

BILL ANALYSIS

Senate Research Center

H.B. 2779
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The United States Congress passed the Secure and Fair Enforcement (S.A.F.E.) of Mortgage Licensing Act in 2008. The Act requires the licensing, regulation, and registration of all residential mortgage loan originators in the United States by 2010. This federal legislation contemplates that states will adopt licensing and regulation legislation. However, if a particular state does not adopt legislation meeting the minimum requirements set out in the S.A.F.E. Mortgage Licensing Act, the secretary of the United States Department of Housing and Urban Development (HUD) will establish a system for that state.

Texas mortgage bankers who are not subsidiaries of a depository institution currently register with the state Department of Savings and Mortgage Lending. Mortgage bankers are not licensed and regulated by the State of Texas since they already are subject to significant regulation, supervision, and oversight by HUD, Fannie Mae, Freddie Mac, and Ginnie Mae; however, the S.A.F.E. Mortgage Licensing Act requires the licensing and regulation of mortgage banker employees who are residential mortgage loan originators. Under the provisions of the S.A.F.E. Mortgage Licensing Act, residential mortgage loan originators who are employees or subsidiaries of a depository institution will be registered with the federal banking agency having jurisdiction over the particular depository institution and will be included in the Nationwide Mortgage Licensing System. All other residential mortgage loan originators are subject to state licensing and regulation.

The Conference of State Bank Supervisors, of which the Texas banking commissioner is a member, and the American Association of Residential Mortgage Regulators, of which the Texas savings and mortgage lending commissioner is a member, drafted model legislation that meets all of the minimum standards and requirements of the S.A.F.E. Mortgage Licensing Act. That model legislation is certified by the secretary of HUD to meet the requirements of the act and was introduced in the current legislative session as H.B. 10 by Representative Burt Solomons. H.B. 10 applies to all residential mortgage loan originators who are not employees of depository institutions or their subsidiaries, including mortgage banker loan officers, mortgage brokers, and residential loan officers of consumer finance companies. The Committee on Pensions, Investments, and Financial Services heard H.B. 10 on March 18, 2009, and no witnesses appeared or registered in opposition to that legislation. While H.B. 10 provides that residential mortgage loan originators who are employees of a mortgage banker will be licensed by the savings and mortgage lending commissioner, the bill does not provide all of the details regarding the structure of the commissioner's regulation. H.B. 10 does not detail the application and renewal process for a license, how the commissioner should exercise enforcement and disciplinary authority, or the rights afforded to a residential mortgage loan originator.

This bill is patterned after the existing provisions in the Mortgage Broker License Act. Those provisions proved to be a reasonable regulatory structure for mortgage brokers who also are licensed by the commissioner, so comparable provisions are created for mortgage banker loan officers who are residential loan originators.

This bill provides the regulatory structure for the savings and mortgage lending commissioner to regulate mortgage banker employees who are residential mortgage loan originators.

H.B. 2779 amends current law relating to the regulation of certain mortgage banker employees who are residential mortgage loan originators, and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 7 (Section 157.011, Finance Code) and SECTION 8 (Sections 157.012, 157.017, 157.018, and 157.021, Finance Code) of this bill.

Rulemaking authority previously granted to the Finance Commission of Texas is rescinded in SECTION 4 (Section 157.004, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 157.001, Finance Code, to designate the title of this chapter.

SECTION 2. Amends Section 157.002, Finance Code, to define "disciplinary action" and redefine "finance commission," "mortgage banker," "residential mortgage," and "residential mortgage loan originator."

SECTION 3. Amends Section 157.003, Finance Code, by amending Subsection (b)-(d) and adding Subsection (b-1), as follows:

(b) Requires a mortgage broker, to register under this chapter, to file with the savings and mortgage lending commissioner (commissioner) a statement that contains a list of employees of the mortgage banker who are residential mortgage loan originators.

(b-1) Requires that the list of mortgage banker employees required by Subsection (b)(4) be promptly updated to reflect any changes, and requires that the updated list be submitted to the commissioner.

(c) Provides that an employee of a mortgage banker who is not a residential mortgage loan originator is not required to register or be licensed under this chapter.

(d) Creates an exception under Section 157.008(b) (relating to commissioner requesting documentary and other evidence).

SECTION 4. Amends Section 157.004, Finance Code, as follows:

Sec. 157.004. EXEMPTIONS. Provides that this chapter does not apply to a subsidiary, rather than an affiliate or subsidiary, of a federally insured bank, savings bank, savings and loan association, Farm Credit System Institution, or credit union; the state or a governmental agency, political subdivision, or other instrumentality of the state, or an employee of the state or a governmental agency, political subdivision, or instrumentality of the state who is acting within the scope of the person's employment. Deletes existing text relating to an authorized lender licensed under Chapter 342, if the authorized lender includes with an application for a mortgage loan a notice that is substantially similar to the notice required by Section 157.007 and provides the method of submitting complaints to the consumer credit commissioner; the authorized lender uses the forms adopted by the Finance Commission of Texas (finance commission) under Section 157.011(b) (relating to the finance commission adopting standard forms for, and require the use of the forms by, a mortgage banker); and the finance commission determines by rule that the consumer credit commissioner may suspend or revoke a license issued under Chapter 342 (Consumer Loans) if the authorized lender engages in unlawful or unfair practices while making a mortgage loan.

SECTION 5. Amends Section 157.007, Finance Code, as follows:

Sec. 157.007. DISCLOSURE STATEMENT. Requires a mortgage banker to include a notice to a residential mortgage loan applicant with an application for a residential mortgage loan, and sets forth the language of the notice.

SECTION 6. Amends Section 157.009(d), Finance Code, to authorize the savings and mortgage lending commissioner (commissioner) to revoke the registration of a mortgage banker after

considering a complaint filed under this chapter if the commissioner concludes that the mortgage banker has engaged in an intentional course of conduct to violate federal or state law or has engaged in an intentional course of conduct that constitutes improper, fraudulent, or dishonest dealings or has engaged in a negligent course of conduct exhibited through pattern or practice.

SECTION 7. Amends Section 157.011, Finance Code, by adding Subsection (c), to authorize the finance commission, for the purpose of enabling this state to participate in the Nationwide Mortgage Licensing System and Registry (registry) and comply with Chapter 180 (Residential Mortgage Loan Originators), by rule to waive or modify, wholly or partly, any requirement of this chapter and establish requirements under this chapter that are reasonably necessary to accomplish that purpose.

SECTION 8. Amends Chapter 157, Finance Code, by adding Sections 157.012-157.031, as follows:

Sec. 157.012. LICENSE REQUIRED FOR CERTAIN EMPLOYEES OF MORTGAGE BANKERS. (a) 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 the registry as required by Section 180.052 (Enrollment with Nationwide Mortgage Licensing System and Registry [*as added by H.B. 10, 81st Legislature, Regular Session, 2009*]); and complies with other applicable requirements of Chapter 180 and rules adopted by the finance commission under that chapter.

(b) Authorizes the finance commission by rule to waive or modify, wholly or partly, any requirement of this chapter and to establish new requirements as reasonably necessary to enable the commissioner to participate in and mortgage banker employees to enroll with the registry for purposes of this section and Chapter 180.

(c) Requires an employee of a mortgage banker, in addition to the requirements of Subsection (a), to be eligible to be licensed as a residential mortgage loan originator, 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.

Sec. 157.013. APPLICATION FOR LICENSE; FEES. (a) Requires that an application for a residential mortgage loan originator license (license) be in writing, under oath, and on the form prescribed by the commissioner.

(b) Requires that an application for a license be accompanied by an application fee in an amount determined by the commissioner, not to exceed \$500.

(c) Provides that an application fee under this section is not refundable and may not be credited or applied to any other fee or indebtedness owed by the person paying the fee.

Sec. 157.014. ISSUANCE OF RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSE. (a) Requires the commissioner to issue a license to an applicant if the commissioner determines that the applicant meets all requirements and conditions for the license.

(b) Requires that each license have a unique identifier as provided by Chapter 180.

Sec. 157.015. RENEWAL OF LICENSE. (a) Provides that a license issued under this chapter is valid for one year and is authorized to be renewed on or before its expiration date.

(b) Provides that each license will be renewed for not more than a one-year period expiring December 31 of each calendar year.

(c) Requires that an application for renewal of a license meet the requirements of Section 157.013.

(d) Requires that an application for renewal of a license meet all of the standards and qualifications for license renewal under Chapter 180.

(e) Requires the commissioner to issue a renewal license if the commissioner finds that the applicant meets all of the requirements and conditions for the license.

(f) Authorizes the commissioner to deny the renewal application for a license for the same reasons and grounds on which the commissioner could have denied an original application for a license.

(g) Authorizes the commissioner to deny the renewal application for a license if the person seeking the renewal of the license is in violation of this chapter or Chapter 180, an applicable rule adopted under this chapter or Chapter 180, or any order previously issued to the person by the commissioner; the person seeking renewal of the license is in default in the payment of any administrative penalty, fee, charge, or other indebtedness owed under this title; the person seeking the renewal of the license is in default on a student loan administered by the Texas Guaranteed Student Loan Corporation, under Section 57.491 (Loan Default Ground for Nonrenewal of Professional or Occupational License), Education Code, or during the current term of the license, the commissioner becomes aware of any fact that would have been grounds for denial of an original license if the fact had been known by the commissioner on the date the license was granted.

Sec. 157.016. RENEWAL AFTER EXPIRATION OF LICENSE; NOTICE. (a) Prohibits a person whose license has expired from engaging in activities that require a license until the license has been renewed.

(b) Authorizes a person whose license has not been renewed before January 1 but who is otherwise eligible to renew a license, and does so before March 1, to renew the license by paying the commissioner a reinstatement fee in an amount that is equal to 150 percent of the required renewal fee.

(c) Prohibits a person whose license has not been renewed before March 1 from renewing the license. Authorizes the person to obtain a new license by complying with the requirements and procedures for obtaining an original license.

(d) Requires the commissioner or the commissioner's authorized representative, not later than the 60th day before the date a person's license is scheduled to expire, to send written notice of the impending expiration to the person at the person's last known address according to the official licensing records.

Sec. 157.017. DENIAL OF APPLICATIONS AND RENEWALS. (a) Requires the commissioner, if the commissioner declines or fails to issue or renew a license, to promptly give written notice to the applicant that the application or renewal, as appropriate, was denied.

(b) Requires the applicant or person, before the applicant or a person requesting the renewal of a license may appeal a determination to a district court as provided by Section 157.026(d), to file with the commissioner, not later than the 10th day after the date on which notice under Subsection (a) is received, an appeal of the ruling requesting a time and place for a hearing before an administrative law judge designated by the commissioner.

(c) Requires the designated administrative law judge to set the time and place for a hearing requested under Subsection (b) not later than the 90th day after the date on which the appeal is received. Requires the administrative law judge to provide at least 10 days' notice of the hearing to the applicant or person requesting the renewal. Authorizes the time of the hearing to be continued periodically with the consent of the applicant or person requesting the renewal. Requires the commissioner, after the hearing, to enter an order relative to the applicant based on the findings of fact, conclusions of law, and recommendations of the administrative law judge.

(d) Provides that if an applicant or person requesting the renewal fails to request a hearing under this section, the commissioner's refusal to issue or renew a license is final and not subject to review by the courts.

(e) Provides that a hearing held under this section is governed by Chapter 2001 (Administrative Procedure), Government Code. Authorizes an appeal of a final order issued under this section to be made in accordance with Section 157.026(d).

(f) Requires a person who requests a hearing under this section to be required to pay a deposit to secure the payment of the costs of the hearing in an amount to be determined by the commissioner not to exceed \$500. Requires that the entire deposit be refunded to the person if the person prevails in the contested case hearing. Requires that any portion of the deposit in excess of the costs of the hearing assessed against that person, if the person does not prevail, be refunded.

(g) Provides that a person whose application for a license has been denied is not eligible to be licensed for a period of two years after the date the denial becomes final, or a shorter period determined by the commissioner after evaluating the specific circumstances of the person's subsequent application. Authorizes the finance commission to adopt rules to provide conditions for which the commissioner may shorten the time for eligibility for a new license.

Sec. 157.018. PROBATIONARY AND PROVISIONAL LICENSES. (a) Authorizes the commissioner to issue probationary and provisional licenses.

(b) Requires the finance commission by rule to adopt reasonable terms and conditions for probationary and provisional licenses.

Sec. 157.019. MODIFICATION OF LICENSE. (a) Requires a mortgage banker employee who is a residential mortgage loan originator, before the 10th day preceding the effective date of an address change, to notify the commissioner or authorized designee in writing of the new address.

(b) Requires a person licensed under this chapter to notify the commissioner or the commissioner's authorized designee not later than the 10th day after the date of any change in the person's name for the issuance of an amended license.

Sec. 157.020. ANNUAL CALL REPORT. (a) Requires each mortgage banker to file an annual call report with the commissioner or the commissioner's authorized designee on a form prescribed by the commissioner or authorized designee. Provides that the report is a statement of condition of the mortgage banker and the mortgage banker's operations, including financial statements and production activity volumes.

(b) Provides that the information contained in the call report related to residential mortgage loan origination volume or other trade information is confidential and is prohibited from being disclosed by the commissioner or authorized designee.

Sec. 157.021. INSPECTION; INVESTIGATIONS. (a) Authorizes the commissioner to conduct an inspection of a person licensed as a residential mortgage loan originator as the commissioner determines necessary to determine whether the person is complying with this chapter, Chapter 180, and applicable rules. Authorizes an inspection under this

subsection to include inspection of the books, records, documents, operations, and facilities of the person. Authorizes the commissioner to request the assistance and cooperation of the mortgage banker in providing needed documents and records. Prohibits the commissioner from making a request of the mortgage banker for documents and records unrelated to the person being investigated or inspected. Authorizes the commissioner to share evidence of criminal activity gathered during an inspection or investigation with any state or federal law enforcement agency.

(b) Requires the commissioner, on the signed written complaint of a person, to investigate the actions and records of a person licensed as a residential mortgage loan originator if the complaint, or the complaint and documentary or other evidence presented in connection with the complaint, provides a reasonable cause. Requires the commissioner, before commencing an investigation, to notify the licensed residential mortgage loan originator in writing of the complaint and that the commissioner intends to investigate the matter.

(c) Requires the commissioner at any time, for reasonable cause, to investigate a person licensed as a residential mortgage loan originator to determine whether the person is complying with this chapter, Chapter 180, and applicable rules.

(d) Authorizes the commissioner to conduct an undercover or covert investigation only if the commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of this chapter.

(e) Requires the finance commission by rule to provide guidelines to govern an inspection or investigation, including rules to determine the information and records of the licensed residential mortgage loan originator to which the commissioner may demand access during an inspection or an investigation, and establish what constitutes reasonable cause for an investigation.

(f) Provides that information obtained by the commissioner during an inspection or an investigation is confidential unless disclosure of the information is permitted or required by other law.

(g) Authorizes the commissioner to share information gathered during an investigation or inspection with any state or federal agency only if the commissioner determines there is a valid reason for the sharing.

Sec. 157.022. ISSUANCE AND ENFORCEMENT OF SUBPOENA. (a) Authorizes the commissioner, during an investigation, to issue a subpoena that is addressed to a peace officer of this state or other person authorized by law to serve citation or perfect service. Authorizes the subpoena to require a person to give a deposition, produce documents, or both.

(b) Authorizes the commissioner, if a person disobeys a subpoena or if a person appearing in a deposition in connection with the investigation refuses to testify, to petition a district court in Travis County to issue an order requiring the person to obey the subpoena, testify, or produce documents relating to the matter. Requires the court to promptly set an application to enforce a subpoena issued under Subsection (a) for hearing and require to cause notice of the application and the hearing to be served on the person to whom the subpoena is directed.

Sec. 157.023. ADMINISTRATIVE PENALTY. (a) Authorizes the commissioner, after notice and opportunity for a hearing, to impose an administrative penalty on a person licensed as a residential mortgage loan originator under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) Prohibits the amount of the penalty from exceeding \$2,500, and provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. Requires that the amount be based on the seriousness of the

violation, including the nature, circumstances, extent, and gravity of 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.

(c) Authorizes the enforcement of the penalty to be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. Authorizes a person who cannot afford to pay the penalty or file the bond to stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the commissioner to contest the affidavit as provided by those rules.

(d) Authorizes the attorney general to sue to collect the penalty.

(e) Provides that an appeal of an administrative penalty under this section is considered to be a contested case under Chapter 2001, Government Code.

Sec. 157.024. **DISCIPLINARY ACTION; CEASE AND DESIST ORDER.** (a) Authorizes the commissioner to order disciplinary action against a licensed residential mortgage loan originator when the commissioner, after notice and opportunity for a hearing, has determined that the person:

(1) obtained a license, including a renewal of a license, 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 residential mortgage loan originator that was misleading, was likely to deceive the public, in any manner tended to create a misleading impression, failed to identify as a licensed residential mortgage loan originator the person causing the advertisement to be published, or violated 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 nolo contendere to or was 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 a residential mortgage loan for a purpose for which the fee was paid;

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

(7) induced or attempted to induce a party to a contract to breach the contract so the person could make a residential mortgage loan;

(8) published or circulated an unjustified or unwarranted threat of legal proceedings in matters related to the person's actions or services as a licensed residential mortgage loan originator;

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

(10) acted in the dual capacity of a licensed residential mortgage loan originator 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;

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

(12) failed or refused on demand to produce a document, book, or record concerning a residential mortgage loan transaction conducted by the licensed residential mortgage loan originator 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 residential mortgage loan originator's business kept by any other person or any business entity through which the residential mortgage loan originator conducts residential mortgage loan origination activities; or provide information requested by the commissioner as a result of a formal or informal complaint made to the commissioner;

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

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

(15) provided false information to the commissioner during the course of an investigation or inspection;

(16) 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; or

(17) 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 residential mortgage loan originator.

(b) Authorizes the commissioner to also order disciplinary action against a licensed residential mortgage loan originator, after notice and opportunity for a hearing, if the commissioner, during the current term of the license, becomes aware of any fact that would have been grounds for denial of an original license if the fact had been known by the commissioner on the date the license was granted.

(c) Authorizes the commissioner, in addition to disciplinary action by the commissioner authorized under Subsections (a) and (b), if the commissioner has reasonable cause to believe that a licensed residential mortgage loan originator has violated or is about to violate this section, to issue without notice and hearing an order to cease and desist continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter.

(d) Requires that an order issued under Subsection (c) contain a reasonably detailed statement of the facts on which the order is made. Requires the commissioner, if a residential mortgage loan originator against whom the order is made requests a hearing, to set and give notice of a hearing before the commissioner or an administrative law judge. Requires that the hearing be governed by Chapter 2001, Government Code. Authorizes the commissioner by order, based on the findings of fact, conclusions of law, and recommendations of the administrative law judge, to find that a violation has occurred or not occurred.

(e) Provides that if a hearing is not requested under Subsection (d) not later than the 30th day after the date on which an order is made, the order is considered final and not appealable.

(f) Authorizes the commissioner, after giving notice, to impose against a residential mortgage loan originator who violates a cease and desist order an administrative penalty in an amount not to exceed \$1,000 for each day of the violation. Authorizes the commissioner, in addition to any other remedy provided by law, to institute in district court a suit for injunctive relief and to collect the administrative penalty. Provides that a bond is not required of the commissioner with respect to injunctive relief granted under this subsection.

(g) Provides that for purposes of Subsection (a), a residential mortgage loan originator is considered convicted if a sentence is imposed on that person, that person receives community supervision, including deferred adjudication community supervision, or the court defers final disposition of that person's case.

(h) Authorizes the commissioner, if a residential mortgage loan originator fails to pay an administrative penalty that has become final or fails to comply with an order of the commissioner that has become final, in addition to any other remedy provided under law, on not less than 10 days' notice to the residential mortgage loan originator, to without a prior hearing suspend the residential mortgage loan originator's license. Provides that the suspension continues until the residential mortgage loan originator has complied with the administrative order or paid the administrative penalty. Prohibits the residential mortgage loan originator, during the period of suspension, from originating a residential mortgage loan, as defined by Section 180.002 (Definitions).

(i) Authorizes an order of suspension under Subsection (h) to be appealed. Provides that an appeal is a contested case governed by Chapter 2001, Government Code. Requires that a hearing of an appeal of an order of suspension issued under Subsection (h) be held not later than the 15th day after the date of receipt of the notice of appeal. Requires the appellant to be provided at least three days' notice of the time and place of the hearing.

(j) Authorizes an order revoking the license of a residential mortgage loan originator to provide that the person is prohibited, without previously obtaining written consent of the commissioner, from engaging in the business of originating or making residential mortgage loans, as defined by Section 180.002; otherwise affiliating with a person for the purpose of engaging in the business of originating or making residential mortgage loans, as defined by Section 180.002; and being an employee, officer, director, manager, shareholder, member, agent, contractor, or processor of a mortgage banker, mortgage broker, or mortgage broker loan officer.

(k) Authorizes the commissioner, on notice and opportunity for a hearing, to suspend the license of a residential mortgage loan originator 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. Provides that the suspension continues until the criminal case is dismissed or the person is acquitted.

Sec. 157.025. RESTITUTION. Authorizes the commissioner to order a residential mortgage loan originator to make restitution for any amount received by that person in violation of this chapter.

Sec. 157.026. HEARINGS AND JUDICIAL REVIEW. (a) Authorizes the commissioner to employ an enforcement staff to investigate and prosecute complaints made against residential mortgage loan originators licensed under this chapter. Authorizes the commissioner to employ an administrative law judge to conduct hearings

under this section. Authorizes the commissioner to collect and deposit any court costs assessed under a final order.

(b) Entitles the applicant or license holder, if the commissioner proposes to suspend or revoke a license of a residential mortgage loan originator or if the commissioner refuses to issue or renew a license to an applicant for a license or person requesting a renewal of a license under this chapter, to a hearing before the commissioner or an administrative law judge who is required to make a proposal for decision to the commissioner. Requires the commissioner or administrative law judge to prescribe the time and place of the hearing. Provides that the hearing is governed by Chapter 2001, Government Code.

(c) Authorizes the commissioner or administrative law judge to issue subpoenas for the attendance of witnesses and the production of records or documents. Authorizes process issued by the commissioner or the administrative law judge to extend to all parts of the state and may be served by any person designated by the commissioner or administrative law judge.

(d) Provides that an individual aggrieved by a ruling, order, or decision of the commissioner has the right to appeal to a district court in the county in which the hearing was held. Provides that an appeal under this subsection is governed by Chapter 2001, Government Code.

Sec. 157.027. CIVIL ACTIONS AND INJUNCTIVE RELIEF. (a) Authorizes a residential mortgage loan applicant injured by a violation of this chapter by a residential mortgage loan originator to bring an action for recovery of actual monetary damages and reasonable attorney's fees and court costs.

(b) Authorizes the commissioner, the attorney general, or a residential mortgage loan applicant to bring an action to enjoin a violation of this chapter by a residential mortgage loan originator.

(c) Provides that a remedy provided by this section is in addition to any other remedy provided by law.

Sec. 157.028. BURDEN OF PROOF TO ESTABLISH AN EXEMPTION. Provides that the burden of proving an exemption in a proceeding or action brought under this chapter is on the person claiming the benefit of the exemption.

Sec. 157.029. RELIANCE ON WRITTEN NOTICES FROM THE COMMISSIONER. Provides that a person does not violate this chapter with respect to an action taken or omission made in reliance on a written notice, written interpretation, or written report from the commissioner unless a subsequent amendment to this chapter or a rule adopted under this chapter affects the commissioner's notice, interpretation, or report.

Sec. 157.030. COMPLETION OF RESIDENTIAL MORTGAGE ORIGINATION SERVICES. (a) Provides that on disbursement of mortgage proceeds to or on behalf of the residential mortgage loan applicant, the residential mortgage loan originator who assisted the applicant in obtaining the residential mortgage loan is considered to have completed the performance of the loan originator's services for the applicant and owes no additional duties or obligations to the applicant with respect to the loan.

(b) Provides that this section does not limit or preclude the liability of a residential mortgage loan originator for failing to comply with this chapter or a rule adopted under this chapter, failing to comply with a provision of or duty arising under an agreement with a residential mortgage loan applicant under this chapter, or violating any other state or federal law.

Sec. 157.031. UNLICENSED ACTIVITY; OFFENSE. (a) Provides that a person commits an offense if the person is an employee of a mortgage banker, is not exempt under this chapter, and acts as a residential mortgage loan originator without first

obtaining a license required under this chapter. Provides that an offense under this subsection is a Class B misdemeanor. Provides that a second or subsequent conviction for an offense under this subsection is a Class A misdemeanor.

(b) Authorizes the commissioner, if the commissioner has reasonable cause to believe that a person who is not licensed or exempt under this chapter has engaged, or is about to engage, in an act or practice for which a license is required under this chapter, to issue, without notice and hearing, an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter. Requires that the order contain a reasonably detailed statement of the facts on which the order is made. Authorizes the order to assess an administrative penalty in an amount not to exceed \$1,000 per day for each violation and to require a person to pay to a residential mortgage loan applicant any compensation received by the person from the applicant in violation of this chapter. Requires the commissioner if a person against whom the order is made requests a hearing, to set and give notice of a hearing before the commissioner or an administrative law judge. Requires that the hearing be governed by Chapter 2001, Government Code. Provides that an order under this subsection becomes final unless the person to whom the order is issued requests a hearing not later than the 30th day after the date the order is issued.

(c) Provides that if a hearing has not been requested under Subsection (b) not later than the 30th day after the date the order is made, the order is considered final and not appealable. Authorizes the commissioner, after giving notice, 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 a violation. Authorizes the commissioner, in addition to any other remedy provided by law, to institute in district court a suit for injunctive relief and to collect the administrative penalty. Provides that a bond is not required of the commissioner with respect to injunctive relief granted under this section.

SECTION 9. Amends the heading to Section 341.103, Finance Code, to read as follows:

Sec. 341.103. REGULATION OF SAVINGS INSTITUTIONS, LICENSED MORTGAGE BROKERS AND LOAN OFFICERS, AND REGISTERED MORTGAGE BROKERS AND LOAN OFFICERS.

SECTION 10. Amends Section 341.103(a), Finance Code, as follows:

(a) Requires the savings and mortgage lending commissioner to enforce this subtitle relating to the regulation of persons registered or licensed under Chapter 157 (Registration of Mortgage Bankers).

SECTION 11. Provides that an individual is not required to comply with Section 157.012, Finance Code, as added 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).

SECTION 12. Makes application of this Act contingent upon passage of H.B. 10 or other similar legislation.

SECTION 13. Effective date, except as provided by Section 12 of this Act: April 1, 2010.