

1-1 By: Anchia (Senate Sponsor - Zaffirini) H.B. No. 3617
 1-2 (In the Senate - Received from the House May 3, 2021;
 1-3 May 17, 2021, read first time and referred to Committee on Business
 1-4 & Commerce; May 21, 2021, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 5, Nays 1;
 1-6 May 21, 2021, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10			X	
1-11		X		
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16			X	
1-17			X	

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 3617 By: Hancock

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to certain qualifications and requirements for
 1-22 residential mortgage loan companies, the investment and use of
 1-23 excess residential mortgage loan originator recovery fund fees, and
 1-24 the creation of the mortgage grant fund; changing a fee.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 13.016, Finance Code, is amended to read
 1-27 as follows:

1-28 Sec. 13.016. RECOVERY FUND. (a) Except as provided by
 1-29 Subchapter G, Chapter 156, the [The] savings and mortgage lending
 1-30 commissioner shall establish, administer, and maintain one
 1-31 recovery fund for the purposes of Chapters 156 and 157. The
 1-32 recovery fund shall be administered and maintained under Subchapter
 1-33 F, Chapter 156.

1-34 (b) The savings and mortgage lending commissioner's
 1-35 authority under this section includes the authority to[+]

1-36 [~~(1) set fee amounts under Chapters 156 and 157 for~~
 1-37 ~~deposit in the recovery fund; and~~

1-38 [~~(2)~~] enforce disciplinary action as provided by
 1-39 Chapters 156 and 157 for a person's failure to comply with the
 1-40 applicable provisions of those chapters relating to the recovery
 1-41 fund and with applicable rules adopted under those chapters.

1-42 SECTION 2. Section 156.2041, Finance Code, is amended to
 1-43 read as follows:

1-44 Sec. 156.2041. QUALIFICATIONS AND REQUIREMENTS FOR
 1-45 LICENSE: MORTGAGE COMPANY. [~~(a)~~] To be issued a mortgage company
 1-46 license, an applicant must:

1-47 (1) submit a completed application together with the
 1-48 payment of applicable fees through the Nationwide Mortgage
 1-49 Licensing System and Registry;

1-50 (2) designate control persons for the mortgage company
 1-51 through the Nationwide Mortgage Licensing System and Registry;

1-52 (3) designate an individual licensed as a residential
 1-53 mortgage loan originator under Chapter 157 as the company's
 1-54 qualifying individual;

1-55 (4) if applicable, submit a completed branch
 1-56 application through the Nationwide Mortgage Licensing System and
 1-57 Registry for each branch office that engages in residential
 1-58 mortgage loan activity on residential real estate located in this
 1-59 state;

1-60 (5) not be in violation of this chapter, a rule adopted

2-1 under this chapter, or any order previously issued by the
2-2 commissioner to the applicant;

2-3 (6) have the company name or assumed name properly
2-4 filed with either the secretary of state or with the appropriate
2-5 county clerk's office; and

2-6 (7) ~~maintain a physical office in this state, and~~
2-7 ~~[(8)]~~ provide financial statements and any other
2-8 information required by the commissioner.

2-9 SECTION 3. Section 156.2042, Finance Code, is amended to
2-10 read as follows:

2-11 Sec. 156.2042. QUALIFICATIONS AND REQUIREMENTS FOR
2-12 LICENSE: CREDIT UNION SUBSIDIARY ORGANIZATION. ~~[(a)]~~ To be issued
2-13 a credit union subsidiary organization license, an applicant must:

2-14 (1) submit a completed application together with the
2-15 payment of applicable fees through the Nationwide Mortgage
2-16 Licensing System and Registry;

2-17 (2) designate control persons for the organization
2-18 through the Nationwide Mortgage Licensing System and Registry;

2-19 (3) designate an individual licensed as a residential
2-20 mortgage loan originator under Chapter 157 as the company's
2-21 qualifying individual;

2-22 (4) submit a completed branch application through the
2-23 Nationwide Mortgage Licensing System and Registry for each branch
2-24 office that engages in residential mortgage loan activity on
2-25 residential real estate located in this state; and

2-26 (5) not be in violation of this chapter, a rule adopted
2-27 under this chapter, or any order previously issued by the
2-28 commissioner to the applicant ~~[, and~~

2-29 ~~[(6) maintain a physical office in this state].~~

2-30 SECTION 4. Section 156.212, Finance Code, is amended to
2-31 read as follows:

2-32 Sec. 156.212. MAINTENANCE AND LOCATION OF OFFICES. ~~[(a)~~
2-33 ~~Each residential mortgage loan company licensed under this chapter~~
2-34 ~~shall maintain a physical office in this state.~~

2-35 ~~[(a-1) If a residential mortgage loan company's main office~~
2-36 ~~is outside this state, the requirement of Subsection (a) is~~
2-37 ~~satisfied if the company has a branch office located in this state.~~

2-38 ~~[(b)]~~ If a residential mortgage loan company maintains an
2-39 office separate and distinct from the company's main office,
2-40 whether located in this state or not, that conducts mortgage
2-41 business with consumers of this state or regarding residential real
2-42 estate in this state, the company shall apply for, pay a fee of \$50
2-43 for, and obtain an additional license to be known as a branch office
2-44 license for each additional office to be maintained by the company.

2-45 SECTION 5. Sections 156.501(b) and (c), Finance Code, are
2-46 amended to read as follows:

2-47 (b) Subject to this subsection and Section 156.502(b), the
2-48 recovery fund shall be used to reimburse residential mortgage loan
2-49 applicants for actual damages incurred because of acts committed by
2-50 a residential mortgage loan originator who was licensed under
2-51 Chapter 157 when the act was committed. The use of the fund is
2-52 limited to reimbursement for out-of-pocket losses caused by an act
2-53 by a residential mortgage loan originator licensed under Chapter
2-54 157 that constitutes a violation of Section 157.024(a)(2), (3),
2-55 (5), (7), (8), (9), (10), (13), (16), (17), or (18) or 156.304(b).

2-56 (c) Amounts in the recovery fund may be invested and
2-57 reinvested in accordance with Chapter 2256, Government Code, and
2-58 under the prudent person standard described in Section 11b, Article
2-59 VII, Texas Constitution [in the same manner as funds of the
2-60 Employees Retirement System of Texas], and the interest from these
2-61 investments shall be deposited to the credit of the fund. An
2-62 investment may not be made under this subsection if the investment
2-63 will impair the necessary liquidity required to satisfy claims
2-64 [judgment payments] awarded under this subchapter.

2-65 SECTION 6. Section 156.502, Finance Code, is amended to
2-66 read as follows:

2-67 Sec. 156.502. FUNDING. (a) On an application for an
2-68 original license ~~[or for renewal of a license]~~ issued under Chapter
2-69 157, the applicant, in addition to paying the original application

3-1 fee [~~or renewal fee~~], shall pay a fee in the [~~an~~] amount of
3-2 [~~determined by the commissioner, not to exceed~~] \$20. The fee shall
3-3 be deposited in the recovery fund.

3-4 (a-1) All or any portion of the amount of a penalty that is
3-5 collected by the commissioner under Sections 156.302, 156.303,
3-6 157.023, 157.024, 157.031, 158.105, and 180.202, as determined by
3-7 the commissioner, may be deposited to the credit of the recovery
3-8 fund at the end of each fiscal year.

3-9 (b) If the balance remaining in the recovery fund at the end
3-10 of a calendar year is more than \$3.5 million, the amount of money in
3-11 excess of that amount shall be remitted by the commissioner to the
3-12 comptroller for deposit in the mortgage grant fund established
3-13 under Subchapter G [~~available to the commissioner to offset the~~
3-14 ~~expenses of participating in and sharing information with the~~
3-15 ~~Nationwide Mortgage Licensing System and Registry in accordance~~
3-16 ~~with Chapter 180~~].

3-17 SECTION 7. Chapter 156, Finance Code, is amended by adding
3-18 Subchapter G to read as follows:

3-19 SUBCHAPTER G. MORTGAGE GRANT FUND

3-20 Sec. 156.551. MORTGAGE GRANT FUND. (a) The commissioner
3-21 shall establish, administer, and maintain a mortgage grant fund as
3-22 provided by this subchapter. The amounts received by the
3-23 commissioner for deposit in the fund shall be held by the
3-24 commissioner in trust for carrying out the purposes of the fund.

3-25 (b) All or any portion of the amount of a penalty that is
3-26 collected by the commissioner under Sections 156.302, 156.303,
3-27 157.023, 157.024, 157.031, 158.105, and 180.202, as determined by
3-28 the commissioner, may be deposited to the credit of the mortgage
3-29 grant fund at the end of each fiscal year.

3-30 Sec. 156.552. FUNDING. The mortgage grant fund consists
3-31 of:

3-32 (1) penalties collected by the commissioner and
3-33 deposited to the credit of the fund in accordance with Section
3-34 156.551(b); and

3-35 (2) excess amounts transferred from the recovery fund
3-36 under Section 156.502(b).

3-37 Sec. 156.553. MANAGEMENT OF FUND. (a) The commissioner, as
3-38 manager of the mortgage grant fund, shall:

3-39 (1) subject to Subsection (b), invest and reinvest the
3-40 assets of the fund;

3-41 (2) make disbursements from the fund in accordance
3-42 with Section 156.554;

3-43 (3) advise the finance commission regarding the fund;

3-44 (4) maintain books and records for the fund as
3-45 required by the finance commission; and

3-46 (5) appear at hearings or judicial proceedings related
3-47 to the fund.

3-48 (b) Amounts in the mortgage grant fund may be invested and
3-49 reinvested in accordance with Chapter 2256, Government Code, and
3-50 under the prudent person standard described in Section 11b, Article
3-51 VII, Texas Constitution.

3-52 Sec. 156.554. DISBURSEMENT FROM FUND. (a) The
3-53 commissioner shall approve each disbursement from the mortgage
3-54 grant fund, which must be for a purpose authorized by Subsection
3-55 (b).

3-56 (b) The commissioner:

3-57 (1) to the extent the commissioner determines the fund
3-58 has sufficient assets available, shall provide a grant in an amount
3-59 of not less than \$100,000 each year to an auxiliary mortgage loan
3-60 activity company or another statewide nonprofit organization that
3-61 supports organizations described by Section 156.202(a-1)(1) for
3-62 the purposes of:

3-63 (A) providing statewide training and technical
3-64 assistance to entities described by Section 156.202(a-1);

3-65 (B) servicing third-party mortgage loans;

3-66 (C) providing financial education to consumers
3-67 that relates to mortgage loans; and

3-68 (D) administering disaster repair programs and
3-69 preparedness resources for consumers with mortgage loans;

4-1 (2) shall make disbursements from the fund to pay
4-2 claims made under Section 156.555 that meet the requirements for
4-3 payment under that section; and

4-4 (3) may make disbursements from the fund to:
4-5 (A) provide support for statewide financial
4-6 education, activities, and programs specifically related to
4-7 mortgage loans for consumers, including activities and programs
4-8 described by Section 393.628(c); and

4-9 (B) if a governor's declaration of a state of
4-10 disaster under Section 418.014, Government Code, is in effect, a
4-11 governmental or nonprofit organization providing mortgage payment
4-12 assistance for residence homesteads, as defined by Section 11.13,
4-13 Tax Code, as needed due to the disaster.

4-14 Sec. 156.555. PAYMENT OF CLAIMS FOR FRAUDULENT UNLICENSED
4-15 ACTIVITY. (a) A residential mortgage loan applicant may make a
4-16 claim on and receive payment from the mortgage grant fund for the
4-17 recovery of the applicant's actual, out-of-pocket damages incurred
4-18 because of fraud committed by an individual who acted as a
4-19 residential mortgage loan originator but who did not hold the
4-20 required license issued under Chapter 157 at the time the
4-21 individual committed the fraudulent act.

4-22 (b) The eligibility and procedural requirements for a claim
4-23 made under Section 156.504 and the statute of limitations under
4-24 Section 156.503 apply to a residential mortgage loan applicant who
4-25 makes a claim under this section.

4-26 (c) Payments made from the mortgage grant fund to a
4-27 residential mortgage loan applicant under this section are subject
4-28 to the limits provided by Section 156.505.

4-29 Sec. 156.556. RULES. The finance commission shall adopt
4-30 rules to administer this subchapter, including rules governing
4-31 implementation of Section 156.554 that:

4-32 (1) ensure a grant awarded under that section is used
4-33 for a public purpose described by that section; and

4-34 (2) provide a means of recovering money awarded that
4-35 is not used in compliance with that section.

4-36 SECTION 8. Section 157.013(b), Finance Code, is amended to
4-37 read as follows:

4-38 (b) An application for a residential mortgage loan
4-39 originator license must be accompanied by:

4-40 (1) an application fee in an amount determined by the
4-41 commissioner, not to exceed \$500; and

4-42 (2) for an original license, a recovery fund fee in the
4-43 [an] amount of ~~[determined by the commissioner, not to exceed]~~ \$20.

4-44 SECTION 9. Sections 156.501(d) and (f), Finance Code, are
4-45 repealed.

4-46 SECTION 10. Section 156.501(c), Finance Code, as amended by
4-47 this Act, applies only to an investment made on or after the
4-48 effective date of this Act. An investment made before the effective
4-49 date of this Act is governed by the law as it existed immediately
4-50 before that date, and that law is continued in effect for that
4-51 purpose.

4-52 SECTION 11. This Act takes effect September 1, 2021.

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