

AN ACT

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

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

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

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

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

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

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

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

(2) enforce disciplinary action as provided by

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (7) "Mortgage applicant" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 26 (1) the use of any medium for an advertisement;
- 27 (2) the personal appearance of or voice of a person in

1 an advertisement;

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

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

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

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

11 (b-1) The members of the committee must include six[+
12 [~~(1) three~~] individuals licensed by the department as
13 residential mortgage loan originators [~~under this chapter~~], two
14 [~~one~~] of whom must hold an active real estate broker or salesperson
15 license issued under Chapter 1101, Occupations Code[; and
16 [~~(2) three individuals licensed as residential~~
17 ~~mortgage loan originators under Chapter 157, one of whom must hold~~
18 ~~an active real estate broker or salesperson license issued under~~
19 ~~Chapter 1101, Occupations Code~~].

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

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

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

27 (B) the education and experience requirements

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

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

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

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

9 SECTION 11. Section 156.105, Finance Code, is amended to
10 read as follows:

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

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

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

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

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

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

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

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

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

15 (2) exempt under Section 156.202.

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

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

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

1 loan originator [~~mortgage broker or a loan officer~~] sponsored by or
2 acting for the residential mortgage loan company [~~mortgage broker~~]
3 in connection with:

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

8 SECTION 14. Section 156.202, Finance Code, is amended by
9 amending Subsection (a) and adding Subsections (a-1), (a-2), and
10 (c) to read as follows:

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

14 (a-1) The following individuals or entities, and employees
15 of those entities when acting for the benefit of those entities,
16 [~~persons~~] are exempt from this chapter:

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

19 (A) a depository institution;

20 (B) a subsidiary of a depository institution that

21 is:

22 (i) owned and controlled by the depository
23 institution; and

24 (ii) regulated by a federal banking agency;

25 or

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

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

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

8 (A) takes a residential mortgage loan
9 application; and

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

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

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

19 (6) a mortgage banker registered under Chapter 157;

20 (7) any owner of residential real estate who in any
21 12-consecutive-month period makes no more than five residential
22 mortgage loans to purchasers of the property for all or part of the
23 purchase price of the residential real estate against which the
24 mortgage is secured;

25 (8) an entity that is:

26 (A) a depository institution;

27 (B) a subsidiary of a depository institution that

1 is:

2 (i) owned and controlled by the depository
3 institution; and

4 (ii) regulated by a federal banking agency;
5 or

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

8 (9) an individual who is exempt as provided by Section
9 180.003(b) [any of the following entities or an employee of any of
10 the following entities provided the employee is acting for the
11 benefit of the employer:

12 [(A) a bank, savings bank, or savings and loan
13 association, or a subsidiary or an affiliate of a bank, savings
14 bank, or savings and loan association;

15 [(B) a state or federal credit union, or a
16 subsidiary, affiliate, or credit union service organization of a
17 state or federal credit union;

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

20 [(D) a mortgage banker registered under Chapter
21 157;

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

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

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

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

4 ~~[(3) an owner of real property who in any~~
5 ~~12-consecutive-month period makes no more than five mortgage loans~~
6 ~~to purchasers of the property for all or part of the purchase price~~
7 ~~of the real estate against which the mortgage is secured;~~

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

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

11 ~~[(B) is not an authorized lender under Chapter~~
12 ~~342, Finance Code; and~~

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

15 ~~[(5) an individual who is an exclusive agent of a~~
16 ~~registered financial services company under a written agreement~~
17 ~~prohibiting the individual from soliciting, processing,~~
18 ~~negotiating, or placing a mortgage loan with a person other than the~~
19 ~~registered financial services company or an affiliate of that~~
20 ~~company].~~

21 (a-2) A person is not required to obtain a license or
22 registration under this chapter to originate a loan subject to
23 Chapter 342 or a loan governed by Section 50(a)(6), Article XVI,
24 Texas Constitution, if the person:

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

27 (2) is licensed under Chapter 342; and

1 (3) makes consumer loans subject to:

2 (A) Subchapter G, Chapter 342; and

3 (B) Subchapter E or F, Chapter 342.

4 (c) The finance commission may grant an exemption from the
5 residential mortgage loan originator licensing requirements of
6 this chapter to a municipality, county, community development
7 corporation, or public or private grant administrator to the extent
8 the entity is administering the Texas HOME Investment Partnerships
9 program if the commission determines that granting the exemption is
10 not inconsistent with the intentions of the federal Secure and Fair
11 Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No.
12 110-289).

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

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

18 (1) a mortgage company license;

19 (2) a credit union subsidiary organization license;

20 (3) an auxiliary mortgage loan activity company
21 license; or

22 (4) an independent contractor loan processor or
23 underwriter company license.

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

27 (1) in writing;

1 (2) under oath; and

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

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

5 (1) in writing;

6 (2) under oath; and

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

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

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

12 [~~(2) a recovery fund fee as provided by Section~~
13 ~~156.502]~~.

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

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

18 (2) a recovery fund fee as provided by Section
19 156.502.

20 SECTION 16. Subchapter C, Chapter 156, Finance Code, is
21 amended by adding Sections 156.2041, 156.2042, 156.2043, 156.2044,
22 156.2045, and 156.2046 to read as follows:

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

27 (1) submit a completed application together with the

1 payment of applicable fees through the Nationwide Mortgage
2 Licensing System and Registry;

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

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

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

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

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

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

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

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

27 (1) has not had a residential mortgage loan originator

1 license revoked in any governmental jurisdiction;

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

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

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

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

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

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

21 (8) has paid a recovery fund fee as required by Section
22 156.502(a); and

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

25 Sec. 156.2042. QUALIFICATIONS AND REQUIREMENTS FOR
26 LICENSES: CREDIT UNION SUBSIDIARY ORGANIZATION AND RESIDENTIAL
27 MORTGAGE LOAN ORIGINATORS. (a) To be issued a credit union

1 subsidiary organization license, an applicant must:

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (8) has paid a recovery fund fee as required by Section
18 156.502(a); and

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

21 Sec. 156.2043. QUALIFICATIONS AND REQUIREMENTS FOR
22 LICENSES: AUXILIARY MORTGAGE LOAN ACTIVITY COMPANY AND RESIDENTIAL
23 MORTGAGE LOAN ORIGINATORS. (a) To be issued an auxiliary mortgage
24 loan activity company license, an applicant must:

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

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

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

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

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

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

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

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

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

27 (5) demonstrates the financial responsibility, good

1 moral character, and general fitness necessary to operate in an
2 honest, trustworthy, fair, and efficient manner as a residential
3 mortgage loan originator under this chapter;

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

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

9 (8) has paid a recovery fund fee as required by Section
10 156.502(a); and

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

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

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

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

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

26 (4) not be in violation of this chapter, a rule adopted
27 under this chapter, or any order previously issued by the

1 commissioner to the applicant.

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

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

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

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

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

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

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

27 (6) has successfully completed at least 20 hours of

1 prelicensing education courses approved by the Nationwide Mortgage
2 Licensing System and Registry;

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

5 (8) has paid a recovery fund fee as required by Section
6 156.502(a); and

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

9 Sec. 156.2045. QUALIFICATIONS AND REQUIREMENTS FOR

10 REGISTRATION AND LICENSE: FINANCIAL SERVICES COMPANY AND EXCLUSIVE

11 AGENTS. (a) To be issued a financial services company
12 registration under Section 156.214(c), an applicant must:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (8) is a citizen of the United States or a lawfully
2 admitted alien.

3 Sec. 156.2046. CONVICTION OF OFFENSE. For the purposes of
4 Section 156.2041, 156.2042, 156.2043, 156.2044, or 156.2045, a
5 person is considered to have been convicted of a criminal offense
6 if:

7 (1) a sentence is imposed on the person;

8 (2) the person received probation or community
9 supervision, including deferred adjudication or community service;
10 or

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

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

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

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

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

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

27 SECTION 19. Subsections (a), (b), and (c), Section 156.206,

1 Finance Code, are amended to read as follows:

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

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

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

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

1 (2) the commissioner releases the information:

2 (A) under order from a court;

3 (B) with the permission of the applicant;

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

6 (D) to a governmental agency.

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

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

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

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

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

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

25 (a-1) A residential mortgage loan company [~~mortgage broker~~]
26 license issued under this chapter is valid through December 31 of
27 the year of issuance [~~for a term of not more than two years~~] and may

1 be renewed on or before its expiration date if the residential
2 mortgage loan company [~~mortgage broker~~]:

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

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

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

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

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

27 (2) continues to meet the minimum requirements for

1 license issuance [~~has not been convicted of a criminal offense the~~
2 ~~commissioner determines is directly related to the occupation of a~~
3 ~~loan officer as provided by Chapter 53, Occupations Code]~~; and

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

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

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

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

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

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

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

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

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

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

13 SECTION 24. Subsections (b) and (c), Section 156.2081,
14 Finance Code, are amended to read as follows:

15 (b) A person who is otherwise eligible to renew a license,
16 but has not done so before January 1, may renew the license before
17 March 1 by paying the commissioner a reinstatement fee in an amount
18 equal to 150 percent of the [~~whose license has been expired for 90~~
19 ~~days or less but who is otherwise eligible to renew a license may~~
20 ~~renew the license by paying to the commissioner a renewal fee that~~
21 ~~is equal to 1-1/2 times the normally~~] required renewal fee.

22 (c) A person whose residential mortgage loan originator
23 license has not been renewed before March 1 [~~has been expired for 91~~
24 ~~days or more~~] may not renew the license. The person may obtain a
25 new license by complying with the requirements and procedures for
26 obtaining an original license.

27 SECTION 25. Section 156.210, Finance Code, is amended to

1 read as follows:

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

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

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

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

1 ~~broker~~] will sponsor the residential mortgage loan originator [~~loan~~
2 ~~officer~~] and will assume responsibility for the actions of the
3 residential mortgage loan originator [~~loan officer~~].

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

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

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

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

1 Sec. 156.212. MAINTENANCE AND LOCATION OF OFFICES.

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

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

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

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

23 Sec. 156.213. MORTGAGE CALL [~~ANNUAL~~] REPORT. (a) Each
24 licensed residential mortgage loan company or licensed residential
25 mortgage loan originator, as required by the commissioner,
26 [~~mortgage broker~~] shall file a mortgage call [~~an annual~~] report
27 with the commissioner or the commissioner's authorized designee on

1 a form prescribed by the commissioner or authorized designee
2 [Savings and Loan Department]. The report ~~[must include]~~:

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

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

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

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

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

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

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

26 (a) A registered financial services company may perform the
27 services of another residential mortgage loan company ~~[a mortgage~~

1 ~~broker~~] as if the company were licensed as a residential mortgage
2 loan company [~~mortgage broker~~] under this chapter, through
3 individuals who are the exclusive agents of the registered
4 financial services company.

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

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

12 (2) provide the commissioner with satisfactory
13 evidence of an undertaking of accountability in a form acceptable
14 to the commissioner, supported by a surety bond equal to \$1 million
15 to cover the person's responsibility for residential mortgage loan
16 company [~~mortgage broker~~] activities of each exclusive agent;

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

22 (4) pay an annual registration fee in an amount
23 determined as follows:

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

27 (i) one-half of the license fee for a

1 residential mortgage loan originator [~~loan officer~~] under Section
2 156.203(c)(1), multiplied by the number of exclusive agents under
3 contract to act for the person in this state; or

4 (ii) \$200,000;

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

8 (C) if the registered financial services company
9 has at least 2,501 but not more than 3,000 exclusive agents acting
10 in this state, \$250,000;

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

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

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

19 (c) If the commissioner determines that a person has met the
20 requirements of Subsection (b) and Section 156.2045(a), the
21 commissioner shall issue a registration to the person. The
22 registration is valid for one year, expires on December 31 of each
23 year, and must [~~may~~] be renewed annually [~~on or before its~~
24 ~~expiration date~~]. A person must [~~may~~] renew an expired
25 registration in the [~~same~~] manner determined by the commissioner
26 [~~as a person may renew an expired license under Section~~
27 ~~156.2081(b)~~].

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

4 SECTION 30. Subsections (b) and (h), Section 156.301,
5 Finance Code, are amended to read as follows:

6 (b) On the signed written complaint of a person, the
7 commissioner shall investigate the actions and records of a person
8 licensed under this chapter if the complaint, or the complaint and
9 documentary or other evidence presented in connection with the
10 complaint, provides reasonable cause. The commissioner, before
11 commencing an investigation, shall notify a residential mortgage
12 loan company [~~mortgage broker or loan officer~~] in writing of the
13 complaint and that the commissioner intends to investigate the
14 matter.

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

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

22 (b) The amount of the penalty may not exceed \$25,000 for
23 [~~\$2,500, and~~] each [~~day a~~] violation [~~continues or occurs is a~~
24 ~~separate violation for the purpose of imposing a penalty~~]. The
25 amount shall be based on:

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

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

3 (3) the history of previous violations;

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

6 (5) [~~(4)~~] efforts to correct the violation; and

7 (6) [~~(5)~~] any other matter that justice may require.

8 SECTION 32. Subsections (a), (a-1), (g), and (i), Section
9 156.303, Finance Code, are amended to read as follows:

10 (a) The commissioner may order disciplinary action against
11 a licensed or registered residential mortgage loan company
12 [~~mortgage broker~~] or a licensed residential mortgage loan
13 originator [~~loan officer~~] when the commissioner, after notice and
14 opportunity for hearing, has determined that the person:

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

20 (2) published or caused to be published an
21 advertisement related to the business of a residential mortgage
22 loan company [~~mortgage broker~~] or residential mortgage loan
23 originator [~~loan officer~~] that:

24 (A) is misleading;

25 (B) is likely to deceive the public;

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

1 (D) fails to identify as a residential mortgage
2 loan company [~~mortgage broker~~] or residential mortgage loan
3 originator [~~loan officer~~] the person causing the advertisement to
4 be published; or

5 (E) violates federal or state law;

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

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

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

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

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

27 (8) paid compensation to a person who is not licensed,

1 registered, or exempt under this chapter for acts for which a
2 license or registration under this chapter is required;

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

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

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

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

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

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

27 (15) failed or refused on demand to:

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

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

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

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

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

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

26 (a-1) The commissioner may also order disciplinary action
27 after notice and opportunity for hearing against a licensed or

1 registered residential mortgage loan company [~~mortgage broker~~] or a
2 licensed residential mortgage loan originator [~~loan officer~~] if the
3 commissioner becomes aware during the term of the license of any
4 fact that would have been grounds for denial of an original license
5 if the fact had been known by the commissioner on the date the
6 license was issued.

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

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

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

27 (2) being an employee, officer, director, manager,

1 shareholder, member, agent, contractor, or processor of a
2 residential mortgage loan company [~~mortgage broker~~] or residential
3 mortgage loan originator [~~loan officer~~]; or

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

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

9 Sec. 156.304. FEE ASSESSMENT AND DISCLOSURE. (a) Before
10 the completion of all services to be performed, a residential
11 mortgage loan originator [~~mortgage broker~~] may charge and receive,
12 unless prohibited by law, the following fees for services in
13 assisting a mortgage applicant to obtain a residential mortgage
14 loan:

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

26 (b) A residential mortgage loan originator [~~mortgage broker~~
27 ~~or loan officer~~] may not charge or receive a fee for locking in an

1 interest rate unless there is a written agreement signed by the
2 mortgage applicant and residential mortgage loan originator
3 [~~mortgage broker~~] that contains a statement of whether the fee to
4 lock in the interest rate is refundable and, if so, the terms and
5 conditions necessary to obtain the refund.

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

8 Sec. 156.305. RESTITUTION. The commissioner may order a
9 person to make restitution for any amount received by that person in
10 violation of this chapter. A residential mortgage loan company
11 [~~mortgage broker~~] may be required to make restitution for any
12 amount received by a sponsored residential mortgage loan originator
13 [~~loan officer~~] in violation of this chapter.

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

16 (e) The commissioner may, in the commissioner's discretion,
17 rescind or vacate any previously issued revocation order.

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

20 Sec. 156.405. COMPLETION OF RESIDENTIAL MORTGAGE LOAN
21 ORIGINATOR [~~MORTGAGE BROKER~~] SERVICES. (a) On disbursement of
22 mortgage proceeds to or on behalf of the mortgage applicant, the
23 residential mortgage loan originator [~~mortgage broker and loan~~
24 ~~officer~~] who assisted the mortgage applicant in obtaining the
25 residential mortgage loan is [~~are~~] considered to have completed the
26 performance of the residential mortgage loan originator's
27 [~~mortgage broker's and loan officer's~~] services for the mortgage

1 applicant and owes [~~owe~~] no additional duties or obligations to the
2 mortgage applicant with respect to the residential mortgage loan.

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

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

8 (2) failing to comply with a provision of or duty
9 arising under an agreement with a mortgage applicant or lender
10 under this chapter; or

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

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

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

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

1 the court. An aggrieved person may recover damages under this
2 subsection in a court.

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

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

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

23 (b) Subject to this subsection, the recovery fund shall be
24 used to reimburse residential mortgage loan applicants for actual
25 damages incurred because of acts committed by a residential
26 mortgage loan originator [~~mortgage broker or loan officer~~] who was
27 licensed under this chapter or under Chapter 157 when the act was

1 committed. The use of the fund is limited to reimbursement for
2 out-of-pocket losses caused by an act by:

3 (1) a residential mortgage loan originator licensed
4 under this chapter [~~a mortgage broker or loan officer~~] that
5 constitutes a violation of Section 156.303(a)(2), (3), (5), (6),
6 (8), (9), (10), (11), (12), (13), or (16) or 156.304; or

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

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

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

23 (d) The recovery fund may be used at the discretion of the
24 commissioner to reimburse expenses incurred to secure and destroy
25 residential mortgage loan documents that have been abandoned by a
26 current or former individual or entity under the regulatory
27 authority of the department.

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

7 (f) The commissioner, as manager of the recovery fund, is
8 entitled to reimbursement for reasonable and necessary costs and
9 expenses incurred in the management of the fund, including costs
10 and expenses incurred with regard to applications filed under
11 Section 156.504.

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

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

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

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

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

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

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

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

18 (b) The residential mortgage loan applicant is required to
19 show:

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

22 (2) that the applicant:

23 (A) is not a spouse of the licensed residential
24 mortgage loan originator [~~mortgage broker or loan officer~~];

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

1 ~~or loan officer~~];

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

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

16 (E) is not licensed as a residential mortgage
17 loan originator [~~mortgage broker or loan officer~~] under this
18 chapter who is seeking to recover any compensation in the
19 transaction or transactions for which the application for payment
20 is made.

21 (d) If the preliminary determination under Subsection
22 (c)(2) is not otherwise resolved by agreement and is not disputed by
23 written notice to the commissioner before the 31st day after the
24 notification date, the preliminary determination automatically
25 becomes final and the commissioner shall make payment from the
26 recovery fund, subject to the limits of Section 156.505.

27 SECTION 42. Section 156.505, Finance Code, is amended to

1 read as follows:

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

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

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

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

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

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

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

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

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

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

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

1 under this chapter.

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

4 Sec. 156.507. SUBROGATION. When the commissioner has paid
5 an applicant an amount from the recovery fund under Section
6 156.504, the commissioner is subrogated to all of the rights of the
7 applicant to the extent of the amount paid. The applicant shall
8 assign all of the applicant's right, title, and interest in any
9 subsequent judgment against the license holder, up to the amount
10 paid by the commissioner. Any amount, including interest,
11 recovered by the commissioner on the assignment shall be deposited
12 to the credit of the fund.

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

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

22 (4-a) "Nationwide Mortgage Licensing System and
23 Registry" has the meaning assigned by Section 180.002.

24 (4-b) "Recovery fund" means the fund established and
25 maintained by the commissioner under Subchapter F, Chapter 156, and
26 Section 13.016.

27 (5) "Residential mortgage loan" has the meaning

1 assigned by Section 180.002 [~~means a debt secured by a lien on~~
2 ~~residential real property designed principally for occupancy by one~~
3 ~~to four families that is created by a deed of trust, security deed,~~
4 ~~or other security instrument~~].

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

8 (b) To register under this chapter, a mortgage banker shall:

9 (1) enroll with the Nationwide Mortgage Licensing
10 System and Registry;

11 (2) be in good standing with the secretary of state;

12 (3) have a valid federal employer identification
13 number;

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

16 (5) provide to the commissioner a list of any offices
17 that are separate and distinct from the primary office identified
18 on the mortgage banker registration and that conduct residential
19 mortgage loan business relating to this state, regardless of
20 whether the offices are located in this state [~~file with the~~
21 ~~commissioner a statement that contains:~~

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

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

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

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

3 (e) The registration of a mortgage banker is valid on
4 approval of the commissioner and may be denied if the commissioner
5 determines the mortgage banker does not meet the requirements of
6 Subsection (b). If registration is denied, the mortgage banker may
7 appeal the determination in the same manner as an applicant for a
8 residential mortgage loan originator license may appeal a denial of
9 issuance of a license under Section 157.017.

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

12 (g) The registration may be [until] withdrawn or revoked.
13 ~~[Periodic renewal of the registration is not required.]~~

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

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

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

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

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

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

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

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

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

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

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

22 Sec. 157.007. DISCLOSURE STATEMENT. A mortgage banker that
23 is a residential mortgage loan originator shall include a [the
24 following] notice to a residential mortgage loan applicant with an
25 application for a residential mortgage loan. The finance
26 commission by rule shall adopt a standard disclosure form to be used
27 by the mortgage banker. The form must:

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

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

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

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

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

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

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

24 (1) is licensed under this chapter, sponsored by a
25 registered mortgage banker, and enrolled with the Nationwide
26 Mortgage Licensing System and Registry as required by Section
27 180.052; and

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

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

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

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

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

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

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

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

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

1 (b) An application for a residential mortgage loan
2 originator license must be accompanied by an application fee in an
3 amount determined by the commissioner, not to exceed \$500, and by a
4 recovery fund fee in an amount determined by the commissioner, not
5 to exceed \$20.

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

8 Sec. 157.016. REINSTATEMENT [~~RENEWAL~~] AFTER EXPIRATION OF
9 LICENSE; NOTICE.

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

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

16 SECTION 55. Section 157.020, Finance Code, is amended to
17 read as follows:

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

1 (b) The information contained in the mortgage call report
2 related to residential mortgage loan origination volume or other
3 trade information is confidential and may not be disclosed by the
4 commissioner, the commissioner's ~~[or]~~ authorized designee, or any
5 other employee of the Department of Savings and Mortgage Lending.

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

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

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

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

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

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

1 nature, circumstances, extent, and gravity of the violation;

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

4 (3) the history of previous violations;

5 (4) [~~(3)~~] the amount necessary to deter a future
6 violation;

7 (5) [~~(4)~~] efforts to correct the violation; and

8 (6) [~~(5)~~] any other matter that justice may require.

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

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

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

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

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

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

27 SECTION 59. Chapter 157, Finance Code, is amended by adding

1 Section 157.0241 to read as follows:

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

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

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

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

27 (e) This section does not limit the authority of the

1 commissioner to take disciplinary action against a residential
2 mortgage loan originator for a violation of this chapter or the
3 rules adopted by the finance commission under this chapter. The
4 repayment in full to the recovery fund of all obligations of a
5 residential mortgage loan originator does not nullify or modify the
6 effect of any other disciplinary proceeding brought under this
7 chapter.

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

10 (19) "Residential mortgage loan originator":

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

13 (i) takes a residential mortgage loan
14 application; or

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

17 (B) does not include:

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

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

27 (a) a lender [~~mortgage broker~~] or

1 other residential mortgage loan originator; or

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

4 (iii) an individual licensed under Chapter
5 1201, Occupations Code, unless the individual is directly
6 compensated for arranging financing for activities regulated under
7 that chapter by:

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

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

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

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

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

20 Sec. 180.003. EXEMPTION. (a) The following persons are
21 exempt from this chapter:

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

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

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

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

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

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

10 ~~[(A) is an exclusive agent of a registered
11 financial services company;~~

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

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

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

20 (5) ~~[(6)]~~ a nonprofit organization providing
21 self-help housing that originates zero interest residential
22 mortgage loans for borrowers who have provided part of the labor to
23 construct the dwelling securing the loan;

24 (6) an owner of residential real estate who in any
25 12-consecutive-month period makes no more than five residential
26 mortgage loans to purchasers of the property for all or part of the
27 purchase price of the residential real estate against which the

1 mortgage is secured; and

2 (7) an owner of a dwelling who in any
3 12-consecutive-month period makes no more than five residential
4 mortgage loans to purchasers of the property for all or part of the
5 purchase price of the dwelling against which the mortgage or
6 security interest is secured.

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

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

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

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

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

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

3 (h) An individual who fails to maintain a residential
4 mortgage loan originator license for at least five consecutive
5 years must retake the prelicensing education requirements
6 prescribed by the S.A.F.E. Mortgage Licensing Act.

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

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

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

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

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

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

26 (b) Before conducting business in this state with respect to
27 a residential mortgage loan, an individual to whom this section

1 applies must enroll as a financial exclusive agent with the
2 Department of Savings and Mortgage Lending until the time any
3 registration with the Nationwide Mortgage Licensing System and
4 Registry is required for the individual by federal law or
5 regulation and a suitable category is created for that registration
6 with that nationwide registry.

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

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

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

15 (c-1) A person who is licensed or registered under Chapter
16 156 or 157 is not required to obtain a license under this section to
17 make, negotiate, or transact a residential mortgage loan, as
18 defined by Section 180.002.

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

- 21 (1) Subdivisions (4), (5), (6), (9), and (10), Section
22 156.002;
- 23 (2) Section 156.2011;
- 24 (3) Subsection (a), Section 156.2015;
- 25 (4) Subsection (b), Section 156.202;
- 26 (5) Section 156.204;
- 27 (6) Section 156.2071;

- 1 (7) Subsections (f), (g), (h), and (i), Section
- 2 156.208;
- 3 (8) Subsections (d) and (e), Section 156.2081;
- 4 (9) Subsections (e), (f), and (g), Section 156.214;
- 5 (10) Section 156.215;
- 6 (11) Subsections (b-1), (c), and (d), Section 157.003;
- 7 (12) Subsection (b), Section 157.009;
- 8 (13) Subsection (d), Section 157.016;
- 9 (14) Section 157.018; and
- 10 (15) Subsection (f), Section 342.051.

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

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

27 SECTION 67. To the extent of any conflict, this Act prevails

1 over another Act of the 82nd Legislature, Regular Session, 2011,
2 relating to nonsubstantive additions to and corrections in enacted
3 codes.

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

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

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1124 passed the Senate on March 31, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 25, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1124 passed the House, with amendments, on May 23, 2011, by the following vote: Yeas 146, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor