

BILL ANALYSIS

Senate Research Center

H.B. 2774
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Certain sections in the Finance Code are not in compliance with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and the recovery fund claim process needs to be streamlined.

The Department of Savings and Mortgage Lending licenses and regulates mortgage brokers and loan officers. As part of its regulatory duties, the department informs the legislature when licensing statutes need revisions.

H.B. 2774 relates to the licensing and regulation of certain persons involved in residential mortgage lending and provides a penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 (Section 156.102, Finance Code) of this bill.

Rulemaking authority previously granted to the Finance Commission of Texas is rescinded in SECTION 9 (Section 156.205, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 156.101, Finance Code, by adding Subsection (d), to require the savings and mortgage lending commissioner (commissioner) to participate in the Nationwide Mortgage Licensing System and Registry as provided by Chapter 180 (Residential Mortgage Loan Originators [*as added by H.B. 10, 81st Legislature, Regular Session, 2009*]).

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

(a-1) Authorizes the Finance Commission of Texas (finance commission), for the purpose of enabling this state to participate in the Nationwide Mortgage Licensing System and Registry and comply with Chapter 180, by rule 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.

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

SECTION 3. Amends the heading to Section 156.104, Finance Code, to read as follows:

Sec. 156.104. MORTGAGE INDUSTRY ADVISORY COMMITTEE.

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

(a) Provides that the mortgage industry advisory committee (advisory committee), rather than the mortgage broker advisory committee, is created to advise and assist the commissioner.

(b) Provides that the advisory committee is composed of six members appointed by the commissioner, rather than six members to be appointed as follows:. Requires each of the members to be under the regulatory authority of the Texas Department of Banking (TDB); actively engaged in the business of originating, brokering, or funding residential mortgage loans for at least two years before the member's appointment. Deletes existing text requiring the commissioner to appoint four members, each of whom are required to hold a mortgage broker license; is actively engaged in the business of brokering mortgage loans for at least two years before the member's appointment and requiring the Texas Real Estate Commission to appoint two members, each of whom is required to hold a real estate broker or salesperson license. Makes nonsubstantive changes.

(h) Deletes existing text requiring the advisory committee to advise the commissioner with respect to continuing education for licensed mortgage brokers and loan officers and the types of courses acceptable as continuing education courses under this chapter and the granting or denying of an application or request for renewal for a mortgage broker license or loan officer license. Makes a nonsubstantive change.

SECTION 5. Amends Section 156.104, Finance Code, effective April 1, 2010, by adding Subsection (b-1), to require the members of the advisory committee to include three individuals licensed as residential mortgage loan originators under this chapter, one of whom must hold an active real estate broker or salesperson license issued under Chapter 1101 (Real Estate Brokers and Salespersons), Occupations Code; and three individuals licensed as residential mortgage loan originators under Chapter 157 (Registration of Mortgage Bankers), one of whom must hold an active real estate broker or salesperson license issued under Chapter 1101, Occupations Code.

SECTION 6. Amends Section 156.203, Finance Code, by adding Subsection (e), to authorize the commissioner, in addition to the disciplinary action by the commissioner authorized under Section 156.303(a)(7), to collect a fee in an amount not to exceed \$50 for any returned check or credit card charge back.

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

(a) Requires the individual, to be eligible to be licensed as a mortgage broker as an individual, to provide the commissioner with satisfactory evidence that the applicant satisfies one of certain criteria including that the individual, rather than person, has received a bachelor's degree in an area relating to finance, banking, or business administration from an accredited college or university and has 18 months of experience in the mortgage or lending field as evidenced by documentary proof of full-time employment as a mortgage broker or licensed loan officer with a mortgage broker or an individual exempt under Section 156.202 or the individual is licensed in this state as an active general lines insurance agent or a limited lines insurance agent or holds an equivalent insurance license under the Insurance Code, rather than a local recording agent or insurance solicitor or agent for a legal reserve life insurance company under Chapter 21, Insurance Code, or holds an equivalent license under Chapter 21, Insurance Code; provide the commissioner with satisfactory evidence that if the individual has not been previously licensed as a mortgage broker under this subchapter but has been licensed as a loan officer under this subchapter, the individual has successfully completed an additional 30 hours, rather than classroom hours, of education courses approved by the commissioner under this section. Makes conforming changes.

(c) Requires a person, to be eligible to be licensed as a loan officer, to provide the commissioner with satisfactory evidence that the applicant satisfies one of certain criteria including that the person has successfully completed at least 60 hours of education courses approved by the commissioner, rather than the person meets one of the requirements described by Subsection (a)(4) (relating to providing the commissioner with satisfactory evidence that the applicant satisfies one of certain criteria) and has successfully completed 60 classroom hours of education courses approved by the commissioner under this section; the person has successfully completed 30 hours of education courses approved by the commissioner under this section if the applicant has 18 months or more of experience as a mortgage loan officer as evidenced by

documentary proof of full-time employment as a mortgage loan officer with a person exempt under Section 156.202; or is a person who meets the qualifications under Subsection (a)(4)(B) (relating to the individual holding certain licenses in this state), rather than the person has 18 months of experience as a loan officer as evidenced by documentary proof of full-time employment as a loan officer with a person exempt under Section 156.202 and has successfully completed 30 classroom hours of education courses approved by the commissioner under this section; or the person holds an active mortgage broker license issued under this chapter, rather than for applications received prior to January 1, 2000, the mortgage broker that will sponsor the applicant provides a certification under oath that the applicant has been provided necessary and appropriate education and training regarding all applicable state and federal law and regulations relating to mortgage loans.

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

SECTION 8. Amends Section 156.204, Finance Code, effective January 1, 2011, by adding Subsection (c-1), as follows:

(c-1) Requires a person, to be eligible to be licensed as a loan officer, to:

- (1) be an individual who is at least 18 years of age;
- (2) be a citizen of the United States or a lawfully admitted alien;
- (3) designate in the application the name of the mortgage broker sponsoring the loan officer;
- (4) provide the commissioner with satisfactory evidence that the applicant satisfies one of the following: the person has successfully completed at least 60 hours of education courses approved by the commissioner; the person has successfully completed 30 hours of education courses approved by the commissioner under this section if the applicant has 18 months or more of experience as a residential mortgage loan originator as evidenced by documentary proof of full-time employment; or the person holds an active license as a residential mortgage loan originator under Chapter 157 and has held that license for a minimum of one year;
- (5) not have been convicted of a criminal offense that the commissioner determines directly relates to the occupation of a loan officer as provided by Chapter 53 (Consequences of Criminal Conviction), Occupations Code;
- (6) satisfy the commissioner as to the individual's good moral character, including the individual's honesty, trustworthiness, and integrity;
- (7) provide the commissioner with satisfactory evidence of having passed an examination, offered by a testing service or company approved by the finance commission, that demonstrates knowledge of the mortgage industry and the role and responsibilities of a loan officer; and
- (8) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued to the individual by the commissioner.

SECTION 9. Amends Section 156.205, Finance Code, as follows:

Sec. 156.205. New heading: **FINANCIAL REQUIREMENTS**. Requires that financial requirements for holding a mortgage broker or loan officer license be met through participation in the fund. Deletes existing Subsections (a)-(c) defining "net assets"; requiring a mortgage broker to maintain net assets of at least \$25,000 or a surety bond in the amount of at least \$50,000; requiring that the term of the surety bond coincide with the term of the license; authorizing the finance commission to adopt rules establishing the terms and conditions of the surety bond and the qualifications of the surety; and requiring

the commissioner to require proof of compliance with this section at the time the mortgage broker applies for or renews a license.

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

(a) Provides that a mortgage broker license issued under this chapter is valid for a term of not more than two years and may be renewed on or before its expiration date if the mortgage broker provides the commissioner with satisfactory evidence that the mortgage broker maintains an active license in this state as an active general lines insurance agent or a limited lines insurance agent or holds an equivalent insurance license under the Insurance Code, rather than a local recording agent or insurance solicitor or agent for a legal reserve life insurance company under Chapter 21, Insurance Code, or an equivalent license under Chapter 21, Insurance Code.

(b) Provides that a loan officer license issued under this chapter is valid for a term of not more than two years and may be renewed on or before its expiration date if the loan officer pays to the commissioner a renewal fee in an amount determined by the commissioner not to exceed \$275, rather than \$175, and a recovery fund fee provided by Section 156.502; provides the commissioner with satisfactory evidence that the loan officer maintains an active license in this state as an active general lines insurance agent or a limited lines insurance agent or holds an equivalent insurance license under the Insurance Code, rather than a local recording agent or insurance solicitor or agent for a legal reserve life insurance company under Chapter 21, Insurance Code, or an equivalent license under Chapter 21, Insurance Code.

(j) Authorizes the commissioner to deny the renewal of a mortgage broker license or a loan officer license if the mortgage broker or loan officer is in default on a student loan administered by the Texas Guaranteed Student Loan Corporation, pursuant to Section 57.491 (Loan Default Ground For Nonrenewal of Professional or Occupational License), Education Code. Makes a nonsubstantive change.

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

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

SECTION 11. Amends Section 156.208, Finance Code, effective January 1, 2011, by adding Subsections (a-1) and (b-1), as follows:

(a-1) Provides that a mortgage broker license issued under this chapter is valid for a term of not more than two years and may be renewed on or before its expiration date if the mortgage broker pays to the commissioner a renewal fee in an amount determined by the commissioner not to exceed \$375 and a recovery fund fee provided by Section 156.502; has not been convicted of a criminal offense the commissioner determines is directly related to the occupation of a mortgage broker as provided by Chapter 53, Occupations Code; and provides the commissioner with satisfactory evidence that the mortgage broker has attended, during the term of the current license, continuing education courses in accordance with the applicable requirements of Chapter 180.

(b-1) Provides that a loan officer license issued under this chapter is valid for a term of not more than two years and may be renewed on or before its expiration date if the loan officer pays to the commissioner a renewal fee in an amount determined by the commissioner not to exceed \$275 and a recovery fund fee provided by Section 156.502; has not been convicted of a criminal offense the commissioner determines is directly related to the occupation of a loan officer as provided by Chapter 53, Occupations Code; and provides the commissioner with satisfactory evidence that the loan officer has attended, during the term of the current license, continuing education courses in accordance with the applicable requirements of Chapter 180.

SECTION 12. Amends the heading to Section 156.212, Finance Code, to read as follows:

Sec. 156.212. MAINTENANCE AND LOCATION OF OFFICES.

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

(b) Requires a person, to be eligible to register as a registered financial services company, to pay an annual registration fee in an amount determined as follows, rather than the lesser of; if the registered financial services company has 2,000 or fewer exclusive agents acting in this state, an amount equal to the lesser of: one-half of the license fee for a loan officer under Section 156.203(c)(1) (relating to an application fee in an amount determined by the commissioner not to exceed \$275), multiplied by the number of exclusive agents under contract to act for the person in this state; or \$200,000; if the registered financial services company has at least 2,001 but not more than 2,500 exclusive agents acting in this state, \$225,000; if the registered financial services company has at least 2,501 but not more than 3,000 exclusive agents acting in this state, \$250,000; if the registered financial services company has at least 3,001 but not more than 5,000 exclusive agents acting in this state, \$300,000; or if the registered financial services company has at least 5,001 exclusive agents acting in this state, \$350,000.

SECTION 14. Amends Section 156.301, Finance Code, by adding Subsection (h), to authorize the commissioner to require reimbursement in an amount not to exceed \$325 for each examiner a day for on-site examination or investigation of a mortgage broker if records are located out of state or if the review is considered necessary beyond the routine examination process.

SECTION 15. Amends Section 156.302(a), Finance Code, to authorize the commissioner, after notice and opportunity for hearing, to impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

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

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

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

(2) published or caused to be published an advertisement related to the business of a mortgage broker or loan officer that is misleading; is likely to deceive the public; in any manner tends to create a misleading impression; fails to identify as a mortgage broker or loan officer the person causing the advertisement to be published; or violates federal or state law;

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

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

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

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

the mortgage loan have been disbursed to or on behalf of the mortgage applicant, except as provided by Section 156.304;

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

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

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

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

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

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

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

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

(15) failed or refused on demand to produce a document, book, or record concerning a mortgage loan transaction conducted by the mortgage broker or loan officer for inspection by the commissioner or the commissioner's authorized personnel or representative; give the commissioner or the commissioner's authorized personnel or representative free access to the books or records relating to the person's business kept by an officer, agent, or employee of the person or any business entity through which the person conducts mortgage brokerage activities, including a subsidiary or holding company affiliate; or provide information requested by the commissioner as a result of a formal or informal complaint made to the commissioner;

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

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

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

(a-1) Authorizes the commissioner to also order disciplinary action after notice and opportunity for hearing against a licensed mortgage broker or a licensed loan officer if the commissioner becomes aware during the term of the license of any fact that would

have been grounds for denial of an original license if the fact had been known by the commissioner on the date the license was issued.

(e) Authorizes the commissioner, after giving notice and an opportunity for hearing, to impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed \$1,000 for each day of the violation. Deletes existing text requiring that a penalty collected under this subsection be deposited in the fund.

(g) Requires that the suspension continue until the person has complied with the order, rather than the cease and desist order, or paid the administrative penalty.

(h) Requires that a hearing of an appeal of an order of suspension issued under Subsection (g) be held not later than the 30th, rather than the 15th, day after the date of receipt of the notice of appeal.

(j) Authorizes the commissioner to, on not less than 10 days' notice to the person, rather than on notice and opportunity for hearing, to suspend a person's license without a prior hearing under this chapter if an indictment or information is filed or returned alleging that the person committed a criminal offense involving fraud, theft, or dishonesty. Authorizes a person to appeal the suspension in accordance with Subsection (h).

SECTION 17. Amends Section 156.401(a), Finance Code, to authorize the commissioner to collect and deposit any court costs collected pursuant to a final order.

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

(a) Requires the commissioner to establish, administer, and maintain a mortgage broker recovery fund as provided by this subchapter.

(b) Requires that the fund, subject to this subsection, be used to reimburse residential mortgage loan applicants for actual damages incurred because of, rather than aggrieved persons to whom a court awards actual damages because of certain, acts committed by a mortgage broker or loan officer who was licensed under this chapter when the act was committed. Provides that the use of the fund is limited to reimbursement for out-of-pocket losses caused by an act by a mortgage broker or loan officer that constitutes a violation of Section 156.303(a)(2), (3), (5), (6), (8), (9), (10), (11), (12), (13), or (16) or 156.304. Makes a nonsubstantive change.

(d) 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 individual or entity under the regulatory authority of TDB.

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

(f) 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 156.504.

SECTION 19. Amends Section 156.502(a), Finance Code, to require the applicant, on an application for an original license or for renewal of a license issued under this chapter, in addition to paying the original application fee or renewal fee, to pay a fee in an amount determined by the commissioner, not to exceed \$20, rather than pay a fee.

SECTION 20. Amends Section 156.502(b), Finance Code, to require 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 \$3.5 million, be available to the commissioner to offset the expenses of participating in and sharing information with the Nationwide Mortgage Licensing System and Registry in

accordance with Chapter 180, rather than requiring that if the balance remaining in the fund after 2010 is less than \$500,000, each mortgage broker and loan officer licensed under this chapter, on the next renewal of the license, to pay, in addition to any other required fees, the lesser of a \$10 fee or a pro rata share of the amount necessary to bring the fund to \$1 million and requiring that the fee be deposited in the fund.

SECTION 21. Amends Section 156.503, Finance Code, as follows:

Sec. 156.503. STATUTE OF LIMITATIONS. (a) Creates this subsection from existing text. Prohibits an application for the recovery of actual damages, rather than an action for a judgment that subsequently results in an order for collection, from the fund under Section 156.504 from being filed, rather than instituted, after the second anniversary of the date of the alleged act or omission causing the actual damages or the date the act or omission should reasonably have been discovered.

(b) Provides that this section does not apply to a subrogation claim brought by the commissioner for recovery of money paid out of the fund, rather than on which the cause of action accrues.

SECTION 22. Amends Section 156.504, Finance Code, as follows:

Sec. 156.504. 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 subject to Section 156.503. 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. Deletes existing text authorizing an aggrieved person who recovers against a mortgage broker or loan officer licensed under this chapter a valid court judgment for conduct described by Section 156.501 that occurred on or after January 1, 2000, after final judgment has been entered, execution returned nulla bona, and a judgment lien perfected, to file a verified claim in the court in which the judgment was entered and, on 20 days' written notice to the commissioner and to the judgment debtor, to apply to the court for an order directing payment from the fund of any unpaid judgment amount.

(b) Requires the residential mortgage loan applicant, rather than, on the hearing on the application, the aggrieved person, to show:

(1) that the applicant's claim, rather than judgment, is based on facts allowing recovery under Section 156.501; and

(2) that the applicant, rather than person, is not a spouse of the licensed mortgage broker or loan officer; is not a child, parent, grandchild, grandparent, or sibling, including relationships by adoption, of the licensed mortgage broker or loan officer; is not a person sharing living quarters with the licensed mortgage broker or loan officer or a current or former employer, employee, or associate of the licensed mortgage broker or loan officer; is not a person who has aided, abetted, or participated other than as a victim with the licensed mortgage broker, rather than that the person is not a spouse of the debtor, or the personal representative of the spouse, and that the person is not licensed as a mortgage broker, or loan officer in any activity that is illegal under Section 156.303(a)(2), (3), (5), (6), (8), (9), (10), (11), (12), (13), or (16) or Section 156.304 or is not the personal representative of a licensed mortgage broker or loan officer; and is not licensed as a mortgage broker or loan officer under this chapter who is seeking to recover any compensation in the transaction or transactions for which the application for payment is made. Deletes existing text requiring that the residential mortgage loan applicant show that based on the best available information, the judgment debtor lacks sufficient attachable assets in this state or any other state to satisfy the judgment and the surety bond required by Section 156.205 is not sufficient

to satisfy the judgment; and the amount that may be realized from the sale of property or other assets liable to be sold or applied in satisfaction of the judgment and the balance remaining due on the judgment after application of the amount that may be realized. Makes nonsubstantive changes.

(c) Requires the commissioner's staff, on receipt of the verified application, to notify each appropriate license holder and the issuer of any surety bond issued in connection with their licenses and 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) (relating to investigating the application and issuing a preliminary determination) 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 156.505.

(e) Requires that the matter, if the preliminary determination under Subsection (c)(2) is disputed by the applicant, the license holder, or any surety by written notice to the commissioner before the 31st day after the notification date, be set for a hearing governed by Chapter 2001 (Administrative Procedure), Government Code, and the hearing rules of the finance commission. Deletes existing Subsections (d)-(g) and existing text requiring that a recovery on the judgment against a single defendant made before payment from the fund be applied first by the creditor to actual damages; requiring the court to make an order directed to the commissioner requiring payment from the fund of the amount the court finds to be payable on the claim, pursuant to and in accordance with the limitations contained in this subchapter, if the court is satisfied, on the hearing, of the truth of all matters required to be shown by the aggrieved person under Subsection (b) and that the aggrieved person has satisfied all of the requirements of this section; authorizing the commissioner, when the commissioner receives notice of entry of a final judgment and a hearing is scheduled under this section, to notify the attorney general of the commissioner's desire to enter an appearance, file a response, appear at the court hearing, defend the action, or to take any other appropriate action; requiring the commissioner and the attorney general, in taking any action described by this subsection, to act only to protect the fund from spurious or unjust claims or to ensure compliance with the requirements for recovery under this subchapter; authorizing the commissioner to relitigate any issue material and relevant in the hearing on the application that was determined in the underlying action on which the judgment in favor of the applicant was based; and requiring the court, if the court finds that the aggregate amount of claims against a licensed mortgage broker or loan officer exceeds the limits contained in Section 156.505, to reduce proportionately the amount the court finds payable on the claim.

SECTION 23. Amends Section 156.505, Finance Code, as follows:

Sec. 156.505. 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. Deletes existing text entitling a person entitled to receive payment out of the fund to receive reimbursement of reasonable attorney's fees, and court costs as determined by the court, as provided by this section.

(b) Authorizes a payment from the fund to be made, rather than be made only pursuant to a court order, as provided by Section 156.504, and this section. Provides that a payment for claims:

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

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

(c) 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.

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

(a) Authorizes the commissioner to revoke a license issued under this chapter on proof that the commissioner has made a payment from the fund of any amount toward satisfaction of a claim against a mortgage broker or loan officer, rather than a judgment against a person licensed as a mortgage broker or loan officer, under this chapter.

(a-1) Authorizes the commissioner to seek to collect from a mortgage broker or loan officer the amount paid from the fund on behalf of the mortgage broker or loan officer and any costs associated with investigating and processing the claim against the fund or with collection of reimbursement for payments from the fund, plus interest 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) Provides that a person on whose behalf payment was made from the fund is not eligible to receive a new license under this chapter until the person has repaid in full, plus interest at the current legal rate, the amount paid from the fund on the person's behalf and any costs associated with investigating and processing the claim against the fund or with collection of reimbursement for payments from the fund.

SECTION 25. Amends Section 156.507, Finance Code, as follows:

Sec. 156.507. SUBROGATION. Provides that when the commissioner has paid an applicant, rather than a judgment creditor, an amount from the fund under Section 156.504, rather than as directed by the court, the commissioner is subrogated to all of the rights of the applicant to the extent of the amount paid. Requires the applicant to assign all of the applicant's, rather than creditor's, right, title, and interest in any subsequent judgment against the license holder, up to the amount paid by the commissioner, rather than interest in the judgment up to the amount paid by the commissioner, and that amount has priority for repayment in the event of any subsequent recovery on the judgment. Requires that any amount, including interest, recovered by the commissioner on the assignment, rather than judgment, be deposited to the credit of the fund. Makes conforming and nonsubstantive changes.

SECTION 26. Amends Section 156.508, Finance Code, as follows:

Sec. 156.508. New heading: FAILURE TO COMPLY WITH SUBCHAPTER OR RULE ADOPTED BY THE FINANCE COMMISSION. Provides that the failure of an applicant under Section 156.504, rather than aggrieved person, to comply with a provision of this subchapter relating to the fund or with a rule adopted by the finance commission relating to the fund constitutes a waiver of any rights under this subchapter.

SECTION 27. Repealers: Sections 156.212(c) (relating to the license certificate of a mortgage broker) and (d) (relating to a loan officer license certificate) and 156.502(c) (relating to the balance remaining in the mortgage broker recovery fund), Finance Code.

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

SECTION 29. (a) Effective date, subject to Subsection (b) of this section: September 1, 2009.

(b) Makes application of Sections 1, 2, and 17 of this Act contingent upon passage of House Bill 10 or another similar bill of the Regular Session of the 81st Legislature.