

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 30, 2009
Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 2774 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Wentworth

Sen. Wentworth

Vicki Truitt

Rep. Truitt (Chair)

Averitt

Sen. Averitt

Danby

Rep. Danby

Eltife

Sen. Eltife

Flynn

Rep. Flynn

Van de Putte

Sen. Van de Putte

Rep. Hernandez

Watson

On the part of the Senate

Sen. Watson

Hopson II

On the part of the House

Rep Hopson

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 2774

A BILL TO BE ENTITLED

AN ACT

1

2 relating to self-directed and semi-independent status of state
3 financial regulatory agencies and the licensing and regulation of
4 certain persons involved in residential mortgage lending; making an
5 appropriation; providing a penalty.

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

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

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

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

13 (a-1) The finance commission may adopt rules under this
14 chapter as required to carry out the intentions of the federal
15 Secure and Fair Enforcement for Mortgage Licensing Act of 2008
16 (Pub. L. No. 110-289).

17 (b-1) The finance commission on the commissioner's
18 recommendation may adopt rules to promote a fair and orderly
19 administration of the fund consistent with the purposes of
20 Subchapter F.

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

23 Sec. 156.104. MORTGAGE INDUSTRY [~~BROKER~~] ADVISORY
24 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 156.202, Finance Code, is amended to
26 read as follows:

27 Sec. 156.202. EXEMPTIONS. (a) The following persons are

1 exempt from this chapter:

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

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

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

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

13 (D) a mortgage banker registered under Chapter
14 157;

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

18 (F) a Farm Credit System institution; or

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

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

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

1 (4) an individual who:

2 (A) makes a mortgage loan from the individual's
3 own funds;

4 (B) is not an authorized lender under Chapter
5 342, Finance Code; and

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

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

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

17 SECTION 7. Section 156.203, Finance Code, is amended by
18 adding Subsection (e) to read as follows:

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

23 SECTION 8. Section 156.204, Finance Code, is amended by
24 amending Subsections (a) and (c) and adding Subsection (f) to read
25 as follows:

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

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

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

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

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

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

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

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

19 (ii) an active attorney; or

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

25 (C) the individual [~~person~~] has three years of
26 experience in the mortgage lending field as evidenced by
27 documentary proof of full-time employment as a licensed loan

1 officer with a mortgage broker or an individual [~~a person~~] exempt
2 under Section 156.202;

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

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

8 (i) the mortgage industry; and

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

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

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

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

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

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

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

1 under this section; or

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

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

- 10 (1) be an individual who is at least 18 years of age;
11 (2) be a citizen of the United States or a lawfully
12 admitted alien;
13 (3) designate in the application the name of the
14 mortgage broker sponsoring the loan officer;
15 (4) provide the commissioner with satisfactory
16 evidence that the applicant satisfies one of the following:

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

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

27 (i) has 18 months or more of experience as a

1 mortgage loan officer as evidenced by documentary proof of
2 full-time employment as a mortgage loan officer with a person
3 exempt under Section 156.202; or

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

6 (C) the person holds an active mortgage broker
7 license issued under this chapter [~~for applications received prior~~
8 ~~to January 1, 2000, the mortgage broker that will sponsor the~~
9 ~~applicant provides a certification under oath that the applicant~~
10 ~~has been 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 (f) Subsection (c) and this subsection expire January 1,
3 2011.

4 SECTION 9. Effective January 1, 2011, Section 156.204,
5 Finance Code, is amended by adding Subsection (c-1) to read as
6 follows:

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

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

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

12 (3) designate in the application the name of the
13 mortgage broker sponsoring the loan officer;

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

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

18 (B) the person has successfully completed 30
19 hours of education courses approved by the commissioner under this
20 section if the applicant has 18 months or more of experience as a
21 residential mortgage loan originator as evidenced by documentary
22 proof of full-time employment; or

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

26 (5) not have been convicted of a criminal offense that
27 the commissioner determines directly relates to the occupation of a

1 loan officer as provided by Chapter 53, Occupations Code;

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

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

9 (A) the mortgage industry; and

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

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

15 SECTION 10. Section 156.205, Finance Code, is amended to
16 read as follows:

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

25 [~~(b) A mortgage broker must maintain net assets of at least~~
26 ~~\$25,000 or a surety bond in the amount of at least \$50,000. The term~~
27 ~~of the surety bond must coincide with the term of the license. The~~

1 ~~finance commission may adopt rules establishing the terms and~~
2 ~~conditions of the surety bond and the qualifications of the surety.~~

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

6 SECTION 11. Section 156.208, Finance Code, is amended by
7 amending Subsections (a), (b), and (j) and adding Subsections (k)
8 and (l) to read as follows:

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

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

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

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

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

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

26 (i) a real estate broker;

27 (ii) a real estate salesperson;

1 (iii) an attorney; or

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

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

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

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

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

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

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

26 (i) a real estate broker;

27 (ii) a real estate salesperson;

1 (iii) an attorney; or

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

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

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

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

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

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

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

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

1 SECTION 12. Effective January 1, 2011, Section 156.208,
2 Finance Code, is amended by adding Subsections (a-1) and (b-1) to
3 read as follows:

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

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

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

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

17 (b-1) A loan officer 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 loan officer:

20 (1) pays to the commissioner a renewal fee in an amount
21 determined by the commissioner not to exceed \$275 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 loan officer as provided by Chapter 53, Occupations Code; and

26 (3) provides the commissioner with satisfactory
27 evidence that the loan officer has attended, during the term of the

1 current license, continuing education courses in accordance with
2 the applicable requirements of Chapter 180.

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

5 Sec. 156.212. MAINTENANCE AND LOCATION OF OFFICES [~~+~~ ~~DISPLAY~~
6 ~~OF LICENSE CERTIFICATES~~].

7 SECTION 14. Section 156.214(b), Finance Code, as added by
8 Chapter 228 (H.B. 1716), Acts of the 80th Legislature, Regular
9 Session, 2007, is amended to read as follows:

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

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

17 (2) provide the commissioner with satisfactory
18 evidence of an undertaking of accountability in a form acceptable
19 to the commissioner, supported by a surety bond equal to \$1 million
20 to cover the person's responsibility for mortgage broker activities
21 of each exclusive agent;

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

27 (4) pay an annual registration fee in an amount

1 determined as follows [~~of the lesser of~~]:

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

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

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

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

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

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

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

21 and

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

24 SECTION 15. Section 156.301, Finance Code, is amended by
25 adding Subsection (h) to read as follows:

26 (h) The commissioner may require reimbursement in an amount
27 not to exceed \$325 for each examiner a day for on-site examination

1 or investigation of a mortgage broker if records are located out of
2 state or if the review is considered necessary beyond the routine
3 examination process.

4 SECTION 16. Section 156.302(a), Finance Code, is amended to
5 read as follows:

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

10 SECTION 17. Section 156.303, Finance Code, is amended by
11 amending Subsections (a), (e), (g), (h), and (j) and adding
12 Subsection (a-1) to read as follows:

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

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

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

25 (A) is misleading;

26 (B) is likely to deceive the public;

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

1 impression;

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

5 (E) violates federal or state law;

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

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

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

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

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

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

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

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

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

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

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

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

22 (15) failed or refused on demand to:

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

27 (B) give the commissioner or the commissioner's

1 authorized personnel or representative free access to the books or
2 records relating to the person's business kept by an officer,
3 agent, or employee of the person or any business entity through
4 which the person conducts mortgage brokerage activities, including
5 a subsidiary or holding company affiliate; or

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

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

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

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

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

25 (e) The commissioner, after giving notice and an
26 opportunity for hearing, may impose against a person who violates a
27 cease and desist order an administrative penalty in an amount not to

1 exceed \$1,000 for each day of the violation. In addition to any
2 other remedy provided by law, the commissioner may institute in
3 district court a suit for injunctive relief and to collect the
4 administrative penalty. A bond is not required of the commissioner
5 with respect to injunctive relief granted under this subsection.
6 ~~[A penalty collected under this subsection shall be deposited in~~
7 ~~the fund.]~~

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

20 (h) An order of suspension under Subsection (g) may be
21 appealed. An appeal is a contested case governed by Chapter 2001,
22 Government Code. A hearing of an appeal of an order of suspension
23 issued under Subsection (g) shall be held not later than the 30th
24 ~~[15th]~~ day after the date of receipt of the notice of appeal. The
25 appellant shall be provided at least three days' notice of the time
26 and place of the hearing.

27 (j) The ~~[On notice and opportunity for hearing, the]~~

1 commissioner may, on not less than 10 days' notice to the person,
2 suspend a person's license without a prior hearing under this
3 chapter if an indictment or information is filed or returned
4 alleging that the person committed a criminal offense involving
5 fraud, theft, or dishonesty. The suspension continues until the
6 criminal case is dismissed or the person is acquitted. A person may
7 appeal the suspension in accordance with Subsection (h).

8 SECTION 18. Section 156.401(a), Finance Code, is amended to
9 read as follows:

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

16 SECTION 19. Section 156.501, Finance Code, is amended by
17 amending Subsections (a) and (b) and adding Subsections (d), (e),
18 and (f) to read as follows:

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

24 (b) Subject to this subsection, the [The] fund shall be used
25 to reimburse residential mortgage loan applicants for actual
26 damages incurred because of [aggrieved persons to whom a court
27 awards actual damages because of certain] acts committed by a

1 mortgage broker or loan officer who was licensed under this chapter
2 when the act was committed. The use of the fund is limited to
3 reimbursement for out-of-pocket losses caused by an act by a
4 mortgage broker or loan officer that constitutes a violation of
5 Section 156.303(a)(2), (3), (5), (6), (8), (9), (10), (11), (12),
6 (13), or (16) or 156.304. Payments from the fund may not be made to
7 a lender who makes a mortgage loan originated by the mortgage broker
8 or loan officer or who acquires a mortgage loan originated by the
9 mortgage broker or loan officer.

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

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

19 (f) The commissioner, as manager of the fund, is entitled to
20 reimbursement for reasonable and necessary costs and expenses
21 incurred in the management of the fund, including costs and
22 expenses incurred with regard to applications filed under Section
23 156.504.

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

26 (a) On an application for an original license or for renewal
27 of a license issued under this chapter, the applicant, in addition

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

4 SECTION 21. Section 156.502(b), Finance Code, is amended to
5 read as follows:

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

17 SECTION 22. Section 156.503, Finance Code, is amended to
18 read as follows:

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

26 (b) This section does not apply to a subrogation claim
27 brought by the commissioner for recovery of money paid out of the

1 fund [~~on which the cause of action accrues~~].

2 SECTION 23. Section 156.504, Finance Code, is amended to
3 read as follows:

4 Sec. 156.504. PROCEDURE FOR RECOVERY. (a) To recover from
5 the fund, a residential mortgage loan applicant must file a written
6 sworn application with the commissioner in the form prescribed by
7 ~~[An aggrieved person who recovers against a mortgage broker or loan~~
8 ~~officer licensed under this chapter a valid court judgment for~~
9 ~~conduct described by Section 156.501 that occurred on or after~~
10 ~~January 1, 2000, after final judgment has been entered, execution~~
11 ~~returned nulla bona, and a judgment lien perfected, may file a~~
12 ~~verified claim in the court in which the judgment was entered and,~~
13 ~~on 20 days' written notice to] the commissioner [and to the judgment~~
14 ~~debtor, may apply to the court for an order directing payment from~~
15 ~~the fund of any unpaid judgment amount], subject to Section~~
16 156.503. A person who knowingly makes a false statement in
17 connection with applying for money out of the fund may be subject to
18 criminal prosecution under Section 37.10, Penal Code.

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

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

23 (2) that the applicant:

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

26 (B) is not a child, parent, grandchild,
27 grandparent, or sibling, including relationships by adoption, of

1 the licensed mortgage broker or loan officer;

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

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

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

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

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

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

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

4 (2) investigate the application and issue a
5 preliminary determination, giving the applicant, the license
6 holder, and any surety an opportunity to resolve the matter by
7 agreement or to dispute the preliminary determination.

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

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

24 ~~[(e) When the commissioner receives notice of entry of a~~
25 ~~final judgment and a hearing is scheduled under this section, the~~
26 ~~commissioner may notify the attorney general of the commissioner's~~
27 ~~desire to enter an appearance, file a response, appear at the court~~

1 ~~hearing, defend the action, or to take any other appropriate~~
2 ~~action. In taking any action described by this subsection, the~~
3 ~~commissioner and the attorney general shall act only to protect the~~
4 ~~fund from spurious or unjust claims or to ensure compliance with the~~
5 ~~requirements for recovery under this subchapter.~~

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

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

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

20 SECTION 24. Section 156.505, Finance Code, is amended to
21 read as follows:

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

27 (b) A payment from the fund may be made [~~only pursuant to a~~

1 ~~court order~~] as provided by Section 156.504 and this section. A
2 payment for claims:

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

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

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

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

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

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

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

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

11 SECTION 26. Section 156.507, Finance Code, is amended to
12 read as follows:

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

26 SECTION 27. Section 156.508, Finance Code, is amended to
27 read as follows:

1 Sec. 16.002. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF
2 FINANCIAL REGULATORY AGENCIES. Notwithstanding any other
3 provision of law, a financial regulatory agency is self-directed
4 and semi-independent as specified by this chapter. Any Act of the
5 81st Legislature that relates to a financial regulatory agency and
6 that is inconsistent with the agency being self-directed and
7 semi-independent may be implemented by the financial regulatory
8 agency only on authorization by the policy-making body of the
9 financial regulatory agency.

10 Sec. 16.003. BUDGET, REVENUES, AND EXPENSES. (a) A
11 financial regulatory agency shall submit to the policy-making body
12 of the financial regulatory agency a budget annually using
13 generally accepted accounting principles. Notwithstanding any
14 other provision of law, including the General Appropriations Act,
15 the budget shall be adopted and approved only by the policy-making
16 body of the financial regulatory agency.

17 (b) A financial regulatory agency shall be responsible for
18 all direct and indirect costs of the agency's existence and
19 operation. The financial regulatory agency may not directly or
20 indirectly cause the general revenue fund to incur any cost.

21 (c) Subject to any limitations in a financial regulatory
22 agency's enabling legislation, a financial regulatory agency may
23 set the amounts of fees, penalties, charges, and revenues required
24 or permitted by statute or rule as necessary for the purpose of
25 carrying out the functions of the financial regulatory agency and
26 funding the budget adopted and approved under Subsection (a).

27 (d) All fees and funds collected by a financial regulatory

1 agency and any funds appropriated to the financial regulatory
2 agency shall be deposited in interest-bearing deposit accounts in
3 the Texas Treasury Safekeeping Trust Company. The comptroller
4 shall contract with the financial regulatory agency for the
5 maintenance of the deposit accounts under terms comparable to a
6 contract between a commercial banking institution and the
7 institution's customers.

8 (e) Periodically, each financial regulatory agency shall
9 submit to the agency's policy-making body, as directed by the
10 policy-making body, a report of the receipts and expenditures of
11 the financial regulatory agency.

12 (f) The fiscal year for a financial regulatory agency begins
13 on September 1 and ends on August 31.

14 Sec. 16.004. AUDITS. This chapter does not affect the duty
15 of the state auditor to audit a financial regulatory agency. The
16 state auditor shall enter into a contract and schedule with each
17 financial regulatory agency to conduct audits, including financial
18 reports and performance audits. The financial regulatory agency
19 shall reimburse the state auditor for all costs incurred in
20 performing the audits and shall provide to the governor a copy of
21 any audit performed.

22 Sec. 16.005. RECORDS; REPORTING REQUIREMENTS. (a) A
23 financial regulatory agency shall keep financial and statistical
24 information as necessary to disclose completely and accurately the
25 financial condition and results of operations of the agency.

26 (b) Before the beginning of each regular session of the
27 legislature, each financial regulatory agency shall submit to the

1 legislature and the governor a report describing all of the
2 agency's activities in the previous biennium. The report must
3 include:

4 (1) an audit as required by Section 16.004;

5 (2) a financial report of the previous fiscal year,
6 including reports on financial condition and results of operations;

7 (3) a description of all changes in fees imposed on
8 regulated industries;

9 (4) a report on changes in the regulatory jurisdiction
10 of the agency, including the number of chartered financial
11 institutions, license holders, and registrants subject to the
12 agency's jurisdiction and any changes in those figures; and

13 (5) a list of all new rules adopted or repealed.

14 (c) In addition to the reporting requirements of Subsection
15 (b), not later than November 1 of each year, each financial
16 regulatory agency shall submit to the governor, the committee of
17 each house of the legislature that has jurisdiction over
18 appropriations, and the Legislative Budget Board a report that
19 contains:

20 (1) the salary for all financial regulatory agency
21 personnel and the total amount of per diem expenses and travel
22 expenses paid for all agency employees;

23 (2) the total amount of per diem expenses and travel
24 expenses paid for each member of the agency's policy-making body,
25 provided that only one report must be submitted regarding the
26 Finance Commission of Texas;

27 (3) the agency's operating plan and annual budget; and

1 (4) a detailed report of all revenue received and all
2 expenses incurred by the financial regulatory agency in the
3 previous 12 months.

4 Sec. 16.006. ABILITY TO CONTRACT. (a) To carry out and
5 promote the objectives of this chapter, a financial regulatory
6 agency may enter into contracts and do all other acts incidental to
7 those contracts that are necessary for the administration of the
8 agency's affairs and for the attainment of the agency's purposes,
9 except as limited by Subsection (b).

10 (b) Any indebtedness, liability, or obligation of the
11 financial regulatory agency incurred under this section may not:

12 (1) create a debt or other liability of this state or
13 another entity other than the financial regulatory agency; or

14 (2) create any personal liability on the part of the
15 members of the policy-making body or the body's or agency's
16 employees.

17 Sec. 16.007. PROPERTY. A financial regulatory agency may:

18 (1) acquire by purchase, lease, gift, or any other
19 manner provided by law and maintain, use, and operate any real,
20 personal, or mixed property, or any interest in property, necessary
21 or convenient to the exercise of the powers, rights, privileges, or
22 functions of the financial regulatory agency;

23 (2) sell or otherwise dispose of any real, personal,
24 or mixed property, or any interest in property, that the financial
25 regulatory agency determines is not necessary or convenient to the
26 exercise of the agency's powers, rights, privileges, or functions;

27 (3) construct, extend, improve, maintain, and

1 reconstruct, or cause to construct, extend, improve, maintain, and
2 reconstruct, and use and operate all facilities necessary or
3 convenient to the exercise of the powers, rights, privileges, or
4 functions of the financial regulatory agency; and

5 (4) borrow money, as may be authorized from time to
6 time by an affirmative vote of a two-thirds majority of the
7 policy-making body of the financial regulatory agency, for a period
8 not to exceed five years if necessary or convenient to the exercise
9 of the financial regulatory agency's powers, rights, privileges, or
10 functions.

11 Sec. 16.008. SUITS. The office of the attorney general
12 shall represent a financial regulatory agency in any litigation.
13 The attorney general may assess and collect from the financial
14 regulatory agency reasonable attorney's fees associated with any
15 litigation under this section.

16 Sec. 16.009. POST-PARTICIPATION LIABILITY. (a) If a
17 financial regulatory agency no longer has status under this chapter
18 as a self-directed semi-independent financial regulatory agency
19 for any reason, the agency shall be liable for any expenses or debts
20 incurred by the agency during the time the agency was a
21 self-directed semi-independent financial regulatory agency. The
22 agency's liability under this section includes liability for any
23 lease entered into by the agency. This state is not liable for any
24 expense or debt covered by this subsection, and money from the
25 general revenue fund may not be used to repay the expense or debt.

26 (b) If a financial regulatory agency no longer has status
27 under this chapter as a self-directed semi-independent financial

1 regulatory agency for any reason, ownership of any property or
2 other asset acquired by the agency during the time the agency was a
3 self-directed semi-independent financial regulatory agency,
4 including unexpended fees in a deposit account in the Texas
5 Treasury Safekeeping Trust Company, shall be transferred to this
6 state.

7 Sec. 16.010. DUE PROCESS; OPEN GOVERNMENT. A financial
8 regulatory agency is:

9 (1) a governmental body for purposes of Chapters 551
10 and 552, Government Code; and

11 (2) a state agency for purposes of Chapters 2001 and
12 2005, Government Code.

13 Sec. 16.011. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM.
14 Employees of the financial regulatory agencies are members of the
15 Employees Retirement System of Texas under Chapter 812, Government
16 Code, and the agencies' transition to independent status as
17 provided by this chapter has no effect on their membership or any
18 benefits under that system.

19 Sec. 16.012. GIFTS. (a) Notwithstanding any other law, a
20 financial regulatory agency may not accept a gift, grant, or
21 donation:

22 (1) from a party to an enforcement action; or

23 (2) to pursue a specific investigation or enforcement
24 action.

25 (b) A financial regulatory agency must:

26 (1) report each gift, grant, or donation that the
27 agency receives as a separate item in the agency's report required

1 under Section 16.005(b); and

2 (2) include with the report a statement indicating the
3 purpose for which each gift, grant, or donation was donated and
4 used.

5 (b) Section 11.104, Finance Code, is amended to read as
6 follows:

7 Sec. 11.104. EXPENSES AND COMPENSATION OF MEMBERS. A
8 member of the finance commission is entitled to:

9 (1) the reimbursement for reasonable and necessary
10 expenses incidental to travel incurred in connection with the
11 performance of official duties; and

12 (2) a per diem [~~as set by legislative appropriation~~]
13 for each day that the member engages in the business of the finance
14 commission.

15 (c) Section 11.110(c), Finance Code, is amended to read as
16 follows:

17 (c) A person appointed to the finance commission is entitled
18 to reimbursement under Section 11.104, as if the person were a
19 member of the finance commission, [~~as provided by the General~~
20 Appropriations Act,] for the travel expenses incurred in attending
21 the training program regardless of whether the attendance at the
22 program occurs before or after the person qualifies for office.

23 (d) Section 11.204, Finance Code, is amended by adding
24 Subsection (c) to read as follows:

25 (c) The finance commission shall have charge and control of
26 the property known as the Finance Commission Building and use of
27 staff, equipment, and facilities of the finance agencies. The

1 Finance Commission Building refers to the property located in the
2 city of Austin and titled in the name of the Banking Section of the
3 Finance Commission of Texas, as described by deed recorded in
4 Volume 5080, Page 1099, of the Deed Records of Travis County, Texas.

5 (e) Section 15.2041(c), Finance Code, is amended to read as
6 follows:

7 (c) A person appointed to the commission is entitled to
8 reimbursement under Section 15.207, as if the person were a member
9 of the commission, for travel expenses incurred in attending the
10 training program, regardless of whether the attendance at the
11 program occurs before or after the person qualifies for office~~[, as~~
12 ~~provided by the General Appropriations Act and as if the person were~~
13 ~~a member of the commission].~~

14 (f) Subchapter E, Chapter 15, Finance Code, is amended by
15 adding Section 15.4011 to read as follows:

16 Sec. 15.4011. CREDIT UNION DEPARTMENT BUILDING. The
17 commission shall have charge and control of the property known as
18 the Credit Union Department Building and use of staff, equipment,
19 and facilities of the department. The Credit Union Department
20 Building refers to the property located in the city of Austin and
21 titled in the name of the State of Texas for the use and benefit of
22 the Credit Union Department, as described by deed recorded in
23 Volume 6126, Page 27, of the Deed Records of Travis County, Texas.

24 (g) Section 156.101(a), Finance Code, is amended to read as
25 follows:

26 (a) The commissioner shall administer and enforce this
27 chapter.

1 (h) Section 2165.007(b), Government Code, is amended to
2 read as follows:

3 (b) Notwithstanding any other law, the commission shall
4 provide facilities management services in relation to all state
5 agency facilities in Travis County or a county adjacent to Travis
6 County. The commission's duty does not apply to:

7 (1) a facility owned or operated by an institution of
8 higher education;

9 (2) military facilities;

10 (3) facilities owned or operated by the Texas
11 Department of Criminal Justice;

12 (4) facilities owned or operated by the Texas Youth
13 Commission;

14 (5) facilities owned or operated by the Texas
15 Department of Transportation;

16 (6) the Capitol, including the Capitol Extension, the
17 General Land Office building, the Bob Bullock Texas State History
18 Museum, any museum located on the Capitol grounds, the Governor's
19 Mansion, and any property maintained by the Texas Historical
20 Commission under Sections 442.0072 and 442.0073;

21 (7) a facility determined by the commission to be
22 completely residential;

23 (8) a regional or field office of a state agency; ~~or~~

24 (9) a facility located within or on state park
25 property;

26 (10) the property known as the Finance Commission
27 Building described by deed recorded in Volume 5080, Page 1099, of

1 the Deed Records of Travis County, Texas; or
2 (11) the property known as the Credit Union Department
3 Building described by deed recorded in Volume 6126, Page 27, of the
4 Deed Records of Travis County, Texas.

5 (i) Sections 12.103, 13.005, 13.008, 14.053, 14.060,
6 15.104, 15.207(c), 15.308, 15.408, and 156.101(b) and (c), Finance
7 Code, are repealed.

8 (j)(1) To provide a reasonable period for each financial
9 regulatory agency, as defined by Section 16.001, Finance Code, as
10 added by this section, to establish itself as a self-directed and
11 semi-independent agency, the following amounts are appropriated
12 from the general revenue fund to each of those financial regulatory
13 agencies:

14 (A) for the state fiscal year ending August 31,
15 2010, an amount equal to 50 percent of the amount of general revenue
16 appropriated to the agency for the state fiscal year ending August
17 31, 2009; and

18 (B) for the state fiscal year ending August 31,
19 2011, an amount equal to 50 percent of the amount of general revenue
20 appropriated to the agency for the state fiscal year ending August
21 31, 2009.

22 (2) Subject to Section 16.003, Finance Code, as added
23 by this section, the appropriations made by Subdivision (1) of this
24 subsection may be spent by the financial regulatory agency to which
25 they are made as the financial regulatory agency directs. The
26 financial regulatory agency shall repay to the general revenue fund
27 the appropriation made to the agency for the state fiscal year

1 ending August 31, 2010, not later than that date and as funds become
2 available. The financial regulatory agency shall repay to the
3 general revenue fund the appropriation made to the agency for the
4 state fiscal year ending August 31, 2011, not later than that date
5 and as funds become available.

6 (k) The transfer of a financial regulatory agency, as
7 defined by Section 16.001, Finance Code, as added by this section,
8 to self-directed and semi-independent status under Chapter 16,
9 Finance Code, as added by this section, and the expiration of
10 self-directed and semi-independent status may not act to cancel,
11 suspend, or prevent:

12 (1) any debt owed to or by the financial regulatory
13 agency;

14 (2) any fine, tax, penalty, or obligation of any
15 party;

16 (3) any contract or other obligation of any party; or

17 (4) any action taken by the financial regulatory
18 agency in the administration or enforcement of the agency's duties.

19 (l) Each financial regulatory agency, as defined by Section
20 16.001, Finance Code, as added by this section, shall continue to
21 have and exercise the powers and duties allocated to the agency in
22 the agency's enabling legislation, except as specifically amended
23 by this section.

24 (m) Title to all supplies, materials, records, equipment,
25 books, papers, and facilities used by each financial regulatory
26 agency, as defined by Section 16.001, Finance Code, as added by this
27 section, is transferred to each respective financial regulatory

1 agency in fee simple. Nothing in this section shall have an effect
2 on property owned by a financial regulatory agency on or before the
3 effective date of this section.

4 (n) If a conflict exists between this section and another
5 Act of the 81st Legislature, Regular Session, 2009, that relates to
6 the self-directed and semi-independent status of a state financial
7 regulatory agency, this section controls without regard to the
8 relative dates of the enactment.

9 SECTION 29. Sections 156.212(c) and (d) and 156.502(c),
10 Finance Code, are repealed.

11 SECTION 30. The provisions of this Act or the applications
12 of those provisions are severable as provided by Section
13 311.032(c), Government Code. If the Secretary of Housing and Urban
14 Development determines that any provision of Sections 1-27 and 29
15 of this Act fails to meet the requirements of the federal Secure and
16 Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No.
17 110-289), that provision of this Act shall be held invalid;
18 however, the remainder of this Act or the application of the
19 provision to other persons or circumstances is not affected.

20 SECTION 31. To the extent of any conflict, this Act prevails
21 over another Act of the 81st Legislature, Regular Session, 2009,
22 relating to nonsubstantive additions to and corrections in enacted
23 codes.

24 SECTION 32. (a) Subject to Subsection (b) of this section,
25 this Act takes effect September 1, 2009.

26 (b) Sections 1, 2, and 18 of this Act take effect only if
27 House Bill 10 or another similar bill of the Regular Session of the

H.B. No. 2774

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

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SECTION 1. Amends Section 156.101, Finance Code, to require the commissioner to participate in the Nationwide Mortgage Licensing System and Registry as provided by Chapter 180.

SECTION 2. Amends Section 156.102, Finance Code. Among other provisions, Section (a-1) authorizes, by rule, 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, to 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.

SECTION 3. Amends the heading to Section 156.104, Finance Code.

SECTION 4. Amends Sections 156.104(a), (b), and (h), Finance Code.

SECTION 5. Amends Section 156.104, Finance Code, effective April 1, 2010.

No equivalent provision.

SENATE VERSION

SECTION 1. Same as House version.

SECTION 2. Same as House version except Subsection (a-1) authorizes the finance commission to 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).

SECTION 3. Same as House version.

SECTION 4. Same as House version.

SECTION 5. Same as House version.

SECTION 6. Amends Section 156.202, Finance Code, to specify that certain exclusive agents are considered employees of the registered financial services company for purposes of the chapter on mortgage brokers.

CONFERENCE

SECTION 1. Same as House version.

SECTION 2. Same as Senate version.

SECTION 3. Same as House version.

SECTION 4. Same as House version.

SECTION 5. Same as House version.

SECTION 6. Same as Senate version.

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SECTIONS 6-26. Amends Section 156.203, 156.204(a), (c), and (d), 156.204(c-1), 156.205, 156.208(a), (b), (j), (k), and (l), 156.208(a-1) and (b-1), 156.212, 156.301(h), 156.302(a), 156.303(a), (e), (g), (h), (j), and (a-1), 156.401(a), 156.501(a), (b), (d), (e), and (f), 156.502(a), 156.502(b), 156.503, 156.504, 156.505, 156.506(a), (c), (a-1), 156.507, 156.508, Finance Code, and 156.214(b), Finance Code, as added by Chapter 228 (H.B. 1716), Acts of the 80th Legislature, Regular Session, 2007.

No equivalent provision.

SENATE VERSION

SECTIONS 7-27. Same as House version.

No equivalent provision.

CONFERENCE

SECTIONS 7-27. Same as House version.

SECTION 28. (a) Title 2, Finance Code, is amended by adding Chapter 16 to read as follows:

CHAPTER 16. FINANCIAL REGULATORY AGENCIES: SELF-DIRECTED AND SEMI-INDEPENDENT

Sec. 16.001. DEFINITIONS. In this chapter:

(1) "Financial regulatory agency" means:

(A) the Texas Department of Banking;

(B) the Department of Savings and Mortgage Lending;

(C) the Office of Consumer Credit Commissioner; and

(D) the Credit Union Department.

(2) "Policy-making body" means:

(A) the Finance Commission of Texas for:

(i) the Texas Department of Banking;

(ii) the Department of Savings and Mortgage Lending;

and

(iii) the Office of Consumer Credit Commissioner; and

(B) the Credit Union Commission for the Credit Union Department.

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Sec. 16.002. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF FINANCIAL REGULATORY AGENCIES. Notwithstanding any other provision of law, a financial regulatory agency is self-directed and semi-independent as specified by this chapter. Any Act of the 81st Legislature that relates to a financial regulatory agency and that is inconsistent with the agency being self-directed and semi-independent may be implemented by the financial regulatory agency only on authorization by the policy-making body of the financial regulatory agency.

Sec. 16.003. BUDGET, REVENUES, AND EXPENSES. (a) A financial regulatory agency shall submit to the policy-making body of the financial regulatory agency a budget annually using generally accepted accounting principles. Notwithstanding any other provision of law, including the General Appropriations Act, the budget shall be adopted and approved only by the policy-making body of the financial regulatory agency.

(b) A financial regulatory agency shall be responsible for all direct and indirect costs of the agency's existence and operation. The financial regulatory agency may not directly or indirectly cause the general revenue fund to incur any cost.

(c) Subject to any limitations in a financial regulatory agency's enabling legislation, a financial regulatory agency may set the amounts of fees, penalties, charges, and revenues required or permitted by statute or rule as

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necessary for the purpose of carrying out the functions of the financial regulatory agency and funding the budget adopted and approved under Subsection (a).

(d) All fees and funds collected by a financial regulatory agency and any funds appropriated to the financial regulatory agency shall be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. The comptroller shall contract with the financial regulatory agency for the maintenance of the deposit accounts under terms comparable to a contract between a commercial banking institution and the institution's customers.

(e) Periodically, each financial regulatory agency shall submit to the agency's policy-making body, as directed by the policy-making body, a report of the receipts and expenditures of the financial regulatory agency.

(f) The fiscal year for a financial regulatory agency begins on September 1 and ends on August 31.

Sec. 16.004. AUDITS. This chapter does not affect the duty of the state auditor to audit a financial regulatory agency. The state auditor shall enter into a contract and schedule with each financial regulatory agency to conduct audits, including financial reports and performance audits. The financial regulatory agency shall reimburse the state auditor for all costs incurred in performing the audits and shall provide to the governor a copy of any audit performed.

Sec. 16.005. RECORDS; REPORTING REQUIREMENTS. (a) A financial regulatory agency

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shall keep financial and statistical information as necessary to disclose completely and accurately the financial condition and results of operations of the agency.

(b) Before the beginning of each regular session of the legislature, each financial regulatory agency shall submit to the legislature and the governor a report describing all of the agency's activities in the previous biennium. The report must include:

(1) an audit as required by Section 16.004;

(2) a financial report of the previous fiscal year, including reports on financial condition and results of operations;

(3) a description of all changes in fees imposed on regulated industries;

(4) a report on changes in the regulatory jurisdiction of the agency, including the number of chartered financial institutions, license holders, and registrants subject to the agency's jurisdiction and any changes in those figures; and

(5) a list of all new rules adopted or repealed.

(c) In addition to the reporting requirements of Subsection (b), not later than November 1 of each year, each financial regulatory agency shall submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and the Legislative Budget Board a report that contains:

(1) the salary for all financial regulatory agency personnel and the total amount of per diem expenses and

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travel expenses paid for all agency employees;
(2) the total amount of per diem expenses and travel expenses paid for each member of the agency's policy-making body, provided that only one report must be submitted regarding the Finance Commission of Texas;
(3) the agency's operating plan and annual budget; and
(4) a detailed report of all revenue received and all expenses incurred by the financial regulatory agency in the previous 12 months.

Sec. 16.006. ABILITY TO CONTRACT. (a) To carry out and promote the objectives of this chapter, a financial regulatory agency may enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of the agency's affairs and for the attainment of the agency's purposes, except as limited by Subsection (b).

(b) Any indebtedness, liability, or obligation of the financial regulatory agency incurred under this section may not:

(1) create a debt or other liability of this state or another entity other than the financial regulatory agency; or
(2) create any personal liability on the part of the members of the policy-making body or the body's or agency's employees.

Sec. 16.007. PROPERTY. A financial regulatory agency may:

(1) acquire by purchase, lease, gift, or any other manner provided by law and maintain, use, and operate any real, personal, or mixed property, or any interest in property,

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necessary or convenient to the exercise of the powers, rights, privileges, or functions of the financial regulatory agency;

(2) sell or otherwise dispose of any real, personal, or mixed property, or any interest in property, that the financial regulatory agency determines is not necessary or convenient to the exercise of the agency's powers, rights, privileges, or functions;

(3) construct, extend, improve, maintain, and reconstruct, or cause to construct, extend, improve, maintain, and reconstruct, and use and operate all facilities necessary or convenient to the exercise of the powers, rights, privileges, or functions of the financial regulatory agency; and

(4) borrow money, as may be authorized from time to time by an affirmative vote of a two-thirds majority of the policy-making body of the financial regulatory agency, for a period not to exceed five years if necessary or convenient to the exercise of the financial regulatory agency's powers, rights, privileges, or functions.

Sec. 16.008. SUITS. The office of the attorney general shall represent a financial regulatory agency in any litigation. The attorney general may assess and collect from the financial regulatory agency reasonable attorney's fees associated with any litigation under this section.

Sec. 16.009. POST-PARTICIPATION LIABILITY. (a) If a financial regulatory agency no longer has status under this chapter as a self-directed semi-independent

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financial regulatory agency for any reason, the agency shall be liable for any expenses or debts incurred by the agency during the time the agency was a self-directed semi-independent financial regulatory agency. The agency's liability under this section includes liability for any lease entered into by the agency. This state is not liable for any expense or debt covered by this subsection, and money from the general revenue fund may not be used to repay the expense or debt.

(b) If a financial regulatory agency no longer has status under this chapter as a self-directed semi-independent financial regulatory agency for any reason, ownership of any property or other asset acquired by the agency during the time the agency was a self-directed semi-independent financial regulatory agency, including unexpended fees in a deposit account in the Texas Treasury Safekeeping Trust Company, shall be transferred to this state.

Sec. 16.010. DUE PROCESS; OPEN GOVERNMENT.

A financial regulatory agency is:

(1) a governmental body for purposes of Chapters 551 and 552, Government Code; and

(2) a state agency for purposes of Chapters 2001 and 2005, Government Code.

Sec. 16.011. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. Employees of the financial regulatory agencies are members of the Employees Retirement System of Texas under Chapter 812, Government Code, and the agencies' transition to

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independent status as provided by this chapter has no effect on their membership or any benefits under that system.

Sec. 16.012. GIFTS. (a) Notwithstanding any other law, a financial regulatory agency may not accept a gift, grant, or donation:

(1) from a party to an enforcement action; or
(2) to pursue a specific investigation or enforcement action.

(b) A financial regulatory agency must:

(1) report each gift, grant, or donation that the agency receives as a separate item in the agency's report required under Section 16.005(b); and

(2) include with the report a statement indicating the purpose for which each gift, grant, or donation was donated and used.

(b) Section 11.104, Finance Code, is amended to read as follows:

Sec. 11.104. EXPENSES AND COMPENSATION OF MEMBERS. A member of the finance commission is entitled to:

(1) the reimbursement for reasonable and necessary expenses incidental to travel incurred in connection with the performance of official duties; and

(2) a per diem [as set by legislative appropriation] for each day that the member engages in the business of the finance commission.

(c) Section 11.110(c), Finance Code, is amended to read as follows:

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(c) A person appointed to the finance commission is entitled to reimbursement under Section 11.104, as if the person were a member of the finance commission, [as provided by the General Appropriations Act,] for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) Section 11.204, Finance Code, is amended by adding Subsection (c) to read as follows:

(c) The finance commission shall have charge and control of the property known as the Finance Commission Building and use of staff, equipment, and facilities of the finance agencies. The Finance Commission Building refers to the property located in the city of Austin and titled in the name of the Banking Section of the Finance Commission of Texas, as described by deed recorded in Volume 5080, Page 1099, of the Deed Records of Travis County, Texas.

(e) Section 15.2041(c), Finance Code, is amended to read as follows:

(c) A person appointed to the commission is entitled to reimbursement under Section 15.207, as if the person were a member of the commission, for travel expenses incurred in attending the training program, regardless of whether the attendance at the program occurs before or after the person qualifies for office, as provided by the General Appropriations Act and as if the person were a member of the commission].

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(f) Subchapter E, Chapter 15, Finance Code, is amended by adding Section 15.4011 to read as follows:

Sec. 15.4011. CREDIT UNION DEPARTMENT BUILDING. The commission shall have charge and control of the property known as the Credit Union Department Building and use of staff, equipment, and facilities of the department. The Credit Union Department Building refers to the property located in the city of Austin and titled in the name of the State of Texas for the use and benefit of the Credit Union Department, as described by deed recorded in Volume 6126, Page 27, of the Deed Records of Travis County, Texas.

(g) Section 156.101(a), Finance Code, is amended to read as follows:

(a) The commissioner shall administer and enforce this chapter.

(h) Section 2165.007(b), Government Code, is amended to read as follows:

(b) Notwithstanding any other law, the commission shall provide facilities management services in relation to all state agency facilities in Travis County or a county adjacent to Travis County. The commission's duty does not apply to:

- (1) a facility owned or operated by an institution of higher education;
- (2) military facilities;
- (3) facilities owned or operated by the Texas Department of Criminal Justice;
- (4) facilities owned or operated by the Texas Youth

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Commission;

(5) facilities owned or operated by the Texas Department of Transportation;

(6) the Capitol, including the Capitol Extension, the General Land Office building, the Bob Bullock Texas State History Museum, any museum located on the Capitol grounds, the Governor's Mansion, and any property maintained by the Texas Historical Commission under Sections 442.0072 and 442.0073;

(7) a facility determined by the commission to be completely residential;

(8) a regional or field office of a state agency; [or]

(9) a facility located within or on state park property;

(10) the property known as the Finance Commission Building described by deed recorded in Volume 5080, Page 1099, of the Deed Records of Travis County, Texas; or

(11) the property known as the Credit Union Department Building described by deed recorded in Volume 6126, Page 27, of the Deed Records of Travis County, Texas.

(i) Sections 12.103, 13.005, 13.008, 14.053, 14.060, 15.104, 15.207(c), 15.308, 15.408, and 156.101(b) and (c), Finance Code, are repealed.

(j)(1) To provide a reasonable period for each financial regulatory agency, as defined by Section 16.001, Finance Code, as added by this section, to establish itself as a self-directed and semi-independent agency, the following amounts are appropriated from the general revenue fund

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to each of those financial regulatory agencies:

(A) for the state fiscal year ending August 31, 2010, an amount equal to 50 percent of the amount of general revenue appropriated to the agency for the state fiscal year ending August 31, 2009; and

(B) for the state fiscal year ending August 31, 2011, an amount equal to 50 percent of the amount of general revenue appropriated to the agency for the state fiscal year ending August 31, 2009.

(2) Subject to Section 16.003, Finance Code, as added by this section, the appropriations made by Subdivision (1) of this subsection may be spent by the financial regulatory agency to which they are made as the financial regulatory agency directs. The financial regulatory agency shall repay to the general revenue fund the appropriation made to the agency for the state fiscal year ending August 31, 2010, not later than that date and as funds become available. The financial regulatory agency shall repay to the general revenue fund the appropriation made to the agency for the state fiscal year ending August 31, 2011, not later than that date and as funds become available.

(k) The transfer of a financial regulatory agency, as defined by Section 16.001, Finance Code, as added by this section, to self-directed and semi-independent status under Chapter 16, Finance Code, as added by this section, and the expiration of self-directed and semi-independent status may not act to cancel, suspend, or prevent:

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- (1) any debt owed to or by the financial regulatory agency;
- (2) any fine, tax, penalty, or obligation of any party;
- (3) any contract or other obligation of any party; or
- (4) any action taken by the financial regulatory agency in the administration or enforcement of the agency's duties.

(l) Each financial regulatory agency, as defined by Section 16.001, Finance Code, as added by this section, shall continue to have and exercise the powers and duties allocated to the agency in the agency's enabling legislation, except as specifically amended by this section.

(m) Title to all supplies, materials, records, equipment, books, papers, and facilities used by each financial regulatory agency, as defined by Section 16.001, Finance Code, as added by this section, is transferred to each respective financial regulatory agency in fee simple. Nothing in this section shall have an effect on property owned by a financial regulatory agency on or before the effective date of this section.

(n) If a conflict exists between this section and another Act of the 81st Legislature, Regular Session, 2009, that relates to the self-directed and semi-independent status of a state financial regulatory agency, this section controls without regard to the relative dates of the enactment.

(The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the

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SECTION 27. Repeals Sections 156.212(c), (d),
156.502(c), Finance Code.

No equivalent provision.

SECTION 28. Saving provision.

SECTION 29. Effective date.

SECTION 28. Same as House version

SECTION 29. Saving provision.

SECTION 30. Same as House version.

SECTION 31. Substantially the same as House version.

*presiding officer can make the final determination on
this issue.)*

SECTION 29. Same as House version.

SECTION 30. Substantially the same as Senate version.

SECTION 31. Same as House version.

SECTION 32. Same as Senate version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

Revision 1

May 30, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB2774** by Truitt (relating to self-directed and semi-independent status of state financial regulatory agencies and the licensing and regulation of certain persons involved in residential mortgage lending; making an appropriation; providing a penalty.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2774, Conference Committee Report: an impact of \$0 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
2011	\$0
2012	\$0
2013	\$0
2014	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Probable Savings from General Revenue Fund 1	Probable (Cost) from General Revenue Fund 1	Probable Revenue Gain from General Revenue Fund 1
2010	(\$27,398,000)	\$27,398,000	(\$15,809,000)	\$15,809,000
2011	(\$27,768,000)	\$27,768,000	(\$15,809,000)	\$15,809,000
2012	(\$27,803,000)	\$27,803,000	\$0	\$0
2013	(\$27,803,000)	\$27,803,000	\$0	\$0
2014	(\$27,803,000)	\$27,803,000	\$0	\$0

Fiscal Year	Probable Revenue Gain from <i>new interest bearing accounts in the Texas Treasury Safekeeping Trust Company</i>	Probable (Cost) from <i>new interest bearing accounts in the Texas Treasury Safekeeping Trust Company</i>	Change in Number of State Employees from FY 2009
2010	\$27,609,370	(\$27,609,370)	(444.5)
2011	\$28,255,395	(\$28,255,395)	(444.5)
2012	\$27,890,395	(\$27,890,395)	(444.5)
2013	\$27,890,395	(\$27,890,395)	(444.5)
2014	\$27,890,395	(\$27,890,395)	(444.5)

Fiscal Analysis

The bill would amend the Finance Code so that any amounts in the Mortgage Broker Recovery Fund 0848 over \$3.5 million would be available for the Finance Commission to use toward offsetting the cost of participating in the Nationwide Mortgage Licensing System and Registry (NMLSR). The bill would require the commissioner of the Department of Savings and Mortgage Lending (SML) to administer the mortgage broker recovery fund. Additionally, the mortgage advisory committee would be amended to become the mortgage industry broker advisory committee, effective April 1, 2010.

Fees amended in the Finance Code associated with the bill include a \$50 fee for any returned check or credit card charge back, changing the fee for an original or renewal license from \$20 to up to \$20, and an administrative penalty not to exceed \$1,000 for violators of a cease and desist order. The \$200,000 annual registration fee for the private finance service companies would include an increase in the fee based on the number of exclusive agents acting in the state. The fee for loan officer license renewals would increase from \$175 to \$275, and after January 1, 2011, the fee would increase not to exceed \$375.

The bill would add Chapter 16 to the Finance Code and repeal sections of the Finance Code under Chapters 12, 13, 14, 15, and 156. The bill would allow the Department of Banking (DOB), Office of Consumer Credit Commissioner (OCCC), SML, and the Credit Union Department (CUD), to become self-directed and semi-independent agencies. All fees and funds collected by an agency would be deposited into an interest-bearing deposit account in the Texas Treasury Safekeeping Trust Company. The Comptroller of Public Accounts (CPA) would be directed to contract with the financial agencies for the maintenance of the deposit accounts. If the financial agencies lost status as self-directed and semi-independent, the agencies would be responsible for any expenses or debts incurred during the time the agencies were classified as self-directed and semi-independent.

The bill would remove the agencies from the legislative budgeting process, and the budget would be adopted and approved only by the policy-making body of the respective agency. On the first day of each regular legislative session, each agency would be required to submit a report to the Legislature and the Governor describing all of the agency's activities in the previous biennium. In addition, the agency would be required to report its two year expenses and revenue collections by November 1 of each year to the Legislature, the Legislative Budget Board, and the Governor. Employees of the agencies would remain members of the Employees Retirement System of Texas under Chapter 812 of the Government Code.

The bill would require the State Auditor to contract with each agency to conduct financial and performance audits and would allow the Attorney General to collect fees from the agencies for legal services. The bill would also transfer all supplies, materials, records, equipment, and facilities used by each agency, including the Finance Commission Building and the Credit Union Department Building, to the Finance Commission and the Credit Union Commission.

The bill would make an appropriation of an amount equal to 50 percent of the amount of the General Revenue appropriated to each agency for fiscal year 2009 for a two-year period beginning fiscal year 2010. Under the provisions of the bill, the amount could be spent as the agency directs and would be repaid to the General Revenue Fund in the fiscal year in which it was appropriated.

The bill takes effect on September 1, 2009. Subsection (b-1) of Section 5 would take effect on April 1,

2010. Subsection (c) in Section 8 and Subsection (a) and (b) of Section 11 would expire on January 1, 2011. Subsection (c-1) of Section 9 would take effect on January 1, 2011. Subsections (a-1) and (b-1) of Section 12 would take effect January 1, 2011. Sections 1, 2, and 18 of this bill 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.

Methodology

The analysis is based on information provided by the SML, OCCC, DOB, CUD, SAO, and the CPA and includes the following assumptions:

The Department of Savings and Mortgage Lending would require 1.0 Legal Assistant III position at \$52,419 each fiscal year from 2010-2015 with a benefits cost of \$14,976 each fiscal year due to the significant increase in legal workload that would occur as a result of moving the Recovery Funds claim process in house. Also included is \$3,000 each fiscal year for travel and operating expenses. The Department of Savings and Mortgage Lending would also be required to pay a \$500,000 one-time buy-in fee to the Conference of State Bank Supervisors (CSBS), \$100,000 in 2010 and \$400,000 in 2011, for use of the NMLSR. Additional technology costs include \$40,000 in 2010 and \$17,000 for each fiscal year from 2011-2015 for a contract software developer from CSBS to upgrade the current database, and \$975 in fiscal year 2010 and fiscal year 2014 for computer equipment for the new 1.0 FTE. The costs associated with the 1.0 FTE are reflected above in the new interest bearing accounts in the Texas Treasury Safekeeping Trust Company columns.

The CPA estimates increasing the \$200,000 ceiling for the private finance service company annual registration fee would have a positive effect on revenue collections. However, SML is a self-leveling agency and is statutorily required to generate revenues sufficient to cover its cost of operation. Based on this requirement, this analysis assumes the levels of other fees would be adjusted accordingly by the commissioner. In addition, the amounts for administrative penalties are unknown and cannot be estimated at this time.

According to the CPA, a loss of \$27,398,000 in General Revenue in 2010, a loss of \$27,768,000 from General Revenue in fiscal year 2011, and a loss of \$27,803,000 in General Revenue for fiscal years 2012-2014 would occur with similar fiscal implications continuing after 2014 based on the Comptroller's 2010-11 Biennial Revenue Estimate and revenue records. Under current law, revenues collected by the entities are deposited to General Revenue Fund. Under the provisions of the bill, revenue collection deposits and expenditures from the identified agencies would change from the General Revenue Fund to new interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. For the purpose of this analysis, the revenue and cost implications of the bill for DOB, SML, OCCC, and CUD are consolidated in the table above.

In addition, there would be a \$15,809,000 total cost to General Revenue in 2010 and 2011 for an appropriation made to the financial agencies to establish itself as a self-directed and semi-independent agency. It is assumed that the agencies would repay the appropriation made within the fiscal year in which the appropriations were made. The offset in revenue from repayment is reflected above in the table.

This analysis assumes that duties and responsibilities associated with implementing the provisions of the bill for the OCCC, DOB, CUD, SAO and Attorney General could be accomplished by utilizing existing resources.

Technology

The bill would require a new computer and software for an additional 1.0 FTE, 1 database upgrade, and a contract developer for an initial total cost of \$40,975 in fiscal year 2010 and \$17,000 in fiscal years 2011-2015, with an additional \$975 in fiscal year 2014 for computer replacement. These costs would be paid out of the new interest bearing accounts in the Texas Treasury Safekeeping Trust Company.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 308 State Auditor's Office, 450 Department of Savings and Mortgage Lending, 451 Department of Banking, 466 Office of Consumer Credit Commissioner, 469 Credit Union Department

LBB Staff: JOB, MN, JRO, MW, ACa

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
 Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2774 by Truitt (relating to the licensing and regulation of certain persons involved in residential mortgage lending; providing a penalty.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2774, Conference Committee Report: an impact of \$0 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
2011	\$0
2012	\$0
2013	\$0
2014	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Probable Savings from General Revenue Fund 1	Probable (Cost) from General Revenue Fund 1	Probable Revenue Gain from General Revenue Fund 1
2010	(\$27,398,000)	\$27,398,000	(\$15,809,000)	\$15,809,000
2011	(\$27,768,000)	\$27,768,000	(\$15,809,000)	\$15,809,000
2012	(\$27,803,000)	\$27,803,000	\$0	\$0
2013	(\$27,803,000)	\$27,803,000	\$0	\$0
2014	(\$27,803,000)	\$27,803,000	\$0	\$0

Fiscal Year	Probable Revenue Gain from new interest bearing accounts in the Texas Treasury Safekeeping Trust Company	Probable (Cost) from new interest bearing accounts in the Texas Treasury Safekeeping Trust Company	Change in Number of State Employees from FY 2009
2010	\$27,609,370	(\$27,609,370)	(444.5)
2011	\$28,255,395	(\$28,255,395)	(444.5)
2012	\$27,890,395	(\$27,890,395)	(444.5)
2013	\$27,890,395	(\$27,890,395)	(444.5)
2014	\$27,890,395	(\$27,890,395)	(444.5)

Fiscal Analysis

The bill would amend the Finance Code so that any amounts in the Mortgage Broker Recovery Fund 0848 over \$3.5 million would be available for the Finance Commission to use toward offsetting the cost of participating in the Nationwide Mortgage Licensing System and Registry (NMLSR). The bill would require the commissioner of the Department of Savings and Mortgage Lending (SML) to administer the mortgage broker recovery fund. Additionally, the mortgage advisory committee would be amended to become the mortgage industry broker advisory committee, effective April 1, 2010.

Fees amended in the Finance Code associated with the bill include a \$50 fee for any returned check or credit card charge back, changing the fee for an original or renewal license from \$20 to up to \$20, and an administrative penalty not to exceed \$1,000 for violators of a cease and desist order. The \$200,000 annual registration fee for the private finance service companies would include an increase in the fee based on the number of exclusive agents acting in the state. The fee for loan officer license renewals would increase from \$175 to \$275, and after January 1, 2011, the fee would increase not to exceed \$375.

The bill would add Chapter 16 to the Finance Code and repeal sections of the Finance Code under Chapters 12, 13, 14, 15, and 156. The bill would allow the Department of Banking (DOB), Office of Consumer Credit Commissioner (OCCC), SML, and the Credit Union Department (CUD), to become self-directed and semi-independent agencies. All fees and funds collected by an agency would be deposited into an interest-bearing deposit account in the Texas Treasury Safekeeping Trust Company. The Comptroller of Public Accounts (CPA) would be directed to contract with the financial agencies for the maintenance of the deposit accounts. If the financial agencies lost status as self-directed and semi-independent, the agencies would be responsible for any expenses or debts incurred during the time the agencies were classified as self-directed and semi-independent.

The bill would remove the agencies from the legislative budgeting process, and the budget would be adopted and approved only by the policy-making body of the respective agency. On the first day of each regular legislative session, each agency would be required to submit a report to the Legislature and the Governor describing all of the agency's activities in the previous biennium. In addition, the agency would be required to report its two year expenses and revenue collections by November 1 of each year to the Legislature, the Legislative Budget Board, and the Governor. Employees of the agencies would remain members of the Employees Retirement System of Texas under Chapter 812 of the Government Code.

The bill would require the State Auditor to contract with each agency to conduct financial and performance audits and would allow the Attorney General to collect fees from the agencies for legal services. The bill would also transfer all supplies, materials, records, equipment, and facilities used by each agency, including the Finance Commission Building and the Credit Union Department Building, to the Finance Commission and the Credit Union Commission.

The bill would make an appropriation of an amount equal to 50 percent of the amount of the General Revenue appropriated to each agency for fiscal year 2009 for a two-year period beginning fiscal year 2010. Under the provisions of the bill, the amount could be spent as the agency directs and would be repaid to the General Revenue Fund in the fiscal year in which it was appropriated.

The bill takes effect on September 1, 2009. Subsection (b-1) of Section 5 would take effect on April 1, 2010. Subsection (c) in Section 8 and Subsection (a) and (b) of Section 11 would expire on January 1, 2011. Subsection (c-1) of Section 9 would take effect on January 1, 2011. Subsections (a-1) and (b-1) of Section 12 would take effect January 1, 2011. Sections 1, 2, and 18 of this bill 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.

Methodology

The analysis is based on information provided by the SML, OCCC, DOB, CUD, SAO, and the CPA and includes the following assumptions:

The Department of Savings and Mortgage Lending would require 1.0 Legal Assistant III position at \$52,419 each fiscal year from 2010-2015 with a benefits cost of \$14,976 each fiscal year due to the significant increase in legal workload that would occur as a result of moving the Recovery Funds claim process in house. Also included is \$3,000 each fiscal year for travel and operating expenses. The Department of Savings and Mortgage Lending would also be required to pay a \$500,000 one-time buy-in fee to the Conference of State Bank Supervisors (CSBS), \$100,000 in 2010 and \$400,000 in 2011, for use of the NMLSR. Additional technology costs include \$40,000 in 2010 and \$17,000 for each fiscal year from 2011-2015 for a contract software developer from CSBS to upgrade the current database, and \$975 in fiscal year 2010 and fiscal year 2014 for computer equipment for the new 1.0 FTE. The costs associated with the 1.0 FTE are reflected above in the new interest bearing accounts in the Texas Treasury Safekeeping Trust Company columns.

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