

BILL ANALYSIS

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C.S.H.B. 10
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Last August, Congress adopted the Housing & Economic Recovery Act of 2008, which included the Secure and Fair Enforcement Mortgage Licensing Act (SAFE). All states are required to adopt the provisions of SAFE to comply with federal law. If a state fails to comply, then the United States Department of Housing and Urban Development will preempt state laws. SAFE establishes a national mortgage origination registration system, which means that any individual who engages in the mortgage lending must register and be licensed.

This legislation was drafted to comply with SAFE, but also gives the Finance Commission of Texas and the Credit Union Commission rulemaking authority to comply with the changing regulatory environment should it affect the SAFE provisions. This bill amends the Finance Code to add Chapter 180—the SAFE provisions.

C.S.H.B. 10 amends current law relating to the regulation of residential mortgage loan originators and provides a penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to a regulatory authority or rulemaking authority in SECTION 1 (Sections 180.056, 180.058, 180.061, 180.062, 180.103, and 180.151, Finance Code) of this bill.

Rulemaking authority previously granted to the Finance Commission of Texas is modified in SECTION 2 (Section 14.107, Finance Code) of this bill.

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 (Section 180.004, Finance Code), SECTION 3 (Section 15.4024, Finance Code), SECTION 5 (Section 156.102, Finance Code), SECTION 6 (Section 156.2015, Finance Code), SECTION 8 (Section 157.012, Finance Code), SECTION 9 (Section 341.610, Finance Code), SECTION 10 (Section 342.0515, Finance Code), SECTION 14 (Section 347.4515, Finance Code), SECTION 16 (Section 348.5015, Finance Code), SECTION 17 (Section 351.0515, Finance Code), and SECTION 22 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle E, Title 3, Finance Code, by adding Chapter 180, as follows:

CHAPTER 180. RESIDENTIAL MORTGAGE LOAN ORIGINATORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 180.001. **SHORT TITLE.** Authorizes this chapter to be cited as the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

Sec. 180.002. **DEFINITIONS.** Defines "clerical or support duties," "credit union," "credit union subsidiary organization," "depository institution," "dwelling," "federal banking agency," "finance commission," "immediate family member," "individual," "license," "loan processor or underwriter," "Nationwide Mortgage Licensing System and Registry," "nontraditional mortgage product," "person," "real estate brokerage activity," "registered mortgage loan originator," "regulatory official," "residential mortgage loan,"

"residential mortgage loan originator," "residential real estate," "rulemaking authority," "S.A.F.E. Mortgage Licensing Act," and "unique identifier."

Sec. 180.003. EXEMPTION. Provides that the following persons are exempt from this chapter:

- (1) a registered mortgage loan originator when acting for an entity described by Section 180.002(16)(A)(i) (relating to a depository institution), (ii) (relating to a certain subsidiary), or (iii) (relating to an institution regulated by the Farm Credit Administration);
- (2) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;
- (3) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney takes a residential mortgage loan application and offers or negotiates the terms of a residential mortgage loan.
- (4) an individual who is an exclusive agent of a registered financial services company, is exempt from regulation under Chapter 156 (Mortgage Brokers) as provided by Section 156.202(5) (relating to an individual who is an exclusive agent), and is individually enrolled as a registered mortgage loan originator with the Nationwide Mortgage Licensing System and Registry (registry);
- (5) an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence; and
- (6) a nonprofit organization providing self-help housing that originates zero interest residential mortgage loans for borrowers who have provided part of the labor to construct the dwelling securing the loan.

Sec. 180.004. ADMINISTRATIVE AUTHORITY; RULEMAKING. (a) Provides that a regulatory official has broad authority to administer, interpret, and enforce this chapter.

(b) Authorizes the Finance Commission of Texas (finance commission) to implement rules necessary to comply with 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).

(c) Provides that this chapter does not limit the authority of a regulatory official to take disciplinary action against a license holder for a violation of this chapter or the rules adopted by the regulatory official under this chapter. Provides that a regulatory official has broad authority to investigate, revoke a license, and inform the proper authority when fraudulent conduct or a violation of this chapter occurs.

Sec. 180.005. SEVERABILITY. Provides that the provisions of this chapter or applications of those provisions are severable as provided by Section 311.032(c) (relating to the provision that the invalidity does not affect other provisions or applications under certain conditions), Government Code.

[Reserves Sections 180.006-180.050 for expansion.]

SUBCHAPTER B. LICENSING AND REGISTRATION REQUIREMENTS

Sec. 180.051. STATE LICENSING REQUIRED; RENEWAL. (a) Prohibits an individual, unless exempted by Section 180.003, from engaging in business as a residential mortgage loan originator with respect to a dwelling located in this state unless the individual is licensed to engage in that business under Chapter 156, 157 (Registration of Mortgage Bankers), 342 (Consumer Loans), 347 (Manufactured Home Credit

Transactions), 348 (Motor Vehicles Installment Sales), or 351 (Property Tax Lenders), and complies with the requirements of this chapter.

(b) Prohibits a loan processor or underwriter who is an independent contractor, unless exempted by Section 180.003, from engaging in the activities of a loan processor or underwriter unless the independent contractor loan processor or underwriter obtains and maintains the appropriate residential mortgage loan originator license and complies with the requirements of this chapter.

(c) Requires the individual to renew the license annually to be considered licensed for purposes of this section.

(d) Requires the regulatory official, notwithstanding any provision of law listed in Subsection (a)(1) (relating to an individual licensed to engage in a certain business), to provide for annual renewal of licenses for individuals seeking to engage in residential mortgage loan origination activities.

Sec. 180.052. ENROLLMENT OR REGISTRATION WITH NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY. (a) Requires a licensed residential mortgage loan originator to enroll with and maintain a valid unique identifier issued by the registry.

(b) Requires a non-federally insured credit union that employs loan originators, as defined by the S.A.F.E. Mortgage Licensing Act, to register those employees with the registry by furnishing the information relating to the employees' identity set forth in Section 1507(a)(2) of the S.A.F.E. Mortgage Licensing Act.

(c) Requires each independent contractor loan processor or underwriter licensed as a residential mortgage loan originator to have and maintain a valid unique identifier issued by the registry.

(d) Requires the regulatory official who administers the law under which a residential mortgage loan originator is licensed to require the residential mortgage loan originator to be enrolled with the registry.

(e) Authorizes the regulatory official, for purposes of implementing Subsection (d), to participate in the registry.

Sec. 180.053. APPLICATION FORM. (a) Requires a regulatory official to prescribe application forms for a license as a residential mortgage loan originator.

(b) Authorizes a regulatory official to change or update an application form as necessary to carry out the purposes of this chapter.

Sec. 180.054. CRIMINAL AND OTHER BACKGROUND CHECKS. (a) Requires the applicant, in connection with an application for a license as a residential mortgage loan originator, at a minimum, to furnish in the form and manner prescribed by the regulatory official and acceptable to the registry information concerning the applicant's identity, including fingerprints for submission to the Federal Bureau of Investigation (FBI) and any governmental agency or entity authorized to receive the information to conduct a state, national, and international criminal background check; and personal history and experience information in a form prescribed by the registry, including the submission of authorization for the registry and the appropriate regulatory official to obtain a certain report and certain information.

(b) Authorizes a regulatory official, for purposes of this section and to reduce the points of contact that the FBI may have to maintain for purposes of Subsection (a)(1) (relating to fingerprints for submission to the FBI), to use the registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice, any governmental agency, or any source at the regulatory official's direction.

(c) Authorizes the regulatory official for purposes of this section and to reduce the points of contact that a regulatory official may have to maintain for purposes of Subsection (a) or (b), to use the registry as a channeling agent for requesting information from and distributing information to and from any source as directed by the regulatory official.

Sec. 180.055. ISSUANCE OF LICENSE. (a) Prohibits the regulatory official from issuing a residential mortgage loan originator license to an individual unless the regulatory official determines, at a minimum, that the applicant meets certain conditions.

(b) Prohibits a revocation that has been formally vacated from being considered a license revocation for purposes of Subsection (a)(1) (relating to a residential mortgage loan originator license being revoked in any governmental jurisdiction).

(c) Prohibits a conviction for which a full pardon has been granted from being considered a conviction for purposes of Subsection (a)(2) (relating to a guilty conviction, guilty plea, or nolo contendere).

(d) Provides that for purposes of Subsection (a)(3) (relating to demonstrating financial responsibility, character, and general fitness), an individual is considered not to be financially responsible if the individual has shown a lack of regard in managing the individual's own financial affairs or condition. Authorizes a determination that an individual has not shown financial responsibility to include an outstanding judgment against the individual, other than a judgment imposed solely as a result of medical expenses; an outstanding tax lien or other governmental liens and filings; a foreclosure during the three-year period preceding the date of the license application; and a pattern of seriously delinquent accounts during the three-year period preceding the date of the application.

Sec. 180.056. PRELICENSING EDUCATIONAL COURSES. (a) Requires an applicant for a residential mortgage loan originator license to complete education courses that include, at a minimum, at least the minimum number of hours and type of courses required by the S.A.F.E. Mortgage Licensing Act and the minimum number of hours of training related to lending standards for the nontraditional mortgage product marketplace required by that Act.

(b) Requires that education courses required under this section be reviewed and approved by the registry in accordance with the S.A.F.E. Mortgage Licensing Act.

(c) Provides that nothing in this section precludes any education course approved in accordance with the S.A.F.E. Mortgage Licensing Act from being provided by an applicant's employer, an entity affiliated with the applicant by an agency contract, or a subsidiary or affiliate of the employer or entity.

(d) Authorizes education courses required under this section to be offered in a classroom, online, or by any other means approved by the registry.

(e) Requires that an individual who has successfully completed prelicensing education requirements approved by the registry for another state be given credit toward completion of the prelicensing education requirements of this section.

(f) Requires an applicant who has previously held a residential mortgage loan originator license that meets the requirements of this chapter and other appropriate regulatory law, before being issued a new original license, to demonstrate to the appropriate regulatory official that the applicant has completed all continuing education requirements for the calendar year in which the license was last held by the applicant.

(g) Requires the rulemaking authority, if the appropriate federal regulators and the registry establish additional educational requirements for licensed residential

mortgage loan originators, to adopt necessary rules to implement the changes to the educational requirements of this section.

Sec. 180.057. TESTING REQUIREMENTS. (a) Requires an applicant for a residential mortgage loan originator license to pass a qualified, written test that meets the standards and requirements established by the S.A.F.E. Mortgage Licensing Act, is developed by the registry, and is administered by a test provider in accordance with the S.A.F.E. Mortgage Licensing Act.

(b) Authorizes an individual to retake the test the number of times and within the period prescribed by the S.A.F.E. Mortgage Licensing Act.

(c) Requires an individual who fails to maintain a residential mortgage loan originator license for at least five consecutive years to retake the test.

(d) Provides that this section does not prohibit a test provider approved in accordance with the S.A.F.E. Mortgage Licensing Act from providing a test at the location of the license applicant's employer, a subsidiary or affiliate of the applicant's employer, or an entity with which the applicant holds an exclusive arrangement to conduct the business of a residential mortgage loan originator.

Sec. 180.058. RECOVERY FUND FEE OR SURETY BOND REQUIREMENT. (a) Prohibits a regulatory official from issuing a residential mortgage loan originator license unless the official determines that the applicant meets the surety bond requirement or has paid a recovery fund fee, as applicable, in accordance with the requirements of the S.A.F.E. Mortgage Licensing Act.

(b) Requires each regulatory official to adopt rules requiring an individual licensed as a residential mortgage loan originator to obtain a surety bond or pay a recovery fund fee as the official determines appropriate to comply with the S.A.F.E. Mortgage Licensing Act.

Sec. 180.059. STANDARDS FOR LICENSE RENEWAL. Authorizes a license to act as a residential mortgage loan originator to be renewed on or before its expiration date if the license holder continues to meet the minimum requirements for license issuance, pays all required fees for the renewal of the license, and provides satisfactory evidence that the license holder has completed the continuing education requirements of Section 180.060.

Sec. 180.060. CONTINUING EDUCATION COURSES. (a) Requires a license holder, to renew a residential mortgage loan originator license, to annually complete the minimum number of hours and type of continuing education courses required by the S.A.F.E. Mortgage Licensing Act, the minimum requirements established by the registry, and any additional requirements established by the regulatory official.

(b) Requires that continuing education courses, including the course provider, be reviewed and approved by the registry as required by the S.A.F.E. Mortgage Licensing Act. Requires that course credit be granted in accordance with that Act.

(c) Provides that nothing in this section precludes any continuing education course approved in accordance with the S.A.F.E. Mortgage Licensing Act from being provided by the employer of the license holder, an entity affiliated with the license holder by an agency contract, or a subsidiary or affiliate of the employer or entity.

(d) Requires a person who successfully completes continuing education requirements approved by the registry for another state to be given credit toward completion of the continuing education requirements of this section.

Sec. 180.061. RULEMAKING AUTHORITY. Authorizes a rulemaking authority to adopt rules establishing requirements as necessary for: conducting background checks by

obtaining criminal history information through fingerprint or other databases, civil administrative records, credit history information, or any other information considered necessary by the registry; payment of fees to apply for or renew licenses through the registry; setting or resetting, as necessary, license renewal dates or reporting periods; amending or surrendering a license or any other activity a regulatory official considers necessary for participation in the registry; and investigation and examination authority for purposes of investigating a violation or complaint arising under this chapter or for purposes of examining, reviewing, or investigating any license holder or individual subject to this chapter.

Sec. 180.062. CONFIDENTIALITY OF INFORMATION. (a) Provides that except as otherwise provided by this section, a requirement under federal or state law regarding the privacy or confidentiality of information or material provided to the registry, and a privilege arising under federal or state law, or under the rules of a federal or state court, continue to apply to the information or material after the disclosure of the information or material to the registry. Authorizes the information and material to be shared with federal and state regulatory officials with mortgage industry oversight authority without the loss of any privilege or confidentiality protections afforded by federal or state laws.

(b) Prohibits information or material subject to a privilege or confidential under Subsection (a) from being subject to disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or this state; or subpoena, discovery, or admission into evidence in a private civil action or administrative proceeding.

(c) Authorizes a person who is the subject of information or material in the registry to waive, wholly or partly, any privilege held by the registry with respect to the information or material.

(d) Authorizes a regulatory official to enter into an agreement or sharing arrangement with another governmental agency, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing appropriate governmental agencies as established by rule of the rulemaking authority or order issued by the regulatory official. Provides that a protection provided by Subsection (a) also applies to information and material shared under an agreement or sharing arrangement entered into under this subsection.

(e) Provides that to the extent of a conflict between Subsection (a) and Chapter 552 (Public Information), Government Code, or another state law relating to the disclosure of confidential information or information or material described by Subsection (a), Subsection (a) controls to the extent Chapter 552, Government Code, or the other law provides less confidentiality or a weaker privilege than is provided by Subsection (a).

(f) Provides that this section does not apply to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a residential mortgage loan originator that is included in the registry for access by the public.

[Reserves Sections 180.063-180.100 for expansion.]

SUBCHAPTER C. REPORTING AND OTHER REQUIREMENTS REGARDING NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY

Sec. 180.101. MORTGAGE CALL REPORTS. Requires each licensed residential mortgage loan originator to submit to the registry a report of condition that is in the form and contains the information required by the registry.

Sec. 180.102. REPORT OF VIOLATIONS AND ENFORCEMENT ACTIONS. Requires a regulatory official, subject to the confidentiality provisions of this chapter, to

report to the registry on a regular basis regarding violations of, enforcement actions under, or information relevant to this chapter or the S.A.F.E. Mortgage Licensing Act under the regulatory official's licensure, regulation, or examination of a licensed residential mortgage loan originator or person registered under the S.A.F.E. Mortgage Licensing Act.

Sec. 180.103. INFORMATION CHALLENGE PROCESS. Requires the applicable rulemaking authority by rule to establish a process by which licensed residential mortgage loan originators are authorized to dispute information submitted by the regulatory official to the registry.

[Reserves Sections 180.104-180.150 for expansion.]

SUBCHAPTER D. BUSINESS PRACTICES; PROHIBITED ACTS

Sec. 180.151. DISPLAY OF UNIQUE IDENTIFIER. Requires that the unique identifier of a person originating a residential mortgage loan be clearly shown on each residential mortgage loan application form, solicitation, or advertisement, including business cards and websites, and any other document required by rule of the rulemaking authority.

Sec. 180.152. REPRESENTATIONS. Prohibits an individual who is engaged exclusively in loan processor or underwriter activities from representing to the public, through the use of advertising, business cards, stationery, brochures, signs, rate lists, or other means, that the individual can or will perform any of the activities of a residential mortgage loan originator unless the individual is licensed as a residential mortgage loan originator.

Sec. 180.153. PROHIBITED ACTS AND PRACTICES. Prohibits an individual or other person subject to regulation under this chapter from employing, directly or indirectly, a scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud a person; engaging in an unfair or deceptive practice toward a person; obtaining property by fraud or misrepresentation; soliciting or entering into a contract with a borrower that provides in substance that the individual or other person subject to this chapter may earn a fee or commission through "best efforts" to obtain a loan even though no loan was actually obtained for the borrower; soliciting, advertising, or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting; conducting any business regulated by this chapter without holding a license as required by this chapter; assisting, aiding, or abetting an individual in the conduct of business without a license required by this chapter; failing to make disclosures as required by this chapter and any other applicable state or federal law, including rules or regulations under applicable state or federal law; failing to comply with this chapter or rules adopted under this chapter; failing to comply with any other state or federal law, including rules or regulations adopted under that law, applicable to a business or activity regulated by this chapter; making, in any manner, a false or deceptive statement or representation; negligently making a false statement or knowingly or wilfully making an omission of material fact in connection with information or a report filed with a governmental agency or the registry or an investigation conducted by the regulatory official or another governmental agency; making a payment, threat, or promise, directly or indirectly, to a person for purposes of influencing the person's independent judgment in connection with a residential mortgage loan, or make a payment, threat, or promise, directly or indirectly, to an appraiser of property, for purposes of influencing the appraiser's independent judgment with respect to the property's value; collecting, charging, attempting to collect or charge, or using or proposing an agreement purporting to collect or charge a fee prohibited by this chapter; causing or requiring a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer; or failing to truthfully account for money belonging to a party to a residential mortgage loan transaction.

[Reserves Sections 180.154-180.200 for expansion.]

SUBCHAPTER E. ENFORCEMENT PROVISIONS

Sec. 180.201. ENFORCEMENT AUTHORITY. Authorizes a regulatory official, to ensure the effective supervision and enforcement of this chapter, to: deny, suspend, revoke, condition, or decline to renew a license for a violation of this chapter, a rule adopted under this chapter, or an order or directive issued under this chapter; deny, suspend, revoke, condition, or decline to renew a license if an applicant or license holder fails to meet the requirements of Subchapter B or withholds information or makes a material misstatement in an application for a license or renewal of a license; order restitution against a person subject to regulation under this chapter for a violation of this chapter; impose an administrative penalty on a person subject to regulation under this chapter, subject to Section 180.202; or issue orders or directives as provided by Section 180.203.

Sec. 180.202. ADMINISTRATIVE PENALTY. (a) Authorizes a regulatory official to impose an administrative penalty on a residential mortgage loan originator or other person subject to regulation under this chapter, if the official, after notice and opportunity for hearing, determines that the residential mortgage loan originator or other person subject to regulation under this chapter has violated or failed to comply with this chapter, a rule adopted under this chapter, or an order issued under this chapter.

(b) Prohibits the penalty from exceeding \$25,000 for each violation.

(c) Requires that the amount of the penalty to be based on the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation; the economic harm to property caused by the violation; the history of previous violations; the amount necessary to deter a future violation; efforts to correct the violation; and any other matter that justice may require.

Sec. 180.203. CEASE AND DESIST ORDERS. Authorizes a regulatory official to order or direct a person subject to regulation under this chapter to cease and desist from conducting business, including issuing an immediate temporary order to cease and desist from conducting business; order or direct a person subject to regulation under this chapter to cease a violation of this chapter or a harmful activity in violation of this chapter, including issuing an immediate temporary order to cease and desist; enter immediate temporary orders against a person subject to regulation under this chapter to cease engaging in business under a license if the regulatory official determines that the license was erroneously granted or the license holder is in violation of this chapter; and order or direct other affirmative action as the regulatory official considers necessary.

[Reserves Sections 180.204-180.250 for expansion.]

SUBCHAPTER F. DUTIES OF REGULATORY OFFICIALS

Sec. 180.251. GENERAL DUTIES OF REGULATORY OFFICIALS. (a) Requires the savings and mortgage lending commissioner, except as provided by Subsection (b), to administer and enforce this chapter with respect to individuals licensed under Chapter 156 or 157.

(b) Requires the credit union commissioner to:

(1) examine, inspect, or investigate employees of credit union subsidiary organizations who are licensed to act as residential mortgage loan originators under Chapter 156; and

(2) enforce compliance by employees of credit union subsidiary organizations described by Subdivision (1) with the applicable requirements of Chapter 156 and this chapter and any applicable rules adopted under Section 15.4024.

(c) Requires the consumer credit commissioner to administer and enforce this chapter with respect to individuals licensed under Chapter 342, 347, 348, or 351.

(d) Authorizes the banking commissioner of Texas, to the extent permitted or required by this chapter and as reasonably necessary for the implementation and enforcement of the S.A.F.E. Mortgage Licensing Act, to administer and enforce this chapter with respect to a person otherwise under the commissioner's jurisdiction under Subtitle A (Banks), F (Trust Companies), or G (Bank Holding Companies; Interstate Bank Operations) of this title.

Sec. 180.252. AUTHORITY OF REGULATORY OFFICIALS TO ESTABLISH RELATIONSHIP WITH NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY; CONTRACTING AUTHORITY. Authorizes a regulatory official, to fulfill the purposes of this chapter, to establish a relationship with or contract with the registry or an entity designated by the registry to collect and maintain records and process transaction fees or other fees related to licensed residential mortgage loan originators or other persons subject to regulation under this chapter.

SECTION 2. Amends Section 14.107(b), Finance Code, to require the finance commission by rule to set the fees for licensing and examination under Chapter 342, 347, 348, 351, or 371 (Pawnshops) at amounts or rates necessary to recover the costs of administering those chapters. Authorizes the commissioner to provide for collection of a single annual fee from a person licensed under Chapter 342, 347, 348, 351, or 371 to include amounts due for both licensing and examination.

SECTION 3. Amends Subchapter E, Chapter 15, Finance Code, by adding Section 15.4024, as follows:

Sec. 15.4024. RULES RELATING TO CERTAIN EMPLOYEES OF CREDIT UNION SUBSIDIARY ORGANIZATIONS. (a) Defines "credit union subsidiary organization."

(b) Authorizes the finance commission to adopt and enforce rules necessary for the commissioner to:

(1) examine, inspect, or investigate employees of credit union subsidiary organizations who are licensed to act as residential mortgage loan originators under Chapter 156, and

(2) enforce compliance by employees of credit union subsidiary organizations described by Subdivision (1) with the applicable requirements of Chapters 156 and 180.

SECTION 4. Amends Section 156.101, Finance Code, by amending Subsection (a) and adding Subsections (a-1) and (a-2), as follows:

(a) Requires the savings and mortgage lending commissioner (commissioner), except as provided by Subsection (a-2), to administer this chapter. Makes a nonsubstantive change.

(a-1) Requires the commissioner to perform all duties relating to the issuance and renewal of licenses under Section 156.2015 for employees of credit union subsidiary organizations who act as residential mortgage loan originators.

(a-2) Provides that the credit union commissioner is responsible for:

(1) the examination, inspection, or investigation of employees of credit union subsidiary organizations who are licensed to act as residential mortgage loan originators under this chapter; and

(2) the enforcement of compliance by employees of credit union subsidiary organizations described by Subdivision (1) with the applicable requirements of this chapter and Chapter 180.

SECTION 5. Amends Section 156.102(a), Finance Code, to authorize the finance commission to adopt and enforce rules necessary for the intent of or to ensure compliance with this chapter, except as provided by Section 15.4024 with respect to employees of credit union subsidiary organizations subject to regulation under Section 156.2015.

SECTION 6. Amends Subchapter C, Chapter 156, Finance Code, by adding Section 156.2015, as follows:

Sec. 156.2015. RESIDENTIAL MORTGAGE LOAN ORIGINATION ACTIVITIES.

(a) Defines "credit union subsidiary organization," "Nationwide Mortgage Licensing System and Registry," and "residential mortgage loan originator."

(b) Prohibits an individual required to be licensed under this chapter from acting as a residential mortgage loan originator unless the individual's license under this chapter otherwise authorizes the individual to act as a residential mortgage loan originator, the individual is enrolled with the registry as required by Section 180.052, and the individual complies with other applicable requirements of Chapter 180 and rules adopted under that chapter.

(c) Prohibits an employee of a credit union subsidiary organization from acting as a residential mortgage loan originator unless the employee is licensed under this chapter, is enrolled with the registry as required by Section 180.052, and complies with other applicable requirements of Chapter 180 and rules adopted under that chapter.

(d) 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 7. Amends Section 156.214(b) and (f), Finance Code, as added by Chapter 228 (H.B. 1716), Acts of the 80th Legislature, Regular Session, 2007, as follows:

(b) Deletes existing text requiring a person, to be eligible to register as a registered financial services company, to be an affiliate of a certain depository institution. Requires a person, to be eligible to register as a registered financial services company, to supervise the mortgage origination, rather than the mortgage broker, activities of its exclusive agents.

(f) Requires the registered financial services company, prior to permitting an exclusive agent to solicit, process, negotiate, or place a mortgage loan, to submit to the commissioner such information as the commissioner is authorized to require relating to the exclusive agent, and requires the exclusive agent to have enrolled with the registry as a registered residential mortgage loan originator and provided to the commissioner the exclusive agent's unique identifier, rather than relating to the person together with a fingerprint imprint of the person. Defines "Nationwide Mortgage Licensing System and Registry," "residential mortgage loan originator," and "unique identifier." Deletes existing text requiring the commissioner to obtain certain criminal history record information. Deletes existing text authorizing the commissioner to assess a fee in an amount determined by the finance commission to cover the cost of the criminal background check. Deletes existing text providing that this section does not apply to a person who is licensed as a mortgage broker or loan officer under Chapter 156 at the time he becomes an exclusive agent of a registered financial services company.

SECTION 8. Amends Chapter 157, Finance Code, by adding Section 157.012, as follows:

Sec. 157.012. LICENSE REQUIRED FOR CERTAIN EMPLOYEES OF MORTGAGE BANKERS. (a) Defines "Nationwide Mortgage Licensing System and Registry" and "residential mortgage loan originator."

(b) Prohibits an employee of a mortgage banker from acting in the capacity of a residential mortgage loan originator unless the employee is licensed under this chapter and enrolled with registry as required by Section 180.052 and complies with other applicable requirements of Chapter 180 and rules adopted by the commission under that chapter.

(c) 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. 110-280).

(d) Requires an employee of a mortgage banker, to be eligible to be licensed as a residential mortgage loan originator, in addition to the requirements of Subsection (b), to satisfy the commissioner as to the employee's good moral character, including the employee's honesty, trustworthiness, and integrity; not be in violation of this chapter or a rule adopted under this chapter; and provide the commissioner with satisfactory evidence that the employee meets the qualifications provided by Chapter 180.

SECTION 9. Amends Chapter 341, Finance Code, by adding Subchapter G, as follows:

SUBCHAPTER G. STATE-LICENSED RESIDENTIAL MORTGAGE LOAN
ORIGINATOR RECOVERY FUND

Sec. 341.601. DEFINITION. Defines "fund."

Sec. 341.602. STATE-LICENSED RESIDENTIAL MORTGAGE LOAN ORIGINATOR RECOVERY FUND. (a) Requires the commissioner under Chapter 180 to establish, administer, and maintain a state-licensed residential mortgage loan originator recovery fund (fund) as provided by this subchapter. Requires that the amounts received by the commissioner for deposit in the fund be held by the commissioner in trust for carrying out the purposes of the fund.

(b) Requires that the fund, subject to this subsection, be used to reimburse residential mortgage loan applicants for actual damages incurred because of acts committed by a state-licensed residential mortgage loan originator who was licensed under Chapter 342, 347, 348, or 351 when the act was committed. Provides that the use of the fund is limited to reimbursement for out-of-pocket losses caused by an act that constitutes a violation of Chapter 180 or this subtitle. Prohibits payments from the fund from being made to a lender who makes a residential mortgage loan originated by the state-licensed residential mortgage loan originator or who acquires a residential mortgage loan originated by the state-licensed residential mortgage loan originator.

(c) Authorizes the fund to be used at the discretion of the commissioner to reimburse expenses incurred to secure and destroy residential mortgage loan documents that have been abandoned by a current or former state-licensed residential mortgage loan originator under the regulatory authority of the agency.

(d) Requires that payments from the fund be reduced by the amount of any recovery from the state-licensed residential mortgage loan originator or from any surety, insurer, or other person or entity making restitution to the applicant on behalf of the originator.

(e) Entitles the commissioner, as manager of the fund, to reimbursement for reasonable and necessary costs and expenses incurred in the management of the fund, including costs and expenses incurred with regard to applications filed under Section 341.605.

(f) Authorizes amounts in the fund to be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas, and requires that the interest from those investments be deposited to the credit of the fund.

Prohibits an investment from being made under this subsection if the investment will impair the necessary liquidity required to satisfy payment of judgments awarded under this subchapter.

Sec. 341.603. FUNDING. (a) Requires an applicant for an original residential mortgage loan originator license issued under Chapter 342, 347, 348, or 351 or for renewal of a residential mortgage loan originator license issued under Chapter 342, 347, 348, or 351 to, in addition to paying the original application fee or renewal fee, pay a fee in an amount determined by the commissioner. Requires that the fee be deposited in the fund.

(b) Requires that the amount of money in excess of that amount, if the balance remaining in the fund at the end of a calendar year is more than \$2.5 million, be available to the commissioner to offset the expenses of participating in and sharing information with the registry in accordance with Chapter 180.

Sec. 341.604. STATUTE OF LIMITATIONS. (a) Prohibits an application for the recovery of actual damages from the fund under Section 341.605 from being filed after the second anniversary of the date of the alleged act or omission causing the actual damages or the date the act or omission should reasonably have been discovered.

(b) Provides that this section does not apply to a subrogation claim brought by the commissioner for recovery of money paid out of the fund.

Sec. 341.605. PROCEDURE FOR RECOVERY. (a) Requires a residential mortgage loan applicant, to recover from the fund, to file a written sworn application with the commissioner in the form prescribed by the commissioner. Provides that a person who knowingly makes a false statement in connection with applying for money out of the fund may be subject to criminal prosecution under Section 37.10 (Tampering with Governmental Record), Penal Code.

(b) Requires the residential mortgage loan applicant to show:

(1) that the applicant's claim is based on facts allowing recovery under Section 341.602; and

(2) that the applicant is not a spouse of the state-licensed residential mortgage loan originator, is not a child, parent, grandchild, grandparent, or sibling, including relationships by adoption, of the state-licensed residential mortgage loan originator, is not a person sharing living quarters with the state-licensed residential mortgage loan originator or a current or former employer, employee, or associate of the originator, is not a person who has aided, abetted, or participated other than as a victim with the state-licensed residential mortgage loan originator in any activity that is illegal under this subtitle or Chapter 180 or is not the personal representative of a state-licensed residential mortgage loan originator; and is not licensed as a state-licensed residential mortgage loan originator who is seeking to recover any compensation in the transaction or transactions for which the application for payment is made.

(c) Requires the commissioner's staff, on receipt of the verified application:

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

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

(d) Provides that if the preliminary determination under Subsection (c)(2) is not otherwise resolved by agreement and is not disputed by written notice to the

commissioner before the 31st day after the notification date, the preliminary determination automatically becomes final and the commissioner is required to make payment from the fund, subject to the limits of Section 341.606.

(e) Requires that the matter, if the preliminary determination under Subsection (c)(2) is disputed by the applicant, license holder, or any surety by written notice to the commissioner before the 31st day after the notification date, be set for a hearing governed by Chapter 2001 (Administrative Procedure), Government Code, and the hearing rules of the commission.

Sec. 341.606. RECOVERY LIMITS. (a) Entitles a person entitled to receive payment out of the fund to receive reimbursement of actual, out-of-pocket damages as provided by this section.

(b) Authorizes a payment from the fund to be made as provided by Section 341.605 and this section. Provides that a payment for claims:

(1) arising out of the same transaction, including interest, is limited in the aggregate to \$25,000, regardless of the number of claimants; and

(2) against a single person licensed as a residential mortgage loan originator under Chapter 342, 347, 348, or 351 is limited in the aggregate to \$50,000 until the fund has been reimbursed for all amounts paid.

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

Sec. 341.607. REVOCATION OF LICENSE FOR PAYMENT FROM FUND. (a) Authorizes the commissioner to revoke a residential mortgage loan originator license issued under this subtitle on proof that the commissioner has made a payment from the fund of any amount toward satisfaction of a claim against a state-licensed residential mortgage loan originator under this subchapter.

(b) Authorizes the commissioner to seek to collect from a state-licensed residential mortgage loan originator the amount paid from the fund on behalf of the originator and any costs associated with investigating and processing the claim against the fund or with collection of reimbursement for payments from the fund, plus interest at the current legal rate until the amount has been repaid in full. Requires that any amount, including interest, recovered by the commissioner be deposited to the credit of the fund.

(c) Authorizes the commissioner to probate an order revoking a license under this section.

(d) Provides that a state-licensed residential mortgage loan originator on whose behalf payment was made from the fund is not eligible to receive a new license until the originator has repaid in full, plus interest at the current legal rate, the amount paid from the fund on the originator's behalf and any costs associated with investigating and processing the claim against the fund or with collection of reimbursement from the fund.

(e) Provides that this section does not limit the authority of the commissioner to take disciplinary action against a state-licensed residential mortgage loan originator for a violation of the chapter under which the license was issued or the rules adopted by the commission under that chapter. Provides that the repayment in full to the fund of all obligations of a state-licensed residential mortgage loan originator does not nullify or modify the effect of any other disciplinary proceeding.

Sec. 341.608. SUBROGATION. Provides that when the commissioner has paid an applicant an amount from the fund under Section 341.605, the commissioner is subrogated to all of the rights of the applicant to the extent of the amount paid. Requires the applicant to assign the applicant's right, title, and interest in any subsequent judgment against the state-licensed residential mortgage loan originator up to the amount paid by the commissioner. Requires that any amount, including interest, recovered by the commissioner on the assignment be deposited to the credit of the fund.

Sec. 341.609. FAILURE TO COMPLY WITH SUBCHAPTER OR RULE ADOPTED BY FINANCE COMMISSION. Provides that the failure of an applicant under Section 341.605 to comply with a provision of this subchapter or a rule adopted by the commission relating to the fund constitutes a waiver of any rights under this subchapter.

Sec. 341.610. RULEMAKING. Authorizes the finance commission to adopt rules on the commissioner's recommendation to promote a fair and orderly administration of the fund consistent with the purposes of this subchapter.

SECTION 10. Amends Subchapter B, Chapter 342, Finance Code, by adding Section 342.0515, as follows:

Sec. 342.0515. RESIDENTIAL MORTGAGE LOAN ORIGINATOR ACTIVITIES. (a) Defines "Nationwide Mortgage Licensing System and Registry" and "residential mortgage loan originator."

(b) Requires an individual who acts as a residential mortgage loan originator in the making, transacting, or negotiating of a loan subject to this chapter, unless exempt under Section 180.003, to be individually licensed to engage in that activity under this chapter, be enrolled with the registry as required by Section 180.052, and comply with other applicable requirements of Chapter 180 and rules adopted under that chapter.

(c) Requires the finance commission to adopt rules establishing procedures for issuing, renewing, and enforcing an individual license under this section. Requires the finance commission in adopting rules under this subsection, to ensure that the minimum eligibility requirements for issuance of an individual license are the same as the requirements of Section 180.055, the minimum eligibility requirements for renewal of an individual license are the same as the requirements of Section 180.059, and the applicant pays an investigation fee in a reasonable amount determined by the commissioner and an annual license fee in an amount determined as provided by Section 14.107 (Fees).

(d) 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. 110-280).

SECTION 11. Amends Section 342.156, Finance Code, as follows:

Sec. 342.156. LICENSE SUSPENSION OR REVOCATION. Authorizes the commissioner, after notice and a hearing, to suspend or revoke a license if the commissioner finds that the license holder has failed to ensure that an individual acting as a residential mortgage loan originator, as defined by Section 180.002, in the making, transacting, or negotiating of a loan subject to this chapter is licensed under this chapter in accordance with Section 342.0515. Makes a nonsubstantive change.

SECTION 12. Amends the heading to Subchapter J, Chapter 347, Finance Code, to read as follows:

**SUBCHAPTER J. RIGHTS AND DUTIES OF CREDITOR AND RESIDENTIAL
MORTGAGE LOAN ORIGINATOR**

SECTION 13. Amends Section 347.451, Finance Code, by adding Subsection (b-1), to require a registered creditor that engages in the activity of originating a residential mortgage loan to meet the surety bond or recovery fund fee requirement, as applicable, of the creditor's residential mortgage loan originator under Section 180.058.

SECTION 14. Amends Subchapter J, Chapter 347, Finance Code, by adding Section 347.4515, as follows:

Sec. 347.4515. RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSE REQUIRED. (a) Defines "Nationwide Mortgage Licensing System and Registry" and "residential mortgage loan originator."

(b) Requires an individual who acts as a residential mortgage loan originator in the making, transacting, or negotiating of an extension of credit subject to this chapter, unless exempt under Section 180.003, to be individually licensed to engage in that activity under this chapter; be enrolled with the registry as required by Section 180.052, and comply with other applicable requirements of Chapter 180 and rules adopted under that chapter.

(c) Requires the finance commission to adopt rules establishing procedures for issuing, renewing, and enforcing an individual license under this section. Requires the finance commission, in adopting rules under this subsection, to ensure that the minimum eligibility requirements for issuance of an individual license are the same as the requirements of Section 180.055, the minimum eligibility requirements for renewal of an individual license are the same as the requirements of Section 180.059, and the applicant pays an investigation fee in a reasonable amount determined by the commissioner and an annual license fee in an amount determined as provided by Section 14.107.

(d) 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 15. Amends Section 348.501, Finance Code, by adding Subsection (c), to require a license holder under this chapter who engages in the sale of a motor vehicle to be used as a principal dwelling to meet the surety bond or recovery fund fee requirements, as applicable, of the holder's residential mortgage loan originator under Section 180.058.

SECTION 16. Amends Subchapter F, Chapter 348, Finance Code, by adding Section 348.5015, as follows:

Sec. 348.5015. RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSE REQUIRED. (a) Defines "Nationwide Mortgage Licensing System and Registry" and "residential mortgage loan originator."

(b) Requires an individual who acts as a residential mortgage loan originator in the sale of a motor vehicle to be used as a principal dwelling, unless exempt under Section 180.003, to be licensed to engage in that activity under this chapter, be enrolled with the registry as required by Section 180.052, and comply with other applicable requirements of Chapter 180 and rules adopted under that chapter.

(c) Requires the finance commission to adopt rules establishing procedures for applying for issuing, renewing, and enforcing a license under this section. Requires the finance commission, in adopting rules under this subsection, to ensure that the minimum eligibility requirements for issuance of a license are the same as the requirements of Section 180.055; the minimum eligibility requirements for renewal of a license are the same as the requirements of Section 180.059; and the applicant pays an investigation fee in a reasonable amount determined by the commissioner and an annual license fee in an amount determined as provided by Section 14.107.

(d) 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 17. Amends Subchapter B, Chapter 351, Finance Code, as added by Chapter 1220 (H.B. 2139), Acts of the 80th Legislature, Regular Session, 2007, by adding Section 351.0515, as follows:

Sec. 351.0515. RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSE REQUIRED. (a) Defines "Nationwide Mortgage Licensing System and Registry" and "residential mortgage loan originator."

(b) Requires an individual who acts as a residential mortgage loan originator in the making, transacting, or negotiating of a property tax loan for a principal dwelling, unless exempt under Section 180.003, to be individually licensed to engage in that activity under this chapter, be enrolled with the registry as required by Section 180.052, and comply with other applicable requirements of Chapter 180 and rules adopted under that chapter.

(c) Requires the finance commission to adopt rules establishing procedures for applying for issuing, renewing, and enforcing a license under this section. Requires the finance commission, in adopting rules under this subsection, to ensure that the minimum eligibility requirements for issuance of a license are the same as the requirements of Section 180.055; the minimum eligibility requirements for renewal of a license are the same as the requirements of Section 180.059; and the applicant pays an investigation fee in a reasonable amount determined by the commissioner and an annual license fee in an amount determined as provided by Section 14.107.

(d) 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 18. Amends Section 351.102, Finance Code, as added by Chapter 1220 (H.B. 2138), Acts of the 80th Legislature, Regular Session, 2007, by adding Subsection (e), to require a license holder engaged in the business of making, transacting, or negotiating a property tax loan for a principal dwelling to meet the surety bond or recovery fund fee requirement, as applicable, of the holder's residential mortgage loan originator under Section 180.058.

SECTION 19. Amends Section 351.156, Finance Code, as added by Chapter 1220 (H.B. 2138), Acts of the 80th Legislature, Regular Session, 2007, as follows:

Sec. 351.156. LICENSE SUSPENSION OR REVOCATION. Authorizes the commissioner, after a notice and a hearing, to suspend or revoke a license if the commissioner finds that the license holder has failed to ensure that an individual acting as a residential mortgage loan originator, as defined by Section 180.002, in the making, transacting, or negotiating of a property tax loan for a principal dwelling is licensed under this chapter in accordance with Section 351.0515. Makes nonsubstantive changes.

SECTION 20. Amends Section 411.095, Government Code, as follows:

Sec. 411.095. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: CONSUMER CREDIT COMMISSIONER. Entitles the consumer credit commissioner to obtain from the Department of Public Safety of the State of Texas (DPS) certain information that relates to a person who is an applicant for or holder of a license under Chapter 342, 347, 348, 351, or 371, Finance Code. Makes a nonsubstantive change.

SECTION 21. Amends Section 411.1385, Government Code, as follows:

Sec. 411.1385. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: SAVINGS AND MORTGAGE LENDING COMMISSIONER. (a) Provides that the

savings and mortgage lending commissioner is entitled to obtain from DPS criminal history record information maintained by DPS that relates to a person who is an applicant for or holder of a license issued under Chapter 156 or 157, Finance Code, rather than of a mortgage broker or loan officer license issued under Chapter 156, Finance Code.

(b) Authorizes criminal history record information obtained by the savings and mortgage lending commissioner under Subsection (a) with respect to the issuance of a license under Chapter 156, Finance Code, to be released or disclosed only as provided by Section 156.206, Finance Code.

SECTION 22. Authorizes the finance commission, for purposes of implementing an orderly and efficient process for licensing and registering residential mortgage loan originators that meets the requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289), Chapter 180, Finance Code, as added by this Act, Section 15.4024, Finance Code, as added by this Act, and Chapters 156, 157, 342, 347, 348, and 351, Finance Code, as amended by this Act, as soon as practicable after the effective date of this Act, to adopt rules and establish interim procedures for licensing individuals engaging in or conducting the business of a residential mortgage loan originator in this state and for the approval or denial of applications for licenses authorizing individuals to engage in business as a residential mortgage loan originator. Authorizes the finance commission, for individuals authorized by state law to engage in residential mortgage loan origination activities immediately before the effective date of this Act, to establish expedited review and licensing procedures.

SECTION 23. (a) Defines "Nationwide Mortgage Licensing System and Registry," "regulatory official," "residential mortgage loan originator," and "unique identifier."

(b) Authorizes the regulatory official, on application by a person for a license, registration, and unique identifier as a residential mortgage loan originator with the registry, to determine that the applicant meets the prelicensing education courses and written test requirements of Sections 180.056 and 180.057, Finance Code, as added by this Act, if the applicant, on the effective date of this Act, is acting as a state-licensed residential mortgage loan originator in this state under Chapter 156, Finance Code. Requires the applicant to be in good standing with the regulatory official to obtain an exemption under this subsection.

(c) Authorizes the regulatory official to determine an exemption under Subsection (b) of this section by rule of the commission.

(d) Provides that this section does not grant a residential mortgage loan originator a waiver from the continuing education requirements prescribed by the regulatory official and the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

SECTION 24. (a) Provides that except as provided by Subsection (b) of this section, an individual is not required to comply with Chapter 180, Finance Code, as added by this Act, and Chapters 156, 157, 342, 347, 348, and 351, Finance Code, as amended by this Act, until the later of July 31, 2010, or a subsequent date that is approved by the secretary of the United States Department of Housing and Urban Development under the authority granted under the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

(b) Provides that an individual authorized to engage in residential mortgage loan origination activities in this state as of July 31, 2009, is not required to comply with Chapter 180, Finance Code, as added by this Act, and Chapters 156, 157, 342, 347, 348, and 351, Finance Code, as amended by this Act, until the later of July 31, 2011, or a subsequent date approved by the secretary of the United States Department of Housing and Urban Development under the authority granted under the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

SECTION 25. Effective date: upon passage or September 1, 2009.