

By: Truitt

H.B. No. 2774

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of certain persons involved in residential mortgage lending; providing a penalty.

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

SECTION 1. Section 156.101, Finance Code, is amended by adding Subsection (d) to read as follows:

(d) The commissioner shall participate in the Nationwide Mortgage Licensing System and Registry as provided by Chapter 180.

SECTION 2. Section 156.102, Finance Code, is amended by adding Subsections (a-1) and (b-1) to read as follows:

(a-1) The finance commission, for the purpose of enabling this state to participate in the Nationwide Mortgage Licensing System and Registry and comply with Chapter 180, by rule may waive or modify, in whole or in part, any requirement of this chapter and establish requirements under this chapter that are reasonably necessary to accomplish that purpose.

(b-1) The finance commission on the commissioner's recommendation may adopt rules to promote a fair and orderly administration of the fund consistent with the purposes of this subchapter.

SECTION 3. The heading to Section 156.104, Finance Code, is amended to read as follows:

Sec. 156.104. MORTGAGE INDUSTRY [~~BROKER~~] ADVISORY COMMITTEE.

1 SECTION 4. Sections 156.104(a), (b), and (h), Finance Code,
2 are amended to read as follows:

3 (a) The mortgage industry [~~broker~~] advisory committee is
4 created to advise and assist the commissioner.

5 (b) The advisory committee is composed of six members [~~to~~
6 ~~be~~] appointed by [~~as follows~~].

7 [~~(1)~~] the commissioner. Each of the members must be
8 [~~shall appoint four members, each of whom~~]:

9 (1) under the regulatory authority of the department
10 [~~(A) must hold a mortgage broker license~~];

11 (2) [(B) is] actively engaged in the business of
12 originating, brokering, or funding residential mortgage loans at
13 the time of appointment; and

14 (3) [(C) has been] primarily engaged in the business
15 of originating, brokering, or funding residential mortgage loans
16 for at least two years before the member's appointment [~~, and~~

17 [~~(2) the Texas Real Estate Commission shall appoint~~
18 ~~two members, each of whom must hold a real estate broker or~~
19 ~~salesperson license~~].

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

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

24 (A) the licensing of mortgage brokers and loan
25 officers;

26 (B) the education and experience requirements
27 for licensing mortgage brokers and loan officers; and

1 (C) conduct and ethics of mortgage brokers and
2 loan officers;

3 ~~[(D) continuing education for licensed mortgage~~
4 ~~brokers and loan officers and the types of courses acceptable as~~
5 ~~continuing education courses under this chapter; and~~

6 ~~[(E) the granting or denying of an application or~~
7 ~~request for renewal for a mortgage broker license or loan officer~~
8 ~~license;]~~

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

11 (3) the interpretation, implementation, and
12 enforcement of this chapter.

13 SECTION 5. Effective April 1, 2010, Section 156.104,
14 Finance Code, is amended by adding Subsection (b-1) to read as
15 follows:

16 (b-1) The members of the committee must include:

17 (1) three individuals licensed as residential
18 mortgage loan originators under this chapter, one of whom must hold
19 an active real estate broker or salesperson license issued under
20 Chapter 1101, Occupations Code; and

21 (2) three individuals licensed as residential
22 mortgage loan originators under Chapter 157, one of whom must hold
23 an active real estate broker or salesperson license issued under
24 Chapter 1101, Occupations Code.

25 SECTION 6. Section 156.203, Finance Code, is amended by
26 adding Subsection (e) to read as follows:

27 (e) In addition to the disciplinary action by the

1 commissioner authorized under Section 156.303(a)(7), the
2 commissioner may collect a fee in an amount not to exceed \$50 for
3 any returned check or credit card charge back.

4 SECTION 7. Section 156.204, Finance Code, is amended by
5 amending Subsections (a) and (c) and adding Subsection (f) to read
6 as follows:

7 (a) To be eligible to be licensed as a mortgage broker as an
8 individual, the individual must:

9 (1) be at least 18 years of age;

10 (2) be a citizen of the United States or a lawfully
11 admitted alien;

12 (3) maintain a physical office in this state and
13 designate that office in the application;

14 (4) provide the commissioner with satisfactory
15 evidence that the applicant satisfies one of the following:

16 (A) the individual [~~person~~] has received a
17 bachelor's degree in an area relating to finance, banking, or
18 business administration from an accredited college or university
19 and has 18 months of experience in the mortgage or lending field as
20 evidenced by documentary proof of full-time employment as a
21 mortgage broker or licensed loan officer with a mortgage broker or
22 an individual [~~a person~~] exempt under Section 156.202;

23 (B) the individual [~~person~~] is licensed in this
24 state as:

25 (i) an active real estate broker under
26 Chapter 1101, Occupations Code;

27 (ii) an active attorney; or

1 (iii) an active general lines [~~a local~~
2 ~~recording agent or~~] insurance [~~solicitor or~~] agent or a limited
3 lines [~~for a legal reserve life~~] insurance agent [~~company under~~
4 ~~Chapter 21, Insurance Code~~], or holds an equivalent insurance
5 license under the [~~Chapter 21,~~] Insurance Code; or

6 (C) the individual [~~person~~] has three years of
7 experience in the mortgage lending field as evidenced by
8 documentary proof of full-time employment as a licensed loan
9 officer with a mortgage broker or an individual [~~a person~~] exempt
10 under Section 156.202;

11 (5) provide the commissioner with satisfactory
12 evidence of:

13 (A) having passed an examination, offered by a
14 testing service or company approved by the finance commission, that
15 demonstrates knowledge of:

16 (i) the mortgage industry; and

17 (ii) the role and responsibilities of a
18 mortgage broker; and

19 (B) compliance with the financial requirements
20 of this chapter;

21 (6) not have been convicted of a criminal offense that
22 the commissioner determines directly relates to the occupation of a
23 mortgage broker as provided by Chapter 53, Occupations Code;

24 (7) satisfy the commissioner as to the individual's
25 good moral character, including the individual's honesty,
26 trustworthiness, and integrity;

27 (8) not be in violation of this chapter, a rule adopted

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

3 (9) provide the commissioner with satisfactory
4 evidence that:

5 (A) if the individual [~~person~~] has not been
6 previously licensed as a mortgage broker or a loan officer under
7 this subchapter, the individual [~~person~~] has completed 90
8 [~~classroom~~] hours of education courses approved by the commissioner
9 under this section; or

10 (B) if the individual [~~person~~] has not been
11 previously licensed as a mortgage broker under this subchapter but
12 has been licensed as a loan officer under this subchapter, the
13 individual [~~person~~] has successfully completed an additional 30
14 [~~classroom~~] hours of education courses approved by the commissioner
15 under this section.

16 (c) To be eligible to be licensed as a loan officer a person
17 must:

18 (1) be an individual who is at least 18 years of age;

19 (2) be a citizen of the United States or a lawfully
20 admitted alien;

21 (3) designate in the application the name of the
22 mortgage broker sponsoring the loan officer;

23 (4) provide the commissioner with satisfactory
24 evidence that the applicant satisfies one of the following:

25 (A) the person [~~meets one of the requirements~~
26 ~~described by Subsection (a)(4) and~~] has successfully completed at
27 least 60 [~~classroom~~] hours of education courses approved by the

1 commissioner; ~~[under this section,]~~

2 (B) the person ~~[has 18 months of experience as a~~
3 ~~loan officer as evidenced by documentary proof of full-time~~
4 ~~employment as a loan officer with a person exempt under Section~~
5 ~~156.202 and]~~ has successfully completed 30 ~~[classroom]~~ hours of
6 education courses approved by the commissioner under this section
7 if the applicant:

8 (i) has 18 months or more of experience as a
9 mortgage loan officer as evidenced by documentary proof of
10 full-time employment as a mortgage loan officer with a person
11 exempt under Section 156.202; or

12 (ii) is a person who meets the
13 qualifications under Subsection (a)(4)(B); or

14 (C) the person holds an active mortgage broker
15 license issued under this chapter ~~[for applications received prior~~
16 ~~to January 1, 2000, the mortgage broker that will sponsor the~~
17 ~~applicant provides a certification under oath that the applicant~~
18 ~~has been provided necessary and appropriate education and training~~
19 ~~regarding all applicable state and federal law and regulations~~
20 ~~relating to mortgage loans];~~

21 (5) not have been convicted of a criminal offense that
22 the commissioner determines directly relates to the occupation of a
23 loan officer as provided by Chapter 53, Occupations Code;

24 (6) satisfy the commissioner as to the individual's
25 good moral character, including the individual's honesty,
26 trustworthiness, and integrity;

27 (7) provide the commissioner with satisfactory

1 evidence of having passed an examination, offered by a testing
2 service or company approved by the finance commission, that
3 demonstrates knowledge of:

4 (A) the mortgage industry; and

5 (B) the role and responsibilities of a loan
6 officer; and

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

10 (f) Subsection (c) and this subsection expire January 1,
11 2011.

12 SECTION 8. Effective January 1, 2011, Section 156.204,
13 Finance Code, is amended by adding Subsection (c-1) to read as
14 follows:

15 (c-1) To be eligible to be licensed as a loan officer a
16 person must:

17 (1) be an individual who is at least 18 years of age;

18 (2) be a citizen of the United States or a lawfully
19 admitted alien;

20 (3) designate in the application the name of the
21 mortgage broker sponsoring the loan officer;

22 (4) provide the commissioner with satisfactory
23 evidence that the applicant satisfies one of the following:

24 (A) the person has successfully completed at
25 least 60 hours of education courses approved by the commissioner;

26 (B) the person has successfully completed 30
27 hours of education courses approved by the commissioner under this

1 section if the applicant has 18 months or more of experience as a
2 residential mortgage loan originator as evidenced by documentary
3 proof of full-time employment; or

4 (C) the person holds an active license as a
5 residential mortgage loan originator under Chapter 157 and has held
6 that license for a minimum of one year;

7 (5) not have been convicted of a criminal offense that
8 the commissioner determines directly relates to the occupation of a
9 loan officer as provided by Chapter 53, Occupations Code;

10 (6) satisfy the commissioner as to the individual's
11 good moral character, including the individual's honesty,
12 trustworthiness, and integrity;

13 (7) provide the commissioner with satisfactory
14 evidence of having passed an examination, offered by a testing
15 service or company approved by the finance commission, that
16 demonstrates knowledge of:

17 (A) the mortgage industry; and

18 (B) the role and responsibilities of a loan
19 officer; and

20 (8) not be in violation of this chapter, a rule adopted
21 under this chapter, or any order previously issued to the
22 individual by the commissioner.

23 SECTION 9. Section 156.205, Finance Code, is amended to
24 read as follows:

25 Sec. 156.205. FINANCIAL REQUIREMENTS [~~FOR A MORTGAGE~~
26 ~~BROKER~~]. Financial requirements for holding a mortgage broker or
27 loan officer license shall be met through participation in the

1 fund. [~~(a) In this section, "net assets" means the difference~~
2 ~~between total assets and total liabilities, as determined by~~
3 ~~generally acceptable accounting principles, and does not include~~
4 ~~any assets that are exempt under state or federal law. All assets~~
5 ~~and liabilities are subject to verification by the commissioner.~~

6 [~~(b) A mortgage broker must maintain net assets of at least~~
7 ~~\$25,000 or a surety bond in the amount of at least \$50,000. The term~~
8 ~~of the surety bond must coincide with the term of the license. The~~
9 ~~finance commission may adopt rules establishing the terms and~~
10 ~~conditions of the surety bond and the qualifications of the surety.~~

11 [~~(c) The commissioner shall require proof of compliance~~
12 ~~with this section at the time the mortgage broker applies for or~~
13 ~~renews a license.]~~

14 SECTION 10. Section 156.208, Finance Code, is amended by
15 amending Subsections (a), (b), and (j) and adding Subsections (k)
16 and (l) to read as follows:

17 (a) A mortgage broker license issued under this chapter is
18 valid for a term of not more than two years and may be renewed on or
19 before its expiration date if the mortgage broker:

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

23 (2) has not been convicted of a criminal offense the
24 commissioner determines is directly related to the occupation of a
25 mortgage broker as provided by Chapter 53, Occupations Code; and

26 (3) provides the commissioner with satisfactory
27 evidence that the mortgage broker:

1 (A) has attended, during the term of the current
2 license, 15 hours of continuing education courses that the
3 commissioner, in accordance with the rules adopted by the finance
4 commission under this section, has approved as continuing education
5 courses; or

6 (B) maintains an active license in this state as:

7 (i) a real estate broker;

8 (ii) a real estate salesperson;

9 (iii) an attorney; or

10 (iv) an active general lines insurance [~~a~~
11 ~~local recording~~] agent or a limited lines [~~or~~] insurance [~~solicitor~~
12 ~~or~~] agent [~~for a legal reserve life insurance company under Chapter~~
13 ~~21, Insurance Code~~], or holds an equivalent insurance license under
14 the [~~Chapter 21,~~] Insurance Code.

15 (b) A loan officer license issued under this chapter is
16 valid for a term of not more than two years and may be renewed on or
17 before its expiration date if the loan officer:

18 (1) pays to the commissioner a renewal fee in an amount
19 determined by the commissioner not to exceed \$275 [~~\$175~~] and a
20 recovery fund fee provided by Section 156.502;

21 (2) has not been convicted of a criminal offense the
22 commissioner determines is directly related to the occupation of a
23 loan officer as provided by Chapter 53, Occupations Code; and

24 (3) provides the commissioner with satisfactory
25 evidence that the loan officer:

26 (A) has attended, during the term of the current
27 license, 15 hours of continuing education courses that the

1 commissioner, in accordance with the rules adopted by the finance
2 commission under this section, has approved as continuing education
3 courses, including courses provided by or through the licensed
4 mortgage broker with whom the loan officer is associated after
5 submission to and approval by the commission; or

6 (B) maintains an active license in this state as:

7 (i) a real estate broker;

8 (ii) a real estate salesperson;

9 (iii) an attorney; or

10 (iv) an active general lines insurance [~~a~~
11 ~~local recording~~] agent or a limited lines [~~or~~] insurance [~~solicitor~~
12 ~~or~~] agent [~~for a legal reserve life insurance company under Chapter~~
13 ~~21, Insurance Code~~], or holds an equivalent insurance license under
14 the [~~Chapter 21,~~] Insurance Code.

15 (j) The commissioner may deny the renewal of a mortgage
16 broker license or a loan officer license if:

17 (1) the mortgage broker or loan officer is in
18 violation of this chapter, a rule adopted under this chapter, or any
19 order previously issued to the individual by the commissioner;

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

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

27 (4) the mortgage broker or loan officer is in default

1 on a student loan administered by the Texas Guaranteed Student Loan
2 Corporation, pursuant to Section 57.491, Education Code.

3 (k) In addition to the disciplinary action by the
4 commissioner authorized under Section 156.303(a)(7), the
5 commissioner may collect a fee in an amount not to exceed \$50 for
6 any returned check or credit card charge back.

7 (l) Subsections (a) and (b) and this subsection expire
8 January 1, 2011.

9 SECTION 11. Effective January 1, 2011, Section 156.208,
10 Finance Code, is amended by adding Subsections (a-1) and (b-1) to
11 read as follows:

12 (a-1) A mortgage broker license issued under this chapter is
13 valid for a term of not more than two years and may be renewed on or
14 before its expiration date if the mortgage broker:

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

18 (2) has not been convicted of a criminal offense the
19 commissioner determines is directly related to the occupation of a
20 mortgage broker as provided by Chapter 53, Occupations Code; and

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

25 (b-1) A loan officer license issued under this chapter is
26 valid for a term of not more than two years and may be renewed on or
27 before its expiration date if the loan officer:

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

4 (2) has not been convicted of a criminal offense the
5 commissioner determines is directly related to the occupation of a
6 loan officer as provided by Chapter 53, Occupations Code; and

7 (3) provides the commissioner with satisfactory
8 evidence that the loan officer has attended, during the term of the
9 current license, continuing education courses in accordance with
10 the applicable requirements of Chapter 180.

11 SECTION 12. The heading to Section 156.212, Finance Code,
12 is amended to read as follows:

13 Sec. 156.212. MAINTENANCE AND LOCATION OF OFFICES [~~DISPLAY~~
14 ~~OF LICENSE CERTIFICATES~~].

15 SECTION 13. Section 156.214(b), Finance Code, as added by
16 Chapter 228 (H.B. 1716), Acts of the 80th Legislature, Regular
17 Session, 2007, is amended to read as follows:

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

20 (1) be a depository institution exempt from this
21 chapter under Section 156.202(1)(A) or (B) and chartered and
22 regulated by the Office of Thrift Supervision or the Office of the
23 Comptroller of the Currency, or be a subsidiary or affiliate of the
24 institution;

25 (2) provide the commissioner with satisfactory
26 evidence of an undertaking of accountability in a form acceptable
27 to the commissioner, supported by a surety bond equal to \$1 million

1 to cover the person's responsibility for mortgage broker activities
2 of each exclusive agent;

3 (3) provide a business plan satisfactory to the
4 commissioner that sets forth the person's plan to provide education
5 to its exclusive agents, handle consumer complaints relating to its
6 exclusive agents, and supervise the mortgage broker activities of
7 its exclusive agents;

8 (4) pay an annual registration fee in an amount
9 determined as follows [~~of the lesser of~~]:

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

13 (i) one-half of the license fee for a loan
14 officer under Section 156.203(c)(1), multiplied by the number of
15 exclusive agents under contract to act for the person in this state;
16 or

17 (ii) [~~(B)~~] \$200,000;

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

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

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

27 (E) if the registered financial services company

1 has at least 5,001 exclusive agents acting in this state, \$350,000;

2 and

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

5 SECTION 14. Section 156.301, Finance Code, is amended by
6 adding Subsection (h) to read as follows:

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

12 SECTION 15. Section 156.302(a), Finance Code, is amended to
13 read as follows:

14 (a) The commissioner, after notice and opportunity for
15 hearing, may impose an administrative penalty on a person licensed
16 under this chapter who violates this chapter or a rule or order
17 adopted under this chapter.

18 SECTION 16. Section 156.303, Finance Code, is amended by
19 amending Subsections (a), (e), (g), (h), and (j) and adding
20 Subsection (a-1) to read as follows:

21 (a) The commissioner may order disciplinary action against
22 a licensed mortgage broker or a licensed loan officer when the
23 commissioner, after notice and opportunity for [a] hearing, has
24 determined that the person:

25 (1) obtained a license, including a renewal of a
26 license, under this chapter through a false or fraudulent
27 representation or made a material misrepresentation in an

1 application for a license or for the renewal of a license under this
2 chapter;

3 (2) published or caused to be published an
4 advertisement related to the business of a mortgage broker or loan
5 officer that:

6 (A) is misleading;

7 (B) is likely to deceive the public;

8 (C) in any manner tends to create a misleading
9 impression;

10 (D) fails to identify as a mortgage broker or
11 loan officer the person causing the advertisement to be published;
12 or

13 (E) violates federal or state law;

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

17 (4) entered a plea of guilty or nolo contendere to, or
18 is convicted of, a criminal offense that is a felony or that
19 involves fraud or moral turpitude in a court of this or another
20 state or in a federal court;

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

23 (6) charged or received, directly or indirectly, a fee
24 for assisting a mortgage applicant in obtaining a mortgage loan
25 before all of the services that the person agreed to perform for the
26 mortgage applicant are completed, and the proceeds of the mortgage
27 loan have been disbursed to or on behalf of the mortgage applicant,

1 except as provided by Section 156.304;

2 (7) failed within a reasonable time to honor a check
3 issued to the commissioner after the commissioner has mailed a
4 request for payment by certified mail to the person's last known
5 business address as reflected by the commissioner's records;

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

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

12 (10) published or circulated an unjustified or
13 unwarranted threat of legal proceedings in matters related to the
14 person's actions or services as a mortgage broker or loan officer,
15 as applicable;

16 (11) established an association, by employment or
17 otherwise, with a person not licensed or exempt under this chapter
18 who was expected or required to act as a mortgage broker or loan
19 officer;

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

22 (13) acted in the dual capacity of a mortgage broker or
23 loan officer and real estate broker, salesperson, or attorney in a
24 transaction without the knowledge and written consent of the
25 mortgage applicant or in violation of applicable requirements under
26 federal law;

27 (14) discriminated against a prospective borrower on

1 the basis of race, color, religion, sex, national origin, ancestry,
2 familial status, or a disability;

3 (15) failed or refused on demand to:

4 (A) produce a document, book, or record
5 concerning a mortgage loan transaction conducted by the mortgage
6 broker or loan officer for inspection by the commissioner or the
7 commissioner's authorized personnel or representative;

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

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

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

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

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

27 (a-1) The commissioner may also order disciplinary action

1 after notice and opportunity for hearing against a licensed
2 mortgage broker or a licensed loan officer if the commissioner
3 becomes aware during the term of the license of any fact that would
4 have been grounds for denial of an original license if the fact had
5 been known by the commissioner on the date the license was issued.

6 (e) The commissioner, after giving notice and an
7 opportunity for hearing, may impose against a person who violates a
8 cease and desist order an administrative penalty in an amount not to
9 exceed \$1,000 for each day of the violation. In addition to any
10 other remedy provided by law, the commissioner may institute in
11 district court a suit for injunctive relief and to collect the
12 administrative penalty. A bond is not required of the commissioner
13 with respect to injunctive relief granted under this subsection.
14 [~~A penalty collected under this subsection shall be deposited in~~
15 ~~the fund.~~]

16 (g) If a person fails to pay an administrative penalty that
17 has become final or fails to comply with an order of the
18 commissioner that has become final, in addition to any other remedy
19 provided under law the commissioner, on not less than 10 days'
20 notice to the person, may without a prior hearing suspend the
21 person's mortgage broker license or loan officer license. The
22 suspension shall continue until the person has complied with the
23 [~~cease and desist~~] order or paid the administrative penalty.
24 During the period of suspension, the person may not originate a
25 mortgage loan and all compensation received by the person during
26 the period of suspension is subject to forfeiture as provided by
27 Section 156.406(b).

1 (h) An order of suspension under Subsection (g) may be
2 appealed. An appeal is a contested case governed by Chapter 2001,
3 Government Code. A hearing of an appeal of an order of suspension
4 issued under Subsection (g) shall be held not later than the 30th
5 ~~[15th]~~ day after the date of receipt of the notice of appeal. The
6 appellant shall be provided at least three days' notice of the time
7 and place of the hearing.

8 (j) The ~~[On notice and opportunity for hearing, the]~~
9 commissioner may, on not less than 10 days' notice to the person,
10 suspend a person's license without a prior hearing under this
11 chapter if an indictment or information is filed or returned
12 alleging that the person committed a criminal offense involving
13 fraud, theft, or dishonesty. The suspension continues until the
14 criminal case is dismissed or the person is acquitted. A person may
15 appeal the suspension in accordance with Subsection (h).

16 SECTION 17. Section 156.401(a), Finance Code, is amended to
17 read as follows:

18 (a) The commissioner may employ an enforcement staff to
19 investigate and prosecute complaints made against persons licensed
20 under this chapter. The commissioner may employ a hearings officer
21 to conduct hearings under this section. The commissioner may
22 collect and deposit any court costs collected pursuant to a final
23 order.

24 SECTION 18. Section 156.501, Finance Code, is amended by
25 amending Subsections (a) and (b) and adding Subsections (d), (e),
26 and (f) to read as follows:

27 (a) The commissioner shall establish, administer, and

1 maintain a mortgage broker recovery fund as provided by this
2 subchapter. The amounts received by the commissioner for deposit
3 in the fund shall be held by the commissioner in trust for carrying
4 out the purposes of the fund.

5 (b) Subject to this subsection, the ~~[The]~~ fund shall be used
6 to reimburse residential mortgage loan applicants for actual
7 damages incurred because of ~~[aggrieved persons to whom a court~~
8 ~~awards actual damages because of certain]~~ acts committed by a
9 mortgage broker or loan officer who was licensed under this chapter
10 when the act was committed. The use of the fund is limited to
11 reimbursement for out-of-pocket losses caused by an act by a
12 mortgage broker or loan officer that constitutes a violation of
13 Section 156.303(a)(2), (3), (5), (6), (8), (9), (10), (11), (12),
14 (13), or (16) or 156.304. Payments from the fund may not be made to
15 a lender who makes a mortgage loan originated by the mortgage broker
16 or loan officer or who acquires a mortgage loan originated by the
17 mortgage broker or loan officer.

18 (d) The fund may be used at the discretion of the
19 commissioner to reimburse expenses incurred to secure and destroy
20 residential mortgage loan documents that have been abandoned by a
21 current or former individual or entity under the regulatory
22 authority of the department.

23 (e) Payments from the fund shall be reduced by the amount of
24 any recovery from the mortgage broker or loan officer or from any
25 surety, insurer, or other person or entity making restitution to
26 the applicant on behalf of the mortgage broker or loan officer.

27 (f) The commissioner, as manager of the fund, is entitled to

1 reimbursement for reasonable and necessary costs and expenses
2 incurred in the management of the fund, including costs and
3 expenses incurred with regard to applications filed under Section
4 156.504.

5 SECTION 19. Section 156.502(a), Finance Code, is amended to
6 read as follows:

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

12 SECTION 20. Section 156.502(b), Finance Code, is amended to
13 read as follows:

14 (b) If the balance remaining in the fund at the end of a
15 calendar year [~~after 2010~~] is more [~~less~~] than \$3.5 million, the
16 amount of money in excess of that amount shall be available to the
17 commissioner to offset the expenses of participating in and sharing
18 information with the Nationwide Mortgage Licensing System and
19 Registry in accordance with Chapter 180 [~~\$500,000, each mortgage~~
20 ~~broker and loan officer licensed under this chapter, on the next~~
21 ~~renewal of the license, shall pay, in addition to any other required~~
22 ~~fees, the lesser of a \$10 fee or a pro rata share of the amount~~
23 ~~necessary to bring the fund to \$1 million. The fee shall be~~
24 ~~deposited in the fund].~~

25 SECTION 21. Section 156.503, Finance Code, is amended to
26 read as follows:

27 Sec. 156.503. STATUTE OF LIMITATIONS. (a) An application

1 for the recovery of actual damages [~~action for a judgment that~~
2 ~~subsequently results in an order for collection~~] from the fund
3 under Section 156.504 may not be filed [~~instituted~~] after the
4 second anniversary of the date of the alleged act or omission
5 causing the actual damages or the date the act or omission should
6 reasonably have been 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 fund [~~on which the cause of action accrues~~].

10 SECTION 22. Section 156.504, Finance Code, is amended to
11 read as follows:

12 Sec. 156.504. PROCEDURE FOR RECOVERY. (a) To recover from
13 the fund, a residential mortgage loan applicant must file a written
14 sworn application with the commissioner in the form prescribed by
15 [~~An aggrieved person who recovers against a mortgage broker or loan~~
16 ~~officer licensed under this chapter a valid court judgment for~~
17 ~~conduct described by Section 156.501 that occurred on or after~~
18 ~~January 1, 2000, after final judgment has been entered, execution~~
19 ~~returned nulla bona, and a judgment lien perfected, may file a~~
20 ~~verified claim in the court in which the judgment was entered and,~~
21 ~~on 20 days' written notice to] the commissioner [~~and to the judgment~~
22 ~~debtor, may apply to the court for an order directing payment from~~
23 ~~the fund of any unpaid judgment amount], subject to Section~~~~

24 156.503. A person who knowingly makes a false statement in
25 connection with applying for money out of the fund may be subject to
26 criminal prosecution under Section 37.10, Penal Code.

27 (b) The residential mortgage loan applicant [~~On the hearing~~

1 ~~on the application, the aggrieved person]~~ is required to show:

2 (1) that the applicant's claim ~~[judgment]~~ is based on
3 facts allowing recovery under Section 156.501; and

4 (2) that the applicant:

5 (A) ~~[person]~~ is not a spouse of the licensed
6 mortgage broker or loan officer;

7 (B) is not a child, parent, grandchild,
8 grandparent, or sibling, including relationships by adoption, of
9 the licensed mortgage broker or loan officer;

10 (C) is not a person sharing living quarters with
11 the licensed mortgage broker or loan officer or a current or former
12 employer, employee, or associate of the licensed mortgage broker or
13 loan officer;

14 (D) is not a person who has aided, abetted, or
15 participated other than as a victim with the ~~[of the debtor, or the~~
16 ~~personal representative of the spouse, and that the person is not]~~
17 licensed ~~[as a]~~ mortgage broker or loan officer in any activity that
18 is illegal under Section 156.303(a)(2), (3), (5), (6), (8), (9),
19 (10), (11), (12), (13), or (16) or Section 156.304 or is not the
20 personal representative of a licensed mortgage broker or loan
21 officer; and

22 (E) is not licensed as a mortgage broker or loan
23 officer under this chapter who is seeking to recover any
24 compensation in the transaction or transactions for which the
25 application for payment is made[+]

26 ~~[(3) that based on the best available information, the~~
27 ~~judgment debtor lacks sufficient attachable assets in this state or~~

1 ~~any other state to satisfy the judgment and the surety bond required~~
2 ~~by Section 156.205 is not sufficient to satisfy the judgment, and~~

3 ~~[(4) the amount that may be realized from the sale of~~
4 ~~property or other assets liable to be sold or applied in~~
5 ~~satisfaction of the judgment and the balance remaining due on the~~
6 ~~judgment after application of the amount that may be realized].~~

7 (c) On receipt of the verified application, the
8 commissioner's staff shall:

9 (1) notify each appropriate license holder and the
10 issuer of any surety bond issued in connection with their licenses;
11 and

12 (2) investigate the application and issue a
13 preliminary determination, giving the applicant, the license
14 holder, and any surety an opportunity to resolve the matter by
15 agreement or to dispute the preliminary determination.

16 (d) If the preliminary determination under Subsection
17 (c)(2) is not otherwise resolved by agreement and is not disputed by
18 written notice to the commissioner before the 31st day after the
19 notification date, the preliminary determination automatically
20 becomes final and the commissioner shall make payment from the
21 fund, subject to [A recovery on the judgment against a single
22 defendant made before payment from the fund shall be applied first
23 by the creditor to actual damages.

24 ~~[(d) The court shall make an order directed to the~~
25 ~~commissioner requiring payment from the fund of the amount the~~
26 ~~court finds to be payable on the claim, pursuant to and in~~
27 ~~accordance with the limitations contained in this subchapter, if~~

1 ~~the court is satisfied, on the hearing, of the truth of all matters~~
2 ~~required to be shown by the aggrieved person under Subsection (b)~~
3 ~~and that the aggrieved person has satisfied all of the requirements~~
4 ~~of this section.~~

5 ~~[(c) When the commissioner receives notice of entry of a~~
6 ~~final judgment and a hearing is scheduled under this section, the~~
7 ~~commissioner may notify the attorney general of the commissioner's~~
8 ~~desire to enter an appearance, file a response, appear at the court~~
9 ~~hearing, defend the action, or to take any other appropriate~~
10 ~~action. In taking any action described by this subsection, the~~
11 ~~commissioner and the attorney general shall act only to protect the~~
12 ~~fund from spurious or unjust claims or to ensure compliance with the~~
13 ~~requirements for recovery under this subchapter.~~

14 ~~[(f) The commissioner may relitigate any issue material and~~
15 ~~relevant in the hearing on the application that was determined in~~
16 ~~the underlying action on which the judgment in favor of the~~
17 ~~applicant was based.~~

18 ~~[(g) If the court finds that the aggregate amount of claims~~
19 ~~against a licensed mortgage broker or loan officer exceeds] the~~
20 ~~limits of [contained in] Section 156.505.~~

21 (e) If the preliminary determination under Subsection
22 (c)(2) is disputed by the applicant, the license holder, or any
23 surety by written notice to the commissioner before the 31st day
24 after the notification date, the matter shall be set for a hearing
25 governed by Chapter 2001, Government Code, and the hearing rules of
26 the finance commission [~~the court shall reduce proportionately~~
27 ~~the amount the court finds payable on the claim].~~

1 SECTION 23. Section 156.505, Finance Code, is amended to
2 read as follows:

3 Sec. 156.505. RECOVERY LIMITS. (a) A person entitled to
4 receive payment out of the fund is entitled to receive
5 reimbursement of actual, out-of-pocket damages [~~, reasonable~~
6 ~~attorney's fees, and court costs as determined by the court~~] as
7 provided by this section.

8 (b) A payment from the fund may be made [~~only pursuant to a~~
9 ~~court order~~] as provided by Section 156.504 and this section. A
10 payment for claims:

11 (1) arising out of the same transaction, including
12 [~~attorney's fees,~~] interest, [~~and court costs,~~] is limited in the
13 aggregate to \$25,000, regardless of the number of claimants; and

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

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

23 SECTION 24. Section 156.506, Finance Code, is amended by
24 amending Subsections (a) and (c) and adding Subsection (a-1) to
25 read as follows:

26 (a) The commissioner may revoke a license issued under this
27 chapter on proof that the commissioner has made a payment from the

1 fund of any amount toward satisfaction of a claim [~~judgment~~]
2 against a [~~person licensed as a~~] mortgage broker or loan officer
3 under this chapter.

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

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

19 SECTION 25. Section 156.507, Finance Code, is amended to
20 read as follows:

21 Sec. 156.507. SUBROGATION. When the commissioner has paid
22 an applicant [~~a judgment creditor~~] an amount from the fund under
23 Section 156.504 [~~as directed by the court~~], the commissioner is
24 subrogated to all of the rights of the applicant [~~judgment~~
25 ~~creditor~~] to the extent of the amount paid. The applicant [~~judgment~~
26 ~~creditor~~] shall assign all of the applicant's [~~creditor's~~] right,
27 title, and interest in [~~the judgment up to the amount paid by the~~

1 ~~commissioner, and that amount has priority for repayment in the~~
2 ~~event of]~~ any subsequent [~~recovery on the]~~ judgment against the
3 license holder, up to the [~~Any]~~ amount paid [~~, including interest,~~
4 ~~recovered]~~ by the commissioner. Any amount, including interest,
5 recovered by the commissioner on the assignment [~~judgment]~~ shall be
6 deposited to the credit of the fund.

7 SECTION 26. Section 156.508, Finance Code, is amended to
8 read as follows:

9 Sec. 156.508. FAILURE TO COMPLY WITH SUBCHAPTER OR RULE
10 ADOPTED BY THE FINANCE COMMISSION. The failure of an applicant
11 under Section 156.504 [~~aggrieved person]~~ to comply with a provision
12 of this subchapter relating to the fund or with a rule adopted by
13 the finance commission relating to the fund constitutes a waiver of
14 any rights under this subchapter.

15 SECTION 27. Sections 156.212(c) and (d) and 156.502(c),
16 Finance Code, are repealed.

17 SECTION 28. To the extent of any conflict, this Act prevails
18 over another Act of the 81st Legislature, Regular Session, 2009,
19 relating to nonsubstantive additions to and corrections in enacted
20 codes.

21 SECTION 29. (a) Subject to Subsection (b) of this section,
22 this Act takes effect September 1, 2009.

23 (b) Sections 1, 2, and 17 of this Act take effect only if
24 House Bill 10 or another similar bill of the Regular Session of the
25 81st Legislature relating to the licensing of residential mortgage
26 loan originators is enacted and becomes law. If House Bill 10 or
27 another similar bill of the Regular Session of the 81st Legislature

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1 relating to the licensing of residential mortgage loan originators
2 does not become law, Sections 1, 2, and 17 of this Act do not take
3 effect.