

House Bill 2774
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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.

SENATE VERSION

Same as House version.

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 may adopt rules under this chapter as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

(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.

Same as House version.

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

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

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

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

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

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

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

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

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

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

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

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

Same as House version.

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

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

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

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

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

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

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

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

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

No equivalent provision.

Same as House version.

SECTION 6. Section 156.202, Finance Code, is amended to read as follows:

Sec. 156.202. EXEMPTIONS. (a) The following

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persons are exempt from this chapter:

(1) any of the following entities or an employee of any of the following entities provided the employee is acting for the benefit of the employer:

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

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

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

(D) a mortgage banker registered under Chapter 157;

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

(F) a Farm Credit System institution; or

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

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

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

(4) an individual who:

(A) makes a mortgage loan from the individual's own

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funds;

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

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

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

(b) An exclusive agent described by Subsection (a)(5) is considered an employee of the registered financial services company for purposes of this chapter.

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

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

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

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

(1) be at least 18 years of age;

SECTION 7. Same as House version.

SECTION 8. Same as House version.

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- (2) be a citizen of the United States or a lawfully admitted alien;
- (3) maintain a physical office in this state and designate that office in the application;
- (4) provide the commissioner with satisfactory evidence that the applicant satisfies one of the following:
 - (A) the individual [~~person~~] has received a bachelor's degree in an area relating to finance, banking, or business administration from an accredited college or university and has 18 months of experience in the mortgage or lending field as evidenced by documentary proof of full-time employment as a mortgage broker or licensed loan officer with a mortgage broker or an individual [~~a person~~] exempt under Section 156.202;
 - (B) the individual [~~person~~] is licensed in this state as:
 - (i) an active real estate broker under Chapter 1101, Occupations Code;
 - (ii) an active attorney; or
 - (iii) an active general lines [~~a local recording agent or insurance~~ [~~solicitor or~~] agent or a limited lines [~~for a legal reserve life~~] insurance agent [~~company under Chapter 21, Insurance Code~~], or holds an equivalent insurance license under the [~~Chapter 21,~~] Insurance Code; or
 - (C) the individual [~~person~~] has three years of experience in the mortgage lending field as evidenced by documentary proof of full-time employment as a licensed loan officer with a mortgage broker or an individual [~~a person~~] exempt under Section 156.202;

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- (5) provide the commissioner with satisfactory evidence of:
 - (A) having passed an examination, offered by a testing service or company approved by the finance commission, that demonstrates knowledge of:
 - (i) the mortgage industry; and
 - (ii) the role and responsibilities of a mortgage broker; and
 - (B) compliance with the financial requirements of this chapter;
- (6) not have been convicted of a criminal offense that the commissioner determines directly relates to the occupation of a mortgage broker as provided by Chapter 53, Occupations Code;
- (7) satisfy the commissioner as to the individual's good moral character, including the individual's honesty, trustworthiness, and integrity;
- (8) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued to the individual by the commissioner; and
- (9) provide the commissioner with satisfactory evidence that:
 - (A) if the individual [~~person~~] has not been previously licensed as a mortgage broker or a loan officer under this subchapter, the individual [~~person~~] has completed 90 [~~classroom~~] hours of education courses approved by the commissioner under this section; or
 - (B) if the individual [~~person~~] has not been previously licensed as a mortgage broker under this subchapter but

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has been licensed as a loan officer under this subchapter, the individual ~~[person]~~ has successfully completed an additional 30 ~~[classroom]~~ hours of education courses approved by the commissioner under this section.

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

- (1) be an individual who is at least 18 years of age;
- (2) be a citizen of the United States or a lawfully admitted alien;
- (3) designate in the application the name of the mortgage broker sponsoring the loan officer;
- (4) provide the commissioner with satisfactory evidence that the applicant satisfies one of the following:
 - (A) the person ~~[meets one of the requirements described by Subsection (a)(4) and]~~ has successfully completed at least 60 ~~[classroom]~~ hours of education courses approved by the commissioner; ~~[under this section;]~~
 - (B) the person ~~[has 18 months of experience as a loan officer as evidenced by documentary proof of full-time employment as a loan officer with a person exempt under Section 156.202 and]~~ has successfully completed 30 ~~[classroom]~~ hours of education courses approved by the commissioner under this section if the applicant:
 - (i) has 18 months or more of experience as a mortgage loan officer as evidenced by documentary proof of full-time employment as a mortgage loan officer with a person exempt under Section 156.202; or
 - (ii) is a person who meets the qualifications under Subsection (a)(4)(B); or

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

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

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

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

(A) the mortgage industry; and

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

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

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

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

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SECTION 9. Same as House version.

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

- (1) be an individual who is at least 18 years of age;
- (2) be a citizen of the United States or a lawfully admitted alien;
- (3) designate in the application the name of the mortgage broker sponsoring the loan officer;
- (4) provide the commissioner with satisfactory evidence that the applicant satisfies one of the following:
 - (A) the person has successfully completed at least 60 hours of education courses approved by the commissioner;
 - (B) the person has successfully completed 30 hours of education courses approved by the commissioner under this section if the applicant has 18 months or more of experience as a residential mortgage loan originator as evidenced by documentary proof of full-time employment; or
 - (C) the person holds an active license as a residential mortgage loan originator under Chapter 157 and has held that license for a minimum of one year;
- (5) not have been convicted of a criminal offense that the commissioner determines directly relates to the occupation of a loan officer as provided by Chapter 53, Occupations Code;
- (6) satisfy the commissioner as to the individual's good moral character, including the individual's honesty, trustworthiness, and integrity;
- (7) provide the commissioner with satisfactory evidence

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

(A) the mortgage industry; and

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

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

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

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

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

~~[(c) The commissioner shall require proof of compliance with this section at the time the mortgage broker applies~~

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SECTION 10. Same as House version.

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~~for or renews a license.]~~

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

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

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

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

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

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

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

(i) a real estate broker;

(ii) a real estate salesperson;

(iii) an attorney; or

(iv) an active general lines insurance ~~[a local recording]~~ agent or a limited lines ~~[or]~~ insurance ~~[solicitor or]~~ agent

SECTION 11. Same as House version.

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~~[for a legal reserve life insurance company under Chapter 21, Insurance Code], or holds an equivalent insurance license under the [Chapter 21,] Insurance Code.~~

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

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

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

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

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

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

- (i) a real estate broker;
- (ii) a real estate salesperson;

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- (iii) an attorney; or
- (iv) an active general lines insurance ~~[a local recording]~~ agent or a limited lines ~~[or]~~ insurance ~~[solicitor or]~~ agent ~~[for a legal reserve life insurance company under Chapter 21, Insurance Code]~~, or holds an equivalent insurance license under the ~~[Chapter 21,]~~ Insurance Code.
- (j) The commissioner may deny the renewal of a mortgage broker license or a loan officer license if:
 - (1) the mortgage broker or loan officer is in violation of this chapter, a rule adopted under this chapter, or any order previously issued to the individual by the commissioner;
 - (2) the mortgage broker or loan officer is in default in the payment of any administrative penalty, fee, charge, or other indebtedness owed under this title; ~~[or]~~
 - (3) during the current term of the license, the commissioner becomes aware of any fact that would have been grounds for denial of an original license if the fact had been known by the commissioner on the date the license was granted; or
 - (4) the mortgage broker or loan officer is in default on a student loan administered by the Texas Guaranteed Student Loan Corporation, pursuant to Section 57.491, Education Code.
- (k) In addition to the disciplinary action by the commissioner authorized under Section 156.303(a)(7), the commissioner may collect a fee in an amount not to exceed \$50 for any returned check or credit card charge

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back.

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

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

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

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

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

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

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

(1) pays to the commissioner a renewal fee in an amount determined by the commissioner not to exceed \$275 and

SECTION 12. Same as House version.

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a recovery fund fee provided by Section 156.502;

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

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

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

Sec. 156.212. MAINTENANCE AND LOCATION OF OFFICES[~~;- DISPLAY OF LICENSE CERTIFICATES~~].

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

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

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

(2) provide the commissioner with satisfactory evidence of an undertaking of accountability in a form acceptable

SECTION 13. Same as House version.

SECTION 14. Same as House version.

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to the commissioner, supported by a surety bond equal to \$1 million to cover the person's responsibility for mortgage broker activities of each exclusive agent;

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

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

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

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

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

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

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

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

(E) if the registered financial services company has at least 5,001 exclusive agents acting in this state,

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\$350,000; and

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

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

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

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

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

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

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

(1) obtained a license, including a renewal of a license,

SECTION 15. Same as House version.

SECTION 16. Same as House version.

SECTION 17. Same as House version.

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under this chapter through a false or fraudulent representation or made a material misrepresentation in an application for a license or for the renewal of a license under this chapter;

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

(A) is misleading;

(B) is likely to deceive the public;

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

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

(E) violates federal or state law;

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

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

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

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

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or on behalf of the mortgage applicant, except as provided by Section 156.304;

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

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

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

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

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

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

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

(14) discriminated against a prospective borrower on the

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

(15) failed or refused on demand to:

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

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

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

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

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

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

(a-1) The commissioner may also order disciplinary

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

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

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

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to forfeiture as provided by Section 156.406(b).

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

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

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

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

SECTION 18. Same as House version.

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

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

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

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

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SECTION 19. Same as House version.

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department.

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

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

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

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

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

(b) If the balance remaining in the fund at the end of a calendar year [~~after 2010~~] is more [~~less~~] than \$3.5 million, the amount of money in excess of that amount shall be available to the commissioner to offset the expenses of participating in and sharing information with the Nationwide Mortgage Licensing System and Registry

SECTION 20. Same as House version.

SECTION 21. Same as House version.

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~~in accordance with Chapter 180 [\$500,000, each mortgage broker and loan officer licensed under this chapter, on the next renewal of the license, shall pay, in addition to any other required fees, the lesser of a \$10 fee or a pro rata share of the amount necessary to bring the fund to \$1 million. The fee shall be deposited in the fund].~~

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

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

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

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

Sec. 156.504. PROCEDURE FOR RECOVERY. (a) To recover from the fund, a residential mortgage loan applicant must file a written sworn application with the commissioner in the form prescribed by [An aggrieved person who recovers against a mortgage broker or loan

SECTION 22. Same as House version.

SECTION 23. Same as House version.

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~~officer licensed under this chapter a valid court judgment for conduct described by Section 156.501 that occurred on or after January 1, 2000, after final judgment has been entered, execution returned nulla bona, and a judgment lien perfected, may file a verified claim in the court in which the judgment was entered and, on 20 days' written notice to] the commissioner [and to the judgment debtor, may apply to the court for an order directing payment from the fund of any unpaid judgment amount], subject to Section 156.503. A person who knowingly makes a false statement in connection with applying for money out of the fund may be subject to criminal prosecution under Section 37.10, Penal Code.~~

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

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

(2) that the applicant:

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

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

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

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

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

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

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

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

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

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

(2) investigate the application and issue a preliminary determination, giving the applicant, the license holder,

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and any surety an opportunity to resolve the matter by agreement or to dispute the preliminary determination.

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

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

~~[(e) When the commissioner receives notice of entry of a final judgment and a hearing is scheduled under this section, the commissioner may notify the attorney general of the commissioner's desire to enter an appearance, file a response, appear at the court hearing, defend the action, or to take any other appropriate action. In taking any action described by this subsection, the commissioner and the attorney general shall act only to protect the fund from spurious or unjust claims or to~~

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~~ensure compliance with the requirements for recovery under this subchapter.~~

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

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

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

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

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

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

(1) arising out of the same transaction, including

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~~[attorney's fees,]~~ interest, ~~[and court costs,]~~ is limited in the aggregate to \$25,000, regardless of the number of claimants; and

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

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

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

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

(a-1) The commissioner may seek to collect from a mortgage broker or loan officer the amount paid from the fund on behalf of the mortgage broker or loan officer and any costs associated with investigating and processing the claim against the fund or with collection of reimbursement for payments from the fund, plus interest

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at the current legal rate until the amount has been repaid in full. Any amount, including interest, recovered by the commissioner shall be deposited to the credit of the fund.

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

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

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

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

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

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

No equivalent provision.

SECTION 28. To the extent of any conflict, this Act prevails over another Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and

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SECTION 27. Same as House version.

SECTION 28. Same as House version.

SECTION 29. The provisions of this Act or the applications of those provisions are severable as provided by Section 311.032(c), Government Code. If the Secretary of Housing and Urban Development determines that any provision of this Act fails to meet the requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289), that provision of this Act shall be held invalid; however, the remainder of this Act or the application of the provision to other persons or circumstances is not affected.

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corrections in enacted codes.

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

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

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SECTION 31. (a) Subject to Subsection (b) of this section, this Act takes effect September 1, 2009.

(b) Sections 1, 2, and 18 of this Act take effect only if House Bill 10 or another similar bill of the Regular Session of the 81st Legislature relating to the licensing of residential mortgage loan originators is enacted and becomes law. If House Bill 10 or another similar bill of the Regular Session of the 81st Legislature relating to the licensing of residential mortgage loan originators does not become law, Sections 1, 2, and 18 of this Act do not take effect.

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