

By: Truitt

H.B. No. 2774

Substitute the following for H.B. No. 2774:

By: Hernandez

C.S.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. Section 156.104, Finance Code, is amended by
2 amending Subsections (a), (b), and (h) and adding Subsection (b-1)
3 to read as follows:

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

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

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

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

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

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

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

19 (1) two mortgage brokers;

20 (2) two mortgage bankers; and

21 (3) two persons who

22 [~~(2) the Texas Real Estate Commission shall appoint~~
23 ~~two members, each of whom must~~] hold a real estate license and who
24 are also licensed as a mortgage broker or registered as a mortgage
25 banker [salesperson license].

26 (h) In addition to other powers and duties delegated to it
27 by the commissioner, the advisory committee shall advise the

1 commissioner with respect to:

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

3 (A) the licensing of mortgage brokers and loan
4 officers;

5 (B) the education and experience requirements
6 for licensing mortgage brokers and loan officers; and

7 (C) conduct and ethics of mortgage brokers and
8 loan officers;

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

12 [~~(E) the granting or denying of an application or
13 request for renewal for a mortgage broker license or loan officer
14 license;]~~

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

17 (3) the interpretation, implementation, and
18 enforcement of this chapter.

19 SECTION 5. Section 156.203, Finance Code, is amended by
20 adding Subsection (e) to read as follows:

21 (e) In addition to the disciplinary action by the
22 commissioner authorized under Section 156.303(a)(7), the
23 commissioner may collect a fee in an amount not to exceed \$50 for
24 any returned check or credit card charge back.

25 SECTION 6. Sections 156.204(a) and (c), Finance Code, are
26 amended to read as follows:

27 (a) To be eligible to be licensed as a mortgage broker as an

1 individual, the individual must:

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

3 (2) be a citizen of the United States or a lawfully
4 admitted alien;

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

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

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

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

18 (i) an active real estate broker under
19 Chapter 1101, Occupations Code;

20 (ii) an active attorney; or

21 (iii) an active general lines [~~a local~~
22 ~~recording agent or~~] insurance [~~solicitor or~~] agent or a limited
23 lines [~~for a legal reserve life~~] insurance agent [~~company under~~
24 ~~Chapter 21, Insurance Code~~], or holds an equivalent insurance
25 license under the [~~Chapter 21,~~] Insurance Code; or

26 (C) the individual [~~person~~] has three years of
27 experience in the mortgage lending field as evidenced by

1 documentary proof of full-time employment as a licensed loan
2 officer with a mortgage broker or an individual [~~a person~~] exempt
3 under Section 156.202;

4 (5) provide the commissioner with satisfactory
5 evidence of:

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

9 (i) the mortgage industry; and

10 (ii) the role and responsibilities of a
11 mortgage broker; and

12 (B) compliance with the financial requirements
13 of this chapter;

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

17 (7) satisfy the commissioner as to the individual's
18 good moral character, including the individual's honesty,
19 trustworthiness, and integrity;

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; and

23 (9) provide the commissioner with satisfactory
24 evidence that:

25 (A) if the individual [~~person~~] has not been
26 previously licensed as a mortgage broker or a loan officer under
27 this subchapter, the individual [~~person~~] has completed 90 classroom

1 hours of education courses approved by the commissioner under this
2 section; or

3 (B) if the individual [~~person~~] has not been
4 previously licensed as a mortgage broker under this subchapter but
5 has been licensed as a loan officer under this subchapter, the
6 individual [~~person~~] has successfully completed an additional 30
7 classroom hours of education courses approved by the commissioner
8 under this section.

9 (c) To be eligible to be licensed as a loan officer a person
10 must:

11 (1) be an individual who is at least 18 years of age;
12 (2) be a citizen of the United States or a lawfully
13 admitted alien;

14 (3) designate in the application the name of the
15 mortgage broker sponsoring the loan officer;

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

18 (A) the person [~~meets one of the requirements~~
19 ~~described by Subsection (a)(4) and~~] has successfully completed at
20 least 60 [~~classroom~~] hours of education courses approved by the
21 commissioner; or [~~under this section,~~]

22 (B) the person [~~has 18 months of experience as a~~
23 ~~loan officer as evidenced by documentary proof of full-time~~
24 ~~employment as a loan officer with a person exempt under Section~~
25 ~~156.202 and~~] has successfully completed 30 [~~classroom~~] hours of
26 education courses approved by the commissioner under this section
27 if the applicant:

1 (i) has 18 months or more of experience as a
2 mortgage loan officer as evidenced by documentary proof of
3 full-time employment as a mortgage loan officer with a person
4 exempt under Section 156.202; or

5 (ii) is a person who meets the
6 qualifications under Subsection (a)(4)(B);

7 [~~(C) for applications received prior to January~~
8 ~~1, 2000, the mortgage broker that will sponsor the applicant~~
9 ~~provides a certification under oath that the applicant has been~~
10 ~~provided necessary and appropriate education and training~~
11 ~~regarding all applicable state and federal law and regulations~~
12 ~~relating to mortgage loans;~~]

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

16 (6) satisfy the commissioner as to the individual's
17 good moral character, including the individual's honesty,
18 trustworthiness, and integrity;

19 (7) provide the commissioner with satisfactory
20 evidence of having passed an examination, offered by a testing
21 service or company approved by the finance commission, that
22 demonstrates knowledge of:

23 (A) the mortgage industry; and

24 (B) the role and responsibilities of a loan
25 officer; and

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

1 individual by the commissioner.

2 SECTION 7. Section 156.205, Finance Code, is amended to
3 read as follows:

4 Sec. 156.205. FINANCIAL REQUIREMENTS [~~FOR A MORTGAGE~~
5 ~~BROKER~~]. Financial requirements for holding a mortgage broker or
6 loan officer license shall be met through participation in the
7 fund. [~~(a) In this section, "net assets" means the difference~~
8 ~~between total assets and total liabilities, as determined by~~
9 ~~generally acceptable accounting principles, and does not include~~
10 ~~any assets that are exempt under state or federal law. All assets~~
11 ~~and liabilities are subject to verification by the commissioner.~~

12 [~~(b) A mortgage broker must maintain net assets of at least~~
13 ~~\$25,000 or a surety bond in the amount of at least \$50,000. The term~~
14 ~~of the surety bond must coincide with the term of the license. The~~
15 ~~finance commission may adopt rules establishing the terms and~~
16 ~~conditions of the surety bond and the qualifications of the surety.~~

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

20 SECTION 8. Section 156.208, Finance Code, is amended by
21 amending Subsections (a), (b), and (j) and adding Subsection (k) to
22 read as follows:

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

26 (1) pays to the commissioner a renewal fee in an amount
27 determined by the commissioner not to exceed \$375 and a recovery

1 fund fee provided by Section 156.502;

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

5 (3) provides the commissioner with satisfactory
6 evidence that the mortgage broker:

7 (A) has attended, during the term of the current
8 license, 15 hours of continuing education courses that the
9 commissioner, in accordance with the rules adopted by the finance
10 commission under this section, has approved as continuing education
11 courses; or

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

13 (i) a real estate broker;

14 (ii) a real estate salesperson;

15 (iii) an attorney; or

16 (iv) an active general lines insurance [~~a~~
17 ~~local recording~~] agent or a limited lines [~~or~~] insurance [~~solicitor~~
18 ~~or~~] agent [~~for a legal reserve life insurance company under Chapter~~
19 ~~21, Insurance Code~~], or holds an equivalent insurance license under
20 the [~~Chapter 21,~~] Insurance Code.

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

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

27 (2) has not been convicted of a criminal offense the

1 commissioner determines is directly related to the occupation of a
2 loan officer as provided by Chapter 53, Occupations Code; and

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

5 (A) has attended, during the term of the current
6 license, 15 hours of continuing education courses that the
7 commissioner, in accordance with the rules adopted by the finance
8 commission under this section, has approved as continuing education
9 courses, including courses provided by or through the licensed
10 mortgage broker with whom the loan officer is associated after
11 submission to and approval by the commission; or

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

13 (i) a real estate broker;

14 (ii) a real estate salesperson;

15 (iii) an attorney; or

16 (iv) an active general lines insurance [~~a~~
17 ~~local recording~~] agent or a limited lines [~~or~~] insurance [~~solicitor~~
18 ~~or~~] agent [~~for a legal reserve life insurance company under Chapter~~
19 ~~21, Insurance Code~~], or holds an equivalent insurance license under
20 the [~~Chapter 21,~~] Insurance Code.

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

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

26 (2) the mortgage broker or loan officer is in default
27 in the payment of any administrative penalty, fee, charge, or other

1 indebtedness owed under this title; ~~[or]~~

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

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

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

13 SECTION 9. The heading to Section 156.212, Finance Code, is
14 amended to read as follows:

15 Sec. 156.212. MAINTENANCE AND LOCATION OF OFFICES [~~, DISPLAY~~
16 ~~OF LICENSE CERTIFICATES~~].

17 SECTION 10. Section 156.214(b), Finance Code, as added by
18 Chapter 228 (H.B. 1716), Acts of the 80th Legislature, Regular
19 Session, 2007, is amended to read as follows:

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

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

27 (2) provide the commissioner with satisfactory

1 evidence of an undertaking of accountability in a form acceptable
2 to the commissioner, supported by a surety bond equal to \$1 million
3 to cover the person's responsibility for mortgage broker activities
4 of each exclusive agent;

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

10 (4) pay an annual registration fee of [~~the lesser of:~~
11 [~~(A)~~] one-half of the license fee for a loan
12 officer under Section 156.203(c)(1), multiplied by the number of
13 exclusive agents under contract to act for the person in this state;

14 [~~or~~

15 [~~(B) \$200,000,~~] and

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

18 SECTION 11. Section 156.301, Finance Code, is amended by
19 adding Subsection (h) to read as follows:

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

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

27 (a) The commissioner, after notice and opportunity for

1 hearing, may impose an administrative penalty on a person licensed
2 under this chapter who violates this chapter or a rule or order
3 adopted under this chapter.

4 SECTION 13. Section 156.303, Finance Code, is amended by
5 amending Subsections (a), (e), (g), (h), and (j) and adding
6 Subsection (a-1) to read as follows:

7 (a) The commissioner may order disciplinary action against
8 a licensed mortgage broker or a licensed loan officer when the
9 commissioner, after notice and opportunity for [~~a~~] hearing, has
10 determined that the person:

11 (1) obtained a license, including a renewal of a
12 license, under this chapter through a false or fraudulent
13 representation or made a material misrepresentation in an
14 application for a license or for the renewal of a license under this
15 chapter;

16 (2) published or caused to be published an
17 advertisement related to the business of a mortgage broker or loan
18 officer that:

19 (A) is misleading;

20 (B) is likely to deceive the public;

21 (C) in any manner tends to create a misleading
22 impression;

23 (D) fails to identify as a mortgage broker or
24 loan officer the person causing the advertisement to be published;
25 or

26 (E) violates federal or state law;

27 (3) while performing an act for which a license under

1 this chapter is required, engaged in conduct that constitutes
2 improper, fraudulent, or dishonest dealings;

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

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

9 (6) charged or received, directly or indirectly, a fee
10 for assisting a mortgage applicant in obtaining a mortgage loan
11 before all of the services that the person agreed to perform for the
12 mortgage applicant are completed, and the proceeds of the mortgage
13 loan have been disbursed to or on behalf of the mortgage applicant,
14 except as provided by Section 156.304;

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

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

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

25 (10) published or circulated an unjustified or
26 unwarranted threat of legal proceedings in matters related to the
27 person's actions or services as a mortgage broker or loan officer,

1 as applicable;

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

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

8 (13) acted in the dual capacity of a mortgage broker or
9 loan officer and real estate broker, salesperson, or attorney in a
10 transaction without the knowledge and written consent of the
11 mortgage applicant or in violation of applicable requirements under
12 federal law;

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

16 (15) failed or refused on demand to:

17 (A) produce a document, book, or record
18 concerning a mortgage loan transaction conducted by the mortgage
19 broker or loan officer for inspection by the commissioner or the
20 commissioner's authorized personnel or representative;

21 (B) give the commissioner or the commissioner's
22 authorized personnel or representative free access to the books or
23 records relating to the person's business kept by an officer,
24 agent, or employee of the person or any business entity through
25 which the person conducts mortgage brokerage activities, including
26 a subsidiary or holding company affiliate; or

27 (C) provide information requested by the

1 commissioner as a result of a formal or informal complaint made to
2 the commissioner;

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

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

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

13 (a-1) The commissioner may also order disciplinary action
14 after notice and opportunity for hearing against a licensed
15 mortgage broker or a licensed loan officer if the commissioner
16 becomes aware during the term of the license of any fact that would
17 have been grounds for denial of an original license if the fact had
18 been known by the commissioner on the date the license was issued.

19 (e) The commissioner, after giving notice and an
20 opportunity for hearing, may impose against a person who violates a
21 cease and desist order an administrative penalty in an amount not to
22 exceed \$1,000 for each day of the violation. In addition to any
23 other remedy provided by law, the commissioner may institute in
24 district court a suit for injunctive relief and to collect the
25 administrative penalty. A bond is not required of the commissioner
26 with respect to injunctive relief granted under this subsection.

27 ~~[A penalty collected under this subsection shall be deposited in~~

1 ~~the fund.]~~

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

14 (h) An order of suspension under Subsection (g) may be
15 appealed. An appeal is a contested case governed by Chapter 2001,
16 Government Code. A hearing of an appeal of an order of suspension
17 issued under Subsection (g) shall be held not later than the 30th
18 ~~[15th]~~ day after the date of receipt of the notice of appeal. The
19 appellant shall be provided at least three days' notice of the time
20 and place of the hearing.

21 (j) The ~~[On notice and opportunity for hearing, the]~~
22 commissioner may, on not less than 10 days' notice to the person,
23 suspend a person's license without a prior hearing under this
24 chapter if an indictment or information is filed or returned
25 alleging that the person committed a criminal offense involving
26 fraud, theft, or dishonesty. The suspension continues until the
27 criminal case is dismissed or the person is acquitted. A person may

1 appeal the suspension in accordance with Subsection (h).

2 SECTION 14. Section 156.401(a), Finance Code, is amended to
3 read as follows:

4 (a) The commissioner may employ an enforcement staff to
5 investigate and prosecute complaints made against persons licensed
6 under this chapter. The commissioner may employ a hearings officer
7 to conduct hearings under this section. The commissioner may
8 collect and deposit any court costs collected pursuant to a final
9 order.

10 SECTION 15. Section 156.501, Finance Code, is amended by
11 amending Subsections (a) and (b) and adding Subsections (d), (e),
12 and (f) to read as follows:

13 (a) The commissioner shall establish, administer, and
14 maintain a mortgage broker recovery fund as provided by this
15 subchapter. The amounts received by the commissioner for deposit
16 in the fund shall be held by the commissioner in trust for carrying
17 out the purposes of the fund.

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

1 a lender who makes a mortgage loan originated by the mortgage broker
2 or loan officer or who acquires a mortgage loan originated by the
3 mortgage broker or loan officer.

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

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

13 (f) The commissioner, as manager of the fund, is entitled to
14 reimbursement for reasonable and necessary costs and expenses
15 incurred in the management of the fund, including costs and
16 expenses incurred with regard to applications filed under Section
17 156.504.

18 SECTION 16. Section 156.502(a), Finance Code, is amended to
19 read as follows:

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

25 SECTION 17. Section 156.502(b), Finance Code, is amended to
26 read as follows:

27 (b) If the balance remaining in the fund at the end of a

1 calendar year [~~after 2010~~] is more [~~less~~] than \$3.5 million, the
2 amount of money in excess of that amount shall be available to the
3 commissioner to offset the expenses of participating in and sharing
4 information with the Nationwide Mortgage Licensing System and
5 Registry in accordance with Chapter 180 [~~\$500,000, each mortgage~~
6 ~~broker and loan officer licensed under this chapter, on the next~~
7 ~~renewal of the license, shall pay, in addition to any other required~~
8 ~~fees, the lesser of a \$10 fee or a pro rata share of the amount~~
9 ~~necessary to bring the fund to \$1 million. The fee shall be~~
10 ~~deposited in the fund].~~

11 SECTION 18. Section 156.503, Finance Code, is amended to
12 read as follows:

13 Sec. 156.503. STATUTE OF LIMITATIONS. (a) An application
14 for the recovery of actual damages [~~action for a judgment that~~
15 ~~subsequently results in an order for collection]~~ from the fund
16 under Section 156.504 may not be filed [~~instituted~~] after the
17 second anniversary of the date of the alleged act or omission
18 causing the actual damages or the date the act or omission should
19 reasonably have been discovered.

20 (b) This section does not apply to a subrogation claim
21 brought by the commissioner for recovery of money paid out of the
22 fund [~~on which the cause of action accrues~~].

23 SECTION 19. Section 156.504, Finance Code, is amended to
24 read as follows:

25 Sec. 156.504. PROCEDURE FOR RECOVERY. (a) To recover from
26 the fund, a residential mortgage loan applicant must file a written
27 sworn application with the commissioner in the form prescribed by

1 ~~[An aggrieved person who recovers against a mortgage broker or loan~~
2 ~~officer licensed under this chapter a valid court judgment for~~
3 ~~conduct described by Section 156.501 that occurred on or after~~
4 ~~January 1, 2000, after final judgment has been entered, execution~~
5 ~~returned nulla bona, and a judgment lien perfected, may file a~~
6 ~~verified claim in the court in which the judgment was entered and,~~
7 ~~on 20 days' written notice to] the commissioner [and to the judgment~~
8 ~~debtor, may apply to the court for an order directing payment from~~
9 ~~the fund of any unpaid judgment amount], subject to Section~~

10 156.503. A person who knowingly makes a false statement in
11 connection with applying for money out of the fund may be subject to
12 criminal prosecution under Section 37.10, Penal Code.

13 (b) The residential mortgage loan applicant ~~[On the hearing~~
14 ~~on the application, the aggrieved person]~~ is required to show:

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

17 (2) that the applicant:

18 (A) [person] is not a spouse of the licensed
19 mortgage broker or loan officer;

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

23 (C) is not a person sharing living quarters with
24 the licensed mortgage broker or loan officer or a current or former
25 employer, employee, or associate of the licensed mortgage broker or
26 loan officer;

27 (D) is not a person who has aided, abetted, or

1 participated other than as a victim with the [~~of the debtor, or the~~
2 ~~personal representative of the spouse, and that the person is not]~~
3 licensed [as a] mortgage broker or loan officer in any activity that
4 is illegal under Section 156.303(a)(2), (3), (5), (6), (8), (9),
5 (10), (11), (12), (13), or (16) or Section 156.304 or is not the
6 personal representative of a licensed mortgage broker or loan
7 officer; and

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

12 [~~(3) that based on the best available information, the~~
13 ~~judgment debtor lacks sufficient attachable assets in this state or~~
14 ~~any other state to satisfy the judgment and the surety bond required~~
15 ~~by Section 156.205 is not sufficient to satisfy the judgment; and~~

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

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

22 (1) notify each appropriate license holder and the
23 issuer of any surety bond issued in connection with their licenses;
24 and

25 (2) investigate the application and issue a
26 preliminary determination, giving the applicant, the license
27 holder, and any surety an opportunity to resolve the matter by

1 agreement or to dispute the preliminary determination.

2 (d) If the preliminary determination under Subsection
3 (c)(2) is not otherwise resolved by agreement and is not disputed by
4 written notice to the commissioner before the 31st day after the
5 notification date, the preliminary determination automatically
6 becomes final and the commissioner shall make payment from the
7 fund, subject to [A recovery on the judgment against a single
8 defendant made before payment from the fund shall be applied first
9 by the creditor to actual damages.

10 ~~[(d) The court shall make an order directed to the~~
11 ~~commissioner requiring payment from the fund of the amount the~~
12 ~~court finds to be payable on the claim, pursuant to and in~~
13 ~~accordance with the limitations contained in this subchapter, if~~
14 ~~the court is satisfied, on the hearing, of the truth of all matters~~
15 ~~required to be shown by the aggrieved person under Subsection (b)~~
16 ~~and that the aggrieved person has satisfied all of the requirements~~
17 ~~of this section.~~

18 ~~[(e) When the commissioner receives notice of entry of a~~
19 ~~final judgment and a hearing is scheduled under this section, the~~
20 ~~commissioner may notify the attorney general of the commissioner's~~
21 ~~desire to enter an appearance, file a response, appear at the court~~
22 ~~hearing, defend the action, or to take any other appropriate~~
23 ~~action. In taking any action described by this subsection, the~~
24 ~~commissioner and the attorney general shall act only to protect the~~
25 ~~fund from spurious or unjust claims or to ensure compliance with the~~
26 ~~requirements for recovery under this subchapter.~~

27 ~~[(f) The commissioner may relitigate any issue material and~~

1 ~~relevant in the hearing on the application that was determined in~~
2 ~~the underlying action on which the judgment in favor of the~~
3 ~~applicant was based.~~

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

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

14 SECTION 20. Section 156.505, Finance Code, is amended to
15 read as follows:

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

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

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

27 (2) ~~[based on judgments]~~ against a single person

1 licensed as a mortgage broker or loan officer under this chapter
2 arising out of separate transactions, including interest, is
3 limited in the aggregate to \$50,000 until the fund has been
4 reimbursed for all amounts paid.

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

9 SECTION 21. Section 156.506, Finance Code, is amended by
10 amending Subsections (a) and (c) and adding Subsection (a-1) to
11 read as follows:

12 (a) The commissioner may revoke a license issued under this
13 chapter on proof that the commissioner has made a payment from the
14 fund of any amount toward satisfaction of a claim [~~judgment~~]
15 against a [~~person licensed as a~~] mortgage broker or loan officer
16 under this chapter.

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

25 (c) A person on whose behalf payment was made from the fund
26 is not eligible to receive a new license under this chapter until
27 the person has repaid in full, plus interest at the current legal

1 rate, the amount paid from the fund on the person's behalf and any
2 costs associated with investigating and processing the claim
3 against the fund or with collection of reimbursement for payments
4 from the fund.

5 SECTION 22. Section 156.507, Finance Code, is amended to
6 read as follows:

7 Sec. 156.507. SUBROGATION. When the commissioner has paid
8 an applicant [~~a judgment creditor~~] an amount from the fund under
9 Section 156.504 [~~as directed by the court~~], the commissioner is
10 subrogated to all of the rights of the applicant [~~judgment~~
11 ~~creditor~~] to the extent of the amount paid. The applicant [~~judgment~~
12 ~~creditor~~] shall assign all of the applicant's [~~creditor's~~] right,
13 title, and interest in [~~the judgment up to the amount paid by the~~
14 ~~commissioner, and that amount has priority for repayment in the~~
15 ~~event of~~] any subsequent [~~recovery on the~~] judgment against the
16 license holder, up to the [~~Any~~] amount paid [~~, including interest,~~
17 ~~recovered~~] by the commissioner. Any amount, including interest,
18 recovered by the commissioner on the assignment [~~judgment~~] shall be
19 deposited to the credit of the fund.

20 SECTION 23. Section 156.508, Finance Code, is amended to
21 read as follows:

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

1 SECTION 24. Sections 156.212(c) and (d) and 156.502(c),
2 Finance Code, are repealed.

3 SECTION 25. To the extent of any conflict, this Act prevails
4 over another Act of the 81st Legislature, Regular Session, 2009,
5 relating to nonsubstantive additions to and corrections in enacted
6 codes.

7 SECTION 26. (a) Subject to Subsection (b) of this section,
8 this Act takes effect September 1, 2009.

9 (b) Sections 1, 2, and 17 of this Act take effect only if
10 House Bill 10 or another similar bill of the Regular Session of the
11 81st Legislature relating to the licensing of residential mortgage
12 loan originators is enacted and becomes law. If House Bill 10 or
13 another similar bill of the Regular Session of the 81st Legislature
14 relating to the licensing of residential mortgage loan originators
15 does not become law, Sections 1, 2, and 17 of this Act do not take
16 effect.