.024(a), (h), and (j), Finance Code, as follows:

(a) Authorizes the commissioner to order disciplinary action against a licensed residential mortgage loan originator when the commissioner, after notice and opportunity for a hearing, has determined that the person:

(1)-(2) Makes no change to these subdivisions;

(3) while performing an act for which a license under this chapter or Chapter 156 is required, engaged in conduct that constitutes improper, fraudulent, or dishonest dealings;

(4)-(5) Makes no change to these subdivisions;

(6) failed within a reasonable time to honor a credit card charge back or a check issued to the commissioner after the commissioner mailed a request for payment, including any applicable fees, by mail to the person's last known home address, rather than business address, as reflected in the commissioner's records;

(7)-(8) Makes no change to these subdivisions;

(9) aided, abetted, or conspired with a person to circumvent the requirements of this chapter or Chapter 156;

(10)-(13) Makes no change to these subdivisions;

(14) disregarded or violated this chapter, Chapter 156, a rule adopted under this chapter or Chapter 156, or an order issued by the commissioner under this chapter or Chapter 156;

(15) Makes no change to this subdivision;

(16) paid compensation to a person who is not licensed or exempt under this chapter for acts for which a license under this chapter or Chapter 156 is required;

(17) established an association, by employment or otherwise, with a person not licensed, registered, or exempt under this chapter or Chapter 156 who was expected or required to act as a residential mortgage loan originator or residential mortgage loan company; or

(18) charged or received, directly or indirectly, a fee for assisting a mortgage applicant in obtaining a residential mortgage loan under Chapter 156 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.

(h) Prohibits the residential mortgage loan originator, during the period of suspension for failure to pay an administrative penalty, from originating a residential mortgage loan and all compensation received by the residential mortgage loan originator during the period of suspension is subject to forfeiture as provided by Section 157.031(a-1), rather than originating a residential mortgage loan, as defined by Section 180.002 (Definitions).

(j) Authorizes an order revoking the license of a residential mortgage loan originator to provide that the person is prohibited, without previously obtaining written consent of the commissioner, from engaging in certain businesses or being a certain titled individual, including from engaging in the business of originating or making residential mortgage loans, rather than engaging in the business of originating or making residential mortgage loans as defined by Section 180.002, and otherwise affiliating with a person for the purpose of engaging in the business of originating or making residential mortgage loans, rather than engaging in the business of originating or making residential mortgage loans as defined by Section 180.002.

SECTION 76. Amends Section 157.0241(e), Finance Code, as follows:

(e) Provides that 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, Chapter 156, or the rules adopted by the finance commission under this chapter or Chapter 156. Provides that the repayment in full to the recovery fund established and maintained by the commissioner 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 or Chapter 156.

SECTION 77. Amends Section 157.025, Finance Code, to authorize the commissioner to order a residential mortgage loan originator to make restitution for any amount received by that person in violation of this chapter or Chapter 156.

SECTION 78. Amends Section 157.026, Finance Code, by amending Subsection (b) and adding Subsection (e), as follows:

(b) Entitles an applicant or license holder, if the commissioner proposes to suspend or revoke a license of a residential mortgage loan originator or if the commissioner refuses to issue or renew a residential mortgage loan originator license under this chapter, rather than renew a license to an applicant for a residential mortgage loan originator license or person requesting a renewal of a residential mortgage loan originator license under this chapter, to a hearing before the commissioner or an administrative law judge who is required to make a proposal for decision to the commissioner.

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

SECTION 79. Amends Section 157.027(a), Finance Code, to authorize a residential mortgage loan applicant injured by a violation of this chapter or Chapter 156 by a residential mortgage loan originator to bring an action for recovery of actual monetary damages and reasonable attorney's fees and court costs.

SECTION 80. Amends Section 157.030(b), Finance Code, to provide that this section does not limit or preclude the liability of a residential mortgage loan originator for failing to comply with this chapter, Chapter 156, or a rule adopted under this chapter or Chapter 156, failing to comply with a provision of or duty arising under an agreement with a residential mortgage loan applicant under this chapter or Chapter 156, or violating any other state or federal law.

SECTION 81. Amends Section 157.031, Finance Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Provides that an individual who is not exempt under this chapter or other applicable law and who acts as a residential mortgage loan originator without first obtaining a license required under this chapter commits an offense. Deletes existing text providing that a person commits an offense if the person is an employee of a mortgage banker, is not exempt under this chapter, and acts as a residential mortgage loan originator without first obtaining a license required under this chapter.

(a-1) Provides that an individual who received money, or the equivalent of money, as a fee or profit because of or in consequence of the individual acting as a residential mortgage loan originator 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 is authorized to be determined by the court. Authorizes an aggrieved person to recover damages under this subsection in a court.

SECTION 82. Amends Subchapter E, Chapter 157, Finance Code, as added by this Act, by adding Section 157.032, as follows:

Sec. 157.032. POWERS OF COMMISSIONER. (a) Authorizes the commissioner, in addition to any other action, proceeding, or remedy authorized by law, to institute an action in the commissioner's name to enjoin a violation of Subchapter D or a rule adopted under Subchapter D. Provides that to sustain an action filed under this subsection, it is not necessary to allege or prove that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation of Subchapter D.

(b) Provides that the commissioner is not required to provide an appeal bond in any action or proceeding to enforce Subchapter D.

(c) Authorizes the commissioner to authorize specific employees to conduct hearings and make recommendations for final decisions in contested cases.

SECTION 83. Amends Section 158.104, Finance Code, to authorize the commissioner or the commissioner's designee, to ensure that residential mortgage loan servicers to whom this chapter applies operate in this state in compliance with this chapter and with other law in accordance with this chapter, to participate in multi-state mortgage examinations as scheduled by the Conference of State Bank Supervisors Multi-State Mortgage Committee or by the Consumer Financial Protection Bureau in accordance with the protocol for such examinations, rather than the Conference of State Bank Supervisors protocol for such examinations.

SECTION 84. Amends Sections 180.002(17) and (21), Finance Code, to redefine "regulatory official" and "rulemaking authority."

SECTION 85. Amends Section 180.056(a), Finance Code, to require an applicant for a residential mortgage loan originator license to complete education courses that include at least a certain minimum number of hours and type of courses and a certain minimum number of hours of training and any additional requirements established by the regulatory official and adopted by rule of the rulemaking authority, rather than education courses that include, at a minimum, at least a certain minimum number of hours and type of courses and a certain minimum number of hours of training.

SECTION 86. Amends Section 180.251(a), Finance Code, to require the savings and mortgage lending commissioner to administer and enforce this chapter with respect to individuals licensed under Chapter 157, rather than requiring the savings and mortgage lending commissioner, except as provided by Subsection (b) (requiring the credit union commissioner to examine, inspect, or investigate certain employees and to enforce compliance by certain employees), to administer and enforce this chapter with respect to individuals licensed under Chapter 156 or 157.

SECTION 87. Repealer: Section 15.4024 (Rules Relating to Certain Employees of Credit Union Subsidiary Organizations), Finance Code;

Repealers: 156.2015 (Residential Mortgage Loan Origination Activities), 156.205 (Financial Requirements), and 156.405 (Completion of Residential Mortgage Loan Originator Services), Finance Code;

Repealers: Sections 156.101(a-1) (requiring the commissioner to perform all duties relating to the issuance and renewal of certain licenses) and (a-2) (providing for the responsibility of the credit union commissioner for examination, inspection, or investigation of certain employees and enforcement of compliance by employees), Finance Code;

Repealers: Sections 156.201(b) (prohibiting an individual under certain circumstances from acting or attempting to act as a residential mortgage loan originator), (b-1) (prohibiting an exclusive agent of a financial institution from acting or attempting to act as a residential mortgage loan originator without a certain license and sponsorship), and (b-2) (requiring sponsorship of a residential mortgage loan originator), Finance Code;

Repealers: Sections 156.102(b) (relating to the finance commission adopting rules to prohibit false practices by residential mortgage loan originators), 156.202(c) (authorizing the finance commission to grant an exemption from the residential mortgage loan originator licensing requirements under certain circumstances), 156.203(c) (relating to fees required to accompany a residential mortgage loan originator license application), 156.2041(b) (relating to requirements of an individual to be issued a license to act as a mortgage company residential mortgage loan originator), 156.2042(b) (relating to requirements of an individual to be issued a license to act as a credit union subsidiary organization residential mortgage loan originator), 156.2043(b) (relating to requirements of an individual to be issued a license to act as an auxiliary mortgage loan activity residential mortgage loan originator), 156.2044(c) (relating to requirements of an individual to be issued a license to act as an independent contractor loan processor or underwriter), 156.2045 (Qualifications and Requirements for Registration and License: Financial Services Company and Exclusive Agents), 156.206(a) (relating to requiring the commissioner to conduct a criminal background and credit history check of the applicant), 156.207(b) (requiring issuance of a license to an applicant who has met all requirements and conditions for the license), (c) (relating to the issuance of a provisional license under certain circumstances), and (d) (authorizing revocation of a license issued under Subsection (c) on certain grounds), and 156.2081(c) (prohibiting a certain renewal and authorizing issuance of a new license by complying with certain requirements and procedures), Finance Code;

Repealers: Sections 156.208(b-1) (relating to a residential mortgage loan originator license issued under this chapter is valid through December 1 and may be renewed), (b-2) (relating to a license issued to a registered financial services company's exclusive agent is valid and may be renewed), and (j) (relating to authorizing the commissioner to deny the renewal of a residential mortgage loan originator license if certain criteria is fulfilled), Finance Code;

Repealers: Sections 157.003(f) (relating to a mortgage banker that services residential mortgage loans is required to indicate in its registration that it acts as a residential mortgage loan servicer), Finance Code, as added by Chapter 655 (S.B. 1124), Acts of the 82nd Legislature, Regular Session, 2011;

Repealers: Sections 157.012(d) (providing that a certain mortgage banker employee is not required to enroll with the Nationwide Mortgage Licensing System and Registry or be licensed under Chapter 157) and 157.015(b) (relating to each residential mortgage loan originator license not being renewed for more than a one-year period), Finance Code; and

Repealer: Section 180.251(b) (requiring the credit union commissioner to examine, inspect, or investigate certain employees and to enforce compliance by certain employees), Finance Code.

SECTION 88. Provides that the changes in law made by this Act do not affect any pending proceeding or action brought under Subchapter D (License Revocation and Suspension and Other Actions Against License Holder), Chapter 156 (Residential Mortgage Loan Companies and Residential Mortgage Loan Originators), Finance Code, as that subchapter existed immediately before amendment by this Act, and the former law is continued in effect for that purpose.

SECTION 89. Makes application of this Act prospective.

SECTION 90. Effective date: September 1, 2013.