

## **BILL ANALYSIS**

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S.B. 1124  
By: Carona  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Secure and Fair Enforcement for Mortgage Licensing Act (Texas SAFE Act) was passed in 2009, based on a federal mandate handed down by Congress. The federal legislation creating that mandate, known as the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, provided for the Nationwide Mortgage Licensing System and Registry, a system that issues a unique identifying number permanently identifying a residential mortgage loan originator. Texas was required to enact the provisions of the Texas SAFE Act to be in compliance with federal rules that have been proposed by the United State Department of Housing and Urban Development.

A number of provisions within the Texas SAFE Act need to be reconciled due to the differences in definitions and powers that existed in the residential mortgage loan origination statutes of Chapters 156 (Mortgage Brokers), 157 (Registration of Mortgage Bankers), 180 (Residential Mortgage Loan Originators), and 342 (Consumer Loans), Finance Code, prior to the passage of the Texas SAFE Act.

S.B. 1124 reconciles differences in definitions and powers that existed in the residential mortgage loan origination statutes of Chapter 156, 157, and 342, Finance Code, as well as adding a new provision to Chapter 180, stating that the long-standing licensing exception for certain owner-financed residential loans continues to exist following the implementation of the Texas SAFE Act.

This bill also includes a provision to address a drafting oversight in the original Texas SAFE Act. The Texas SAFE Act shifted jurisdiction for oversight of the second mortgage liens from the Office of the Consumer Credit Commissioner (OCCC) to the Texas Department of Savings and Mortgage Lending (TDSML). In doing so, the bill added oversight to TDSML but failed to eliminate the licensing requirement with OCCC.

As proposed, S.B. 1124 amends current law relating to licensing and regulation of certain persons involved in residential mortgage lending pursuant to the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 and provides penalties.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to Finance Commission of Texas (finance commission) is modified in SECTION 7 (Section 156.004, Finance Code), SECTION 9 (Section 156.102, Finance Code), SECTION 11 (Section 156.105, Finance Code), and SECTION 25 (Section 156.210, Finance Code) of this bill.

Rulemaking authority is expressly granted to the finance commission in SECTION 50 (Section 157.007, Finance Code) of this bill.

Rulemaking authority previously granted to finance commission is rescinded in SECTION 64 (Sections 156.2011, 156.208, 156.215, and 157.018, Finance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 11.306, Finance Code, as follows:

Sec. 11.306. New heading: RESIDENTIAL MORTGAGE LOAN ORIGINATION RULES. Authorizes the Finance Commission of Texas (finance commission) to adopt residential mortgage loan origination rules, rather than mortgage broker rules, as provided by Chapter 156.

SECTION 2. Amends Chapter 13, Finance Code, by adding Section 13.016, as follows:

Sec. 13.016. RECOVERY FUND. (a) Requires the savings and mortgage lending commissioner (commissioner) to establish, administer, and maintain one recovery fund for the purposes of Chapters 156 (Mortgage Brokers) and 157 (Registration of Mortgage Bankers). Requires the recovery fund to be administered and maintained under Subchapter F (Mortgage Broker Recovery Fund), Chapter 156.

(b) Provides that the commissioner's authority under this section includes the authority to:

(1) set fee amounts under Chapters 156 and 157 for deposit in the recovery fund; and

(2) enforce disciplinary action as provided by Chapters 156 and 157 for a person's failure to comply with the applicable provisions of those chapters relating to the recovery fund and with applicable rules adopted under those chapters.

SECTION 3. Amends the heading to Chapter 156, Finance Code, to read as follows:

CHAPTER 156. RESIDENTIAL MORTGAGE LOAN COMPANIES AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

SECTION 4. Amends Section 156.001, Finance Code, as follows:

Sec. 156.001. SHORT TITLE. Authorizes that this chapter be cited as the Residential Mortgage Loan Company and Residential Mortgage Loan Originator Licensing and Registration Act, rather than the Mortgage Broker License Act.

SECTION 5. Amends Section 156.002, Finance Code, by amending Subdivisions (1), (2), (7), and (8) and adding Subdivisions (1-a), (1-b), (1-c), (4-a), (6-a), (8-a), (10-a), (10-b), (10-c), (12), (13), (14), and (15), as follows:

(1) Defines "auxiliary mortgage loan activity company."

(1-a) Redesignates existing Subdivision (1) as Subdivision (1-a). Makes no further changes.

(1-b) Defines "credit union subsidiary organization."

(1-c) Defines "department."

(2) Redefines "disciplinary action."

(4-a) Defines "independent contractor loan processor or underwriter company."

(6-a) Defines "loan processor or underwriter."

(7) Redefines "mortgage applicant."

(8) Redefines "mortgage banker."

(8-a) Defines "mortgage company."

(10-a) Defines "Nationwide Mortgage Licensing System and Registry."

(10-b) Defines "qualifying individual."

(10-c) Defines "recovery fund."

(12) Defines "residential mortgage loan."

(13) Defines "residential mortgage loan company."

(14) Defines "residential mortgage loan originator."

(15) Defines "residential real estate."

SECTION 6. Amends Section 156.003, Finance Code, to change a reference to a mortgage broker to a residential mortgage loan originator.

SECTION 7. Amends Section 156.004, Finance Code, as follows:

Sec. 165.004. DISCLOSURE TO APPLICANT. (a) Creates this subsection from existing text. Makes nonsubstantive and conforming changes.

(b) Creates this subsection from existing text. Requires the finance commission, by rule, to adopt, rather than promulgate, a standard disclosure form to be used by the residential mortgage loan originator, rather than the mortgage broker.

SECTION 8. Amends Section 156.005, Finance Code, to make conforming changes.

SECTION 9. Amends Sections 156.102(b) and (b-1), Finance Code, as follows:

(b) Authorizes the finance commission to adopt rules to prohibit false, misleading, or deceptive practices by residential mortgage loan originators, rather than by mortgage brokers and loan officers, but prohibits the finance commission from adopting any other rules restricting competitive bidding or advertising by residential mortgage loan originators, rather than by mortgage brokers or loan officers. Prohibits the finance commission, when adopting rules under this subsection, from restricting certain details of the advertisement, including a residential mortgage loan originator's advertisement, rather than a mortgage broker's or loan officer's advertisement, under a trade name.

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

SECTION 10. Amends Sections 156.104(b-1) and (h), Finance Code, as follows:

(b) Requires the mortgage industry advisory committee (advisory committee) to include six individuals licensed by the Texas Department of Banking (TDB) as residential mortgage loan originators, two of whom must hold an active real estate broker or salesperson license issued under Chapter 1101 (Real Estate Brokers and Salespersons), Occupations Code, rather than 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, Occupations Code, and three individuals licensed as residential mortgage loan originators under Chapter 157, one of whom must hold an active real estate broker or salesperson license issued under Chapter 1101, Occupations Code.

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

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

(A) the licensing of residential mortgage loan originators or residential mortgage loan companies, rather than mortgage brokers and loan officers;

(B) the education and experience requirements for licensing residential mortgage loan originators, rather than mortgage brokers and loan officers; and

(C) the conduct and ethics of residential mortgage loan originators, rather than mortgage brokers and loan officers;

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

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

SECTION 11. Amends Section 156.105, Finance Code, as follows:

Sec. 156.105. **STANDARD FORMS.** (a) Requires the finance commission, by rule, to adopt one or more standard forms for use by a residential mortgage loan originator, rather than a mortgage broker or loan officer, in representing that an applicant for a residential mortgage loan is preapproved or has prequalified for the loan.

(b) Requires the finance commission to adopt rules requiring a residential mortgage loan originator, rather than a mortgage broker or loan officer, licensed under this chapter to use the forms adopted by the finance commission under Subsection (a).

SECTION 12. Amends the heading to Subchapter C, Chapter 156, Finance Code, to read as follows:

**SUBCHAPTER C. RESIDENTIAL MORTGAGE LOAN COMPANY AND RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSES AND REGISTRATION**

SECTION 13. Amends Section 156.201, Finance Code, as follows:

Sec. 156.201. **LICENSES REQUIRED.** (a) Prohibits a person from acting in the capacity of, engaging in the business of, or advertising or holding that person out as engaging in or conducting the business of a residential mortgage loan company, rather than a mortgage broker, in this state unless the person holds an active residential mortgage loan company license, rather than a mortgage broker license, is registered under Section 156.214 (Registered Financial Services Company), or is exempt under Section 156.202 (Exemptions).

(b) Prohibits an individual, except as provided by Subsection (b-1), from acting or attempting to act as a residential mortgage loan originator, rather than a loan officer, unless the individual at the time is:

(1) licensed under this chapter and sponsored by a licensed residential mortgage loan company, rather than a mortgage broker, and is acting for the residential mortgage loan company, rather than a mortgage broker; or

(2) exempt under Section 156.202.

(b-1) Prohibits an exclusive agent of a registered financial services company from acting or attempting to act as a residential mortgage loan originator unless the exclusive agent at the time is licensed under this chapter and sponsored by a registered financial services company and is acting for the company.

(b-2) Requires a residential mortgage loan originator to be sponsored by at least one residential mortgage loan company.

(c) Provides that each residential mortgage loan company and the company's qualifying individual, rather than each mortgage broker, licensed under this chapter is responsible to the commissioner and members of the public for any act or conduct performed by the residential mortgage loan originator, rather than mortgage broker or a loan officer, sponsored by or acting for the residential mortgage loan company, rather than the mortgage broker, in connection with:

(1) the origination of a residential mortgage loan; or

(2) a transaction that is related to the origination of a residential mortgage loan in which the qualifying individual, rather than mortgage broker, knew or should have known of the transaction.

SECTION 14. Amends Section 156.202, Finance Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Defines "depository institution," "dwelling," "federal banking agency," and "immediate family member."

(a-1) Redesignates existing Subsection (a) as Subsection (a-1). Provides that the following persons are exempt from this chapter:

(1) a registered mortgage loan originator when acting for:

(A) a depository institution;

(B) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(C) an institution regulated by the Farm Credit Administration;

(2) an individual who offers or negotiates the 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:

(A) takes a residential mortgage loan application; and

(B) offers or negotiates the terms of a residential mortgage loan;

(4) an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence;

(5) 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;

(6) a mortgage banker registered under Chapter 157; and

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

Deletes existing text providing that the following persons are exempt from this chapter:

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

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

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

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

(D) a mortgage banker registered under Chapter 157;

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

(F) a Farm Credit System institution; or

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

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

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

(4) an individual who:

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

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

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

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

SECTION 15. Amends Section 156.203, Finance Code, by amending Subsections (a), (b), and (c) and adding Subsections (a-1) and (a-2), as follows:

(a) Provides that, for purposes of this section, an application for a residential mortgage loan company license means an application for:

(1) a mortgage company license;

(2) a credit union subsidiary organization license;

(3) an auxiliary independent contractor company license; or

(4) an independent contractor loan processor or underwriter company license.

(a-1) Redesignates existing Subsection (a) as Subsection (a-1). Requires that an application for a residential mortgage loan company license and a residential mortgage loan originator license, rather than a mortgage broker or loan officer license, be:

- (1) in writing;
- (2) under oath; and
- (3) on the form prescribed by the commissioner.

(a-2) Requires an application for a financial services company registration under Section 156.214 to be:

- (1) in writing;
- (2) under oath; and
- (3) on the form prescribed by the commissioner.

(b) Requires that an application for a residential mortgage loan company license, rather than a mortgage broker license, be accompanied by an application fee in an amount determined by the commissioner not to exceed \$375. Deletes existing text requiring that an application for a mortgage broker license be accompanied by, in addition to an application fee in an amount determined by the commissioner not to exceed \$375, a recovery fund fee as provided by Section 156.502 (Funding).

(c) Requires that an application for a residential mortgage loan originator license, rather than a loan officer license, be accompanied by:

- (1) an application fee in an amount determined by the commissioner not to exceed \$375, rather than \$275; and
- (2) a recovery fund fee as provided by Section 156.502.

SECTION 16. Amends Subchapter C, Chapter 156, Finance Code, by adding Sections 156.2041, 156.2042, 156.2043, 156.2044, 156.2045, and 156.2046, as follows:

Sec. 156.2041. QUALIFICATIONS AND REQUIREMENTS FOR LICENSES: MORTGAGE COMPANY AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS. (a) Requires an applicant, to be issued a mortgage company license, to:

- (1) submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry (NMLSR);
- (2) designate control persons for the mortgage company through NMLSR;
- (3) designate an individual licensed as a residential mortgage loan originator under this chapter as the company's qualifying individual;
- (4) submit a completed branch application through NMLSR for each branch office that engages in residential mortgage loan activity on residential real estate located in this state;
- (5) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant;
- (6) have the company name or assumed name properly filed with either the secretary of state or with the appropriate county clerk's office; and

(7) maintain a physical office in this state.

(b) Requires an individual, to be issued a license to act as a mortgage company residential mortgage loan originator, to submit a completed application through NMLSR together with the payment of applicable fees and to establish to the satisfaction of the commissioner that the applicant:

(1) has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;

(2) is not in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant;

(3) has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;

(4) at any time preceding the date of the application, has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;

(5) demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as a residential mortgage loan originator under this chapter;

(6) has successfully completed at least 20 hours of prelicensing education courses approved by NMLSR;

(7) has passed both the state and national components of a written test that meets the requirements of Section 180.057 (Testing Requirements);

(8) has paid a recovery fund fee as required by Section 156.502(a) (relating to paying a fee in addition to the original application fee); and

(9) is a citizen of the United States or a lawfully admitted alien.

Sec. 156.2042. QUALIFICATIONS AND REQUIREMENTS FOR LICENSES: CREDIT UNION SUBSIDIARY ORGANIZATION AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS. (a) Requires an applicant, to be issued a credit union subsidiary organization license, to:

(1) submit a completed application together with the payment of applicable fees through NMLSR;

(2) designate control persons for the organization through NMLSR;

(3) designate an individual licensed as a residential mortgage loan originator under this chapter as the company's qualifying individual;

(4) submit a completed branch application through NMLSR for each branch office that engages in residential mortgage loan activity on residential real estate located in this state; and

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

(b) Requires an individual, to be issued a license to act as a credit union subsidiary organization residential mortgage loan originator, to submit a



completed application through NMLSR together with the payment of applicable fees and to establish to the satisfaction of the commissioner that the applicant:

- (1) has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;
- (2) is not in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant;
- (3) has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;
- (4) at any time preceding the date of the application, has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;
- (5) demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as a residential mortgage loan originator under this chapter;
- (6) has successfully completed at least 20 hours of prelicensing education courses approved by NMLSR;
- (7) has passed both the state and national components of a written test that meets the requirements of Section 180.057;
- (8) has paid a recovery fund fee as required by Section 156.502(a); and
- (9) is a citizen of the United States or a lawfully admitted alien.

Sec. 156.2043. QUALIFICATIONS AND REQUIREMENTS FOR LICENSES: AUXILIARY MORTGAGE LOAN ACTIVITY COMPANY AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS. (a) Requires an applicant, to be issued an auxiliary mortgage loan activity company license, to:

- (1) submit a completed application together with the payment of applicable fees through NMLSR;
- (2) designate control persons for the company through NMLSR;
- (3) designate an individual licensed as a residential mortgage loan originator under this chapter as the company's qualifying individual; and
- (4) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant.

(b) Requires an individual, to be issued a license to act as an auxiliary mortgage loan activity residential mortgage loan originator, to submit a completed application through NMLSR together with the payment of applicable fees and to establish to the satisfaction of the commissioner that the applicant:

- (1) has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;
- (2) is not in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant;

(3) has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;

(4) at any time preceding the date of the application, has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;

(5) demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as a residential mortgage loan originator under this chapter;

(6) has successfully completed at least 20 hours of prelicensing education courses approved by NMLSR;

(7) has passed both the state and national components of a written test that meets the requirements of Section 180.057;

(8) has paid a recovery fund fee as required by Section 156.502(a); and

(9) is a citizen of the United States or a lawfully admitted alien.

Sec. 156.2044. QUALIFICATIONS AND REQUIREMENTS FOR LICENSES: INDEPENDENT CONTRACTOR LOAN PROCESSOR OR UNDERWRITER COMPANY AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS. (a) Requires an applicant, to be issued an independent contractor loan processor or underwriter company license under this chapter, to:

(1) submit a completed application together with the payment of applicable fees through NMLSR;

(2) designate control persons for the company through NMLSR;

(3) designate an individual licensed as a residential mortgage loan originator under this chapter as the company's qualifying individual; and

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

(b) Provides that an independent contractor loan processor or underwriter company is not authorized to originate residential mortgage loans with a license issued under Subsection (a).

(c) Requires an individual, to be issued a license to act as an independent contractor loan processor or underwriter residential mortgage loan originator, to submit a completed application through NMLSR together with the payment of applicable fees and to establish to the satisfaction of the commissioner that the applicant:

(1) has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;

(2) is not in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant;

(3) has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;

(4) at any time preceding the date of the application, has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;

(5) demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as a residential mortgage loan originator under this chapter;

(6) has successfully completed at least 20 hours of prelicensing education courses approved by NMLSR;

(7) has passed both the state and national components of a written test that meets the requirements of Section 180.057;

(8) has paid a recovery fund fee as required by Section 156.502(a); and

(9) is a citizen of the United States or a lawfully admitted alien.

**Sec. 156.2045. QUALIFICATIONS AND REQUIREMENTS FOR REGISTRATION AND LICENSE: FINANCIAL SERVICES COMPANY AND EXCLUSIVE AGENTS.**

(a) Requires an applicant, to be issued a financial services company registration under Section 156.214(c) (relating to issuing a registration to the person who has met certain requirements), to:

(1) obtain pre-approval from the commissioner that the company meets the eligibility requirements for registration as a financial services company under Section 156.214(b) (relating to the requirements to be eligible to register as a registered financial services company);

(2) submit a completed application through NMLSR together with applicable fees required by Section 156.214(b)(4) (relating to paying pay an annual registration fee);

(3) provide evidence to the commissioner that the company has obtained surety bond coverage in an amount equal to \$1 million;

(4) designate an officer of the company to be responsible for the activities of the company's exclusive agents; and

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

(b) Requires an individual, to be issued a license to act as a financial services company exclusive agent, to submit a completed application through NMLSR together with the payment of applicable fees and to establish to the satisfaction of the commissioner that the applicant:

(1) has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;

(2) is not in violation of this chapter, a rule adopted under this chapter, or any order previously issued to the applicant by the commissioner;

(3) has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;

(4) at any time preceding the date of the application, has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;

(5) demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as a residential mortgage loan originator under this chapter;

(6) has successfully completed at least 20 hours of prelicensing education courses approved by NMLSR;

(7) has passed both the state and national components of a written test that meets the requirements of Section 180.057; and

(8) is a citizen of the United States or a lawfully admitted alien.

Sec. 156.2046. **CONVICTION OF OFFENSE.** Provides that, for the purposes of Section 156.2041, 156.2042, 156.2043, 156.2044, or 156.2045, a person is considered to have been convicted of a criminal offense if:

(1) a sentence is imposed on the person;

(2) the person received probation or community supervision, including deferred adjudication or community service; or

(3) the court deferred final disposition of the person's case.

SECTION 17. Amends Section 156.205, Finance Code, as follows:

Sec. 156.205. **FINANCIAL REQUIREMENTS.** (a) Requires that financial requirements for holding a residential mortgage loan originator license, rather than a mortgage broker or loan officer license, except as provided by Subsection (b), be met through participation in the recovery fund.

(b) Provides that an exclusive agent of a financial services company meets the agent's financial requirements for holding a residential mortgage loan originator license by obtaining surety bond coverage in an amount equal to \$1 million.

SECTION 18. Amends the heading to Section 156.206, Finance Code, to read as follows:

Sec. 156.206. **CRIMINAL AND OTHER BACKGROUND CHECKS.**

SECTION 19. Amends Sections 156.206(a), (b), and (c), Finance Code, as follows:

(a) Requires the commissioner, on receipt of an application for a residential mortgage loan originator license, rather than a mortgage broker license or a loan officer license, to, at a minimum, conduct a criminal background and credit history check of the applicant.

(b) Requires the commissioner to conduct criminal background and credit history checks in accordance with Section 180.054 (Criminal and Other Background Checks), and authorizes the commissioner, in connection with each application for a residential mortgage loan originator license, to conduct a criminal background check through the Department of Public Safety (DPS).

Deletes existing text requiring the commissioner to obtain criminal history record information on an applicant that is maintained by DPS and to obtain criminal history record information from the Federal Bureau of Investigation (FBI) on each applicant. Deletes existing text requiring each applicant to submit with the application fingerprint

and other information necessary to implement this section. Deletes existing text authorizing the commissioner to submit the fingerprint and other information to FBI, and providing that DPS is designated to be the recipient of the criminal history record information. Deletes existing text authorizing the commissioner to also obtain criminal history record information from any court or any local, state, or national governmental agency.

(c) Requires the commissioner to keep confidential any background information obtained under this section, rather than subsection, and prohibits the commissioner from releasing or disclosing the information except under certain conditions.

SECTION 20. Amends the heading to Section 156.207, Finance Code, to read as follows:

Sec. 156.207. ISSUANCE OF LICENSE; PROVISIONAL LICENSE.

SECTION 21. Amends Sections 156.207(a) and (b), Finance Code, as follows:

(a) Requires the commissioner to issue a license, rather than a certificate, to an applicant for a residential mortgage loan company license, rather than a mortgage broker license, if the commissioner finds that the applicant meets all requirements and conditions for the license.

(b) Requires the commissioner, when an applicant for a residential mortgage loan originator license, rather than a loan officer license, has met all requirements and conditions for the license, to issue a license to the individual, rather than issue a license certificate to the mortgage broker sponsoring the loan officer.

SECTION 22. Amends Section 156.208, Finance Code, by amending Subsections (a-1), (b-1), (c), and (j) and adding Subsection (b-2), as follows:

(a-1) Provides that a residential mortgage loan company license issued under this chapter is valid through December 31 of the year of issuance and may be renewed on or before its expiration date if the residential mortgage loan company:

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

(2) has not shown a pattern or practice of abusive mortgage activity and has no civil judgments or liens that, in the commissioner's opinion, directly impact the ability of the residential mortgage loan company to conduct business while safeguarding and protecting the public interest.

Deletes existing text providing 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, in addition to a renewal fee in an amount determined by the commissioner not to exceed \$375, 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 (Consequences of Criminal Conviction), 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 (Residential Mortgage Loan Originators).

(b-1) Provides that a residential mortgage loan originator license, except as provided by Subsection (b-2), is valid through December 31 of the year of issuance and may be renewed on or before its expiration date if the residential mortgage loan originator:

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

(2) continues to meet the minimum requirements for license issuance; and

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

Deletes existing text providing 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.

(b-2) Provides that a license issued under this chapter to a registered financial services company's exclusive agent is valid through December 31 of the year of issuance and may be renewed on or before the expiration date if the exclusive agent complies with the requirements of Subsections (b-1)(2) and (3).

(c) Authorizes the commissioner to require residential mortgage loan originators, rather than mortgage brokers or loan officers, to submit requests for renewal on a form prescribed by the commissioner.

(j) Authorizes the commissioner to deny the renewal of a residential mortgage loan originator license, rather than a mortgage broker license or a loan officer license, if:

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

(2) the residential mortgage loan originator, rather than the mortgage broker or loan officer, is in default in the payment of any administrative penalty, fee, charge, or other indebtedness owed under this title;

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

(4) the residential mortgage loan originator, rather than 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.

SECTION 23. Amends the heading to Section 156.2081, Finance Code, to read as follows:

Sec. 156.2081. REINSTATEMENT AFTER EXPIRATION.

SECTION 24. Amends Sections 156.2081(b) and (c), Finance Code, as follows:

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

than authorizes a person whose license has been expired for 90 days or less but who is otherwise eligible to renew a license to renew the license by paying to the commissioner a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) Prohibits a person whose residential mortgage loan originator license has not been renewed before March 1, rather than has been expired for 91 days or more, from renewing the license.

SECTION 25. Amends Section 156.210, Finance Code, as follows:

Sec. 156.210. New heading: **CONDITIONAL LICENSE**. Authorizes the commissioner to issue a conditional license, rather than a probationary license. Requires the finance commission by rule to adopt reasonable terms and conditions for a conditional license, rather than a probationary license.

SECTION 26. Amends Sections 156.211(a), (b), (b-1), (b-2), and (b-3), Finance Code, as follows:

(a) Requires a residential mortgage loan company, rather than a mortgage broker, before the 10th day preceding the effective date of an address change, to notify the commissioner in writing of the new address accompanied by a change of address fee of \$25. Deletes existing text requiring a new license certificate to be obtained before the mortgage broker may conduct business at the new location.

(b) Deletes existing text authorizing a loan officer to act only for the mortgage broker sponsoring the loan officer. Deletes existing text authorizing a loan officer to be sponsored by only one mortgage broker at a time. Requires the residential mortgage loan originator and the residential mortgage loan company, rather than the loan officer and the mortgage broker, respectively, when the sponsorship of a residential mortgage loan originator, rather than a loan officer, is terminated, to immediately notify the commissioner. Deletes existing text requiring the mortgage broker to return the loan officer license to the commissioner. Provides that the residential mortgage loan originator's license, rather than the loan officer's license, then becomes inactive. Authorizes the residential mortgage loan originator license, rather than the loan officer license, to be activated if, before the license expires, a residential mortgage loan company, files a request, accompanied by a \$25 fee, notifying the commissioner that the residential mortgage loan company will sponsor the residential mortgage loan originator and will assume responsibility for the actions of the residential mortgage loan originator.

(b-1) Requires the residential mortgage loan company, rather than a mortgage broker, not later than the 10th day before a residential mortgage loan company begins doing business under an assumed name, to file with the commissioner a copy of an assumed name certificate for each assumed name under which the residential mortgage loan company intends to conduct business. Deletes existing text requiring a mortgage broker to pay a \$25 registration fee for each assumed name. Prohibits a residential mortgage loan originator, rather than a loan officer, from conducting business under any assumed name that is not the registered assumed name of the sponsoring residential mortgage loan company.

(b-2) Requires a person licensed under this chapter to notify the commissioner not later than the 10th day after the date of any change of the person's name for the issuance of an amended license, rather than a certificate. Deletes existing text requiring a person licensed under this chapter to pay to the commissioner a change of name fee of \$25.

(b-3) Requires a residential mortgage loan company, rather than a business entity, licensed under this chapter that changes the company's qualifying individual, rather than its designated representative, to notify the commissioner not later than the 10th business day after the date of the change. Deletes existing text authorizing the commissioner to charge a fee of \$25 for each change of a designated representative.

SECTION 27. Amends Section 156.212, Finance Code, as follows:

Sec. 156.212. MAINTENANCE AND LOCATION OF OFFICES. (a) Requires each residential mortgage loan company, rather than mortgage broker, licensed under this chapter to maintain a physical office in this state. Deletes existing text requiring the address of the office to be designated on the license certificate.

(a-1) Provides that, if a residential mortgage loan company's main office is outside this state, the requirement of Subsection (a) is satisfied if the company has a branch office located in this state.

(b) Requires a residential mortgage loan company, rather than a mortgage broker, if the company maintains an office separate and distinct from the company's main office, rather than if a mortgage broker maintains more than one place of business in this state, whether located in this state or not, that conducts mortgage business with consumers of this state or regarding residential real estate in this state, to apply for, pay a fee of \$50 for, and obtain an additional license, rather than certificate, to be known as a branch office license for each additional office to be maintained by the company.

SECTION 28. Amends Section 156.213, Finance Code, as added by Chapter 337 (H.B. 1636), Acts of the 77th Legislature, Regular Session, 2001, as follows:

Sec. 156.213. New heading: MORTGAGE CALL REPORT. (a) Requires each licensed residential mortgage loan company or licensed residential mortgage loan originator, as required by the commissioner, rather than each mortgage broker, to file a mortgage call report, rather than an annual report, with the commissioner or the commissioner's authorized designee on a form prescribed by the commissioner or authorized designee, rather than with the Savings and Loan Department. Provides that the report:

(1) is a statement of condition of the residential mortgage loan company and the company's operations, or a statement of condition of the residential mortgage loan originators sponsored by the company, as applicable, including financial statements and production activity volumes;

(2) must include any other information required by the commissioner; and

(3) must be filed as frequently as required by the commissioner.

Deletes existing text requiring that the report include data on loan originations in this state for the mortgage broker, information on each loan officer sponsored by the mortgage broker, and any other information required by finance commission rule.

(b) Provides that information contained in the mortgage call report related to residential mortgage loan origination volume or other trade information, including information used to determine statistical entries in the report related to loan origination volume, is confidential and is prohibited from being disclosed by the commissioner, the commissioner's authorized designee, or any other employee of TDB, rather than by the Savings and Loan Department.

SECTION 29. Amends Sections 156.214(a), (b), (c), and (d), Finance Code, as follows:

(a) Authorizes a registered financial services company to perform the services of another residential mortgage loan company, rather than a mortgage broker, as if the company were licensed as a residential mortgage loan company, rather than a mortgage broker, under this chapter, through individuals who are the exclusive agents of the registered financial services company.



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

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

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

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

(4) pay an annual registration fee in an amount determined in a certain manner, including 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 residential mortgage loan originator, rather than a loan officer, under Section 156.203(c)(1) (relating to requiring an application fee to accompany an application for a loan officer license), multiplied by the number of exclusive agents under contract to act for the person in this state or \$200,000; and

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

(c) Requires the commissioner, if the commissioner determines that a person has met the requirements of Subsection (b) and Section 156.2045(a), to issue a registration to the person. Provides that the registration is valid for one year, expires on December 31 of each year, and is required, rather than authorized, to be renewed annually, rather than on or before its expiration date. Requires, rather than authorizes, a person to renew an expired registration in the manner determined by the commissioner, rather than in the same manner as a person may renew an expired license under Section 156.2081(b).

(d) Provides that a registered financial services company is subject to Subchapters D (License Revocation and Suspension and Other Actions Against License Holder) and E (Hearings; Judicial Review; Civil Actions; Unlicensed Activity) as if the company were licensed as a residential mortgage loan company, rather than a mortgage broker.

SECTION 30. Amends Sections 156.301(b) and (h), Finance Code, to change references to a mortgage broker or loan officer to a residential mortgage loan company.

SECTION 31. Amends Section 156.302(b), Finance Code, as follows:

(b) Prohibits the amount of the penalty from exceeding \$25,000 for each violation. Deletes existing text prohibiting the amount of the penalty from exceeding \$2,500, and providing 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 certain factors, including the economic harm to property caused by the violation. Makes nonsubstantive changes.

SECTION 32. Amends Sections 156.303(a), (a-1), (g), and (i), Finance Code, as follows:

(a) Authorizes the commissioner to order disciplinary action against a licensed or registered residential mortgage loan company, rather than a mortgage broker, or a

licensed residential mortgage loan originator, rather than a loan officer, when the commissioner, after notice and opportunity for hearing, has determined that the person:

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

(2) published or caused to be published an advertisement related to the business of a residential mortgage loan company, rather than a mortgage broker, or residential mortgage loan originator, rather than a loan officer, that:

(A) is misleading;

(B) is likely to deceive the public;

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

(D) fails to identify as a residential mortgage loan company, rather than a mortgage broker, or residential mortgage loan originator, rather than a loan officer, the person causing the advertisement to be published; or

(E) violates federal or state law;

(3) while performing an act for which a license or registration 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 residential 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 residential mortgage loan before all of the services that the person agreed to perform for the mortgage applicant are completed, and the proceeds of the residential mortgage loan have been disbursed to or on behalf of the mortgage applicant, except as provided by Section 156.304 (Fee Assessment and Disclosure);

(7) failed within a reasonable time to honor a check issued to the commissioner after the commissioner has mailed a request for payment of the check and any applicable fees 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, registered, or exempt under this chapter for acts for which a license or registration 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 residential 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 residential mortgage loan company, rather than a mortgage broker, or residential mortgage loan originator, rather than a loan officer, as applicable;

(11) established an association, by employment or otherwise, with a person not licensed, registered, or exempt under this chapter who was expected or required to act as a residential mortgage loan company, rather than a mortgage broker, or residential mortgage loan originator, rather than a 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 residential mortgage loan company, rather than a mortgage broker, or residential mortgage loan originator, rather than a 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:

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

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

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

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

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

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

(a-1) Authorizes the commissioner to also order disciplinary action after notice and opportunity for hearing against a licensed or registered residential mortgage loan company, rather than a licensed mortgage broker, or a licensed residential mortgage loan originator, rather than 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.

(g) Authorizes the commissioner, if a person fails to pay an administrative penalty that has become final or fails to comply with an order of the commissioner that has become final, in addition to any other remedy provided under law, on not less than 10 days' notice to the person, to without a prior hearing suspend the person's residential mortgage loan company license, rather than the person's mortgage broker license, or registration or

residential mortgage loan originator license, rather than loan officer license. Requires that the suspension continue until the person has complied with the order or paid the administrative penalty. Prohibits the person, during the period of suspension, from originating a residential mortgage loan and all compensation received by the person during the period of suspension is subject to forfeiture as provided by Section 156.406(b) (relating to liability for damages for receiving money, or the equivalent of money, as a fee or profit without an active mortgage broker or loan officer license or being exempt).

(i) Authorizes an order revoking the license or registration of a residential mortgage loan company, rather than a mortgage broker, or the license of a residential mortgage loan originator, rather than a loan officer, to provide that the person is prohibited, without obtaining prior written consent of the commissioner, from:

(1) engaging in the business of originating or making residential mortgage loans;

(2) being an employee, officer, director, manager, shareholder, member, agent, contractor, or processor of a residential mortgage loan company, rather than a mortgage broker or residential mortgage loan originator, rather than a loan officer; or

(3) otherwise affiliating with a person for the purpose of engaging in the business of originating or making residential mortgage loans.

SECTION 33. Amends Section 156.304, Finance Code, as follows:

(a) Authorizes a residential mortgage loan originator, rather than a mortgage broker, before the completion of all services to be performed, to charge and receive, unless prohibited by law, certain fees for services in assisting a mortgage applicant to obtain a residential mortgage loan, including a fee for processing a residential mortgage loan application or a fee for taking a residential mortgage loan application.

(b) Prohibits a residential mortgage loan originator, rather than a mortgage broker or loan officer, from charging or receiving a fee for locking in an interest rate unless there is a written agreement signed by the mortgage applicant and residential mortgage loan originator, rather than the mortgage broker, that contains a statement of whether the fee to lock in the interest rate is refundable and, if so, the terms and conditions necessary to obtain the refund.

SECTION 34. Amends Section 156.305, Finance Code, to provide that a residential mortgage loan company, rather than a mortgage broker, may be required to make restitution for any amount received by a sponsored residential mortgage loan originator, rather than a loan officer, in violation of this chapter.

SECTION 35. Amends Section 156.401, Finance Code, by adding Subsection (e) to provide that the commissioner has sole discretion to amend, rescind, or vacate any previously issued revocation order.

SECTION 36. Amends Section 156.405, Finance Code, as follows:

Sec. 156.405. New heading: **COMPLETION OF RESIDENTIAL MORTGAGE LOAN ORIGINATOR SERVICES.** (a) Provides that, on disbursement of mortgage proceeds to or on behalf of the mortgage applicant, the residential mortgage loan originator, rather than the mortgage broker and loan officer, who assisted the mortgage applicant in obtaining the residential mortgage loan is considered to have completed the performance of the residential mortgage loan originator's services, rather than the mortgage broker's and loan officer's services, for the mortgage applicant and owes no additional duties or obligations to the mortgage applicant with respect to the residential mortgage loan. Makes nonsubstantive changes.

(b) Provides that this section does not limit or preclude the liability of a residential mortgage loan originator, rather than a mortgage broker or loan officer, for:

- (1) failing to comply with this chapter or a rule adopted under this chapter;
- (2) failing to comply with a provision of or duty arising under an agreement with a mortgage applicant or lender under this chapter; or
- (3) violating any other state or federal law.

SECTION 37. Amends Sections 156.406(a), (b), and (d), Finance Code, as follows:

- (a) Changes a reference to a mortgage broker or loan officer to a residential mortgage loan originator.
- (b) Makes a conforming change.
- (d) Requires a penalty collected under this subsection to be deposited in the recovery fund.

SECTION 38. Amends Section 156.501, Finance Code, as follows:

Sec. 156.501. New heading: RECOVERY FUND. (a) Requires the commissioner to establish, administer, and maintain a recovery fund, rather than a mortgage broker recovery fund, as provided by Section 13.016 and this subchapter. Requires the amounts received by the commissioner for deposit in the fund to be held by the commissioner in trust for carrying out the purposes of the fund.

(b) Requires the recovery fund, subject to this subsection, to be used to reimburse residential mortgage loan applicants for actual damages incurred because of acts committed by a residential mortgage loan originator, rather than a mortgage broker or loan officer, who was licensed under this chapter or under Chapter 157 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:

- (1) a residential mortgage loan originator licensed under this chapter, rather than 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; or
- (2) a residential mortgage loan originator licensed under Chapter 157 that constitutes a violation of Section 157.024(a)(2) (relating to ordering a disciplinary action against a licensed residential mortgage loan originator for publishing or causing to be published an advertisement meeting certain conditions), (3) (relating to ordering a disciplinary action against a licensed residential mortgage loan originator for engaging in conduct constituting improper, fraudulent, or dishonest dealings), (5) (relating to ordering a disciplinary action against a licensed residential mortgage loan originator for failing to use a certain fee), (7) (relating to ordering a disciplinary action against a licensed residential mortgage loan originator for inducing or attempting to induce a party to a contract breach under certain conditions), (8) (relating to ordering a disciplinary action against a licensed residential mortgage loan originator for publishing or circulating an unjustified or unwarranted threat of legal proceedings in certain matters), (9) (relating to ordering a disciplinary action against a licensed residential mortgage loan originator for aiding, abetting, or conspiring with a person to circumvent certain requirements), (10) (relating to ordering a disciplinary action against a licensed residential mortgage loan originator for acting in certain dual capacities), (13) (relating to ordering a disciplinary action against a licensed residential mortgage loan originator

for failing without just cause to surrender, on demand, certain documents or instruments), or (16) (relating to ordering a disciplinary action against a licensed residential mortgage loan originator for paying compensation to a person who is not licensed or exempted under this chapter for certain acts).

(b-1) Prohibits payments from the recovery fund from being made to a lender who makes a residential mortgage loan originated by the residential mortgage loan originator, rather than the mortgage broker or loan officer, or who acquires a residential mortgage loan originated by the residential mortgage loan originator, rather than the mortgage broker or loan officer.

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

(d) Authorizes the recovery 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 payments from the recovery fund to be reduced by the amount of any recovery from the residential mortgage loan originator, rather than 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 residential mortgage loan originator, rather than the mortgage broker or loan officer.

(f) Entitles the commissioner, as manager of the recovery 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 (Procedure for Recovery).

SECTION 39. Amends Section 156.502, Finance Code, as follows:

Sec. 156.502. FUNDING. (a) Requires that the fee for an application for an original license or for renewal of a license issued under this chapter be deposited in the recovery fund.

(b) Requires the amount of money in excess of \$3.5 million, if the balance remaining in the recovery fund at the end of a calendar year is more than that amount, to be available to the commissioner to offset the expenses of participating in and sharing information with NMLSR in accordance with Chapter 180.

SECTION 40. Amends Section 156.503, Finance Code, as follows:

Sec. 156.503. STATUTE OF LIMITATIONS. (a) Prohibits an application for the recovery of actual damages from the recovery fund under Section 156.504 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 recovery fund.

SECTION 41. Amends Sections 156.504(a), (b), and (d), Finance Code, as follows:

(a) Requires a residential mortgage loan applicant, to recover from the recovery fund, to file a written sworn application with the commissioner in the form prescribed by the commissioner, subject to Section 156.503. Authorizes a person who knowingly makes a false statement in connection with applying for money out of the fund to 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 156.501; and

(2) that the applicant:

(A) is not a spouse of the licensed residential mortgage loan originator, rather than the licensed mortgage broker or loan officer;

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

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

(D) is not a person who has aided, abetted, or participated other than as a victim with the licensed residential mortgage loan originator, rather than the licensed 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), Section 156.304, or Section 157.024(a)(2), (3), (5), (7), (8), (9), (10), (13), or (16), or is not the personal representative of a licensed residential mortgage loan originator, rather than the licensed mortgage broker or loan officer; and

(E) is not licensed as a residential mortgage loan originator, rather than 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.

(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 shall make payment from the recovery fund, subject to the limits of Section 156.505.

SECTION 42. Amends Section 156.505, Finance Code, as follows:

Sec. 156.505. RECOVERY LIMITS. (a) Entitles a person entitled to receive payment out of the recovery fund to receive reimbursement of actual, out-of-pocket damages as provided by this section.

(b) Authorizes a payment from the recovery fund to be made as provided by Section 156.504 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, rather than a mortgage broker or loan officer, under this chapter or Chapter 157 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 recovery fund, to prorate recovery based on the amount of damage suffered by each claimant.

SECTION 43. Amends Section 156.506, Finance Code, as follows:

Sec. 156.506. New heading: REVOCATION OR SUSPENSION OF LICENSE FOR PAYMENT FROM RECOVERY FUND. (a) Authorizes the commissioner to revoke or suspend a license issued under this chapter on proof that the commissioner has made a payment from the recovery fund of any amount toward satisfaction of a claim against a residential mortgage loan originator, rather than a mortgage broker or loan officer, under this chapter.

(a-1) Authorizes the commissioner to seek to collect from a residential mortgage loan originator, rather than a mortgage broker or loan officer, the amount paid from the recovery fund on behalf of the residential mortgage loan originator, rather than 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 recovery 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.

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

(c) Provides that a person on whose behalf payment was made from the recovery fund is not eligible to receive a new license or have a suspension lifted 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.

(d) Provides that this section does not limit the authority of the commissioner to take disciplinary action against a residential mortgage loan originator, rather than a mortgage broker or loan officer, for a violation of this chapter or the rules adopted by the finance commission under this chapter. Provides that the repayment in full to the recovery fund of all obligations of a residential mortgage loan originator, rather than a mortgage broker or loan officer, does not nullify or modify the effect of any other disciplinary proceeding brought under this chapter.

SECTION 44. Amends Sections 156.507 and 156.508, Finance Code, as follows:

Sec. 156.507. SUBROGATION. Provides that, when the commissioner has paid an applicant an amount from the recovery fund under Section 156.504, the commissioner is subrogated to all of the rights of the applicant to the extent of the amount paid.

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

SECTION 45. Amends Section 157.002, Finance Code, by adding Subdivisions (4-a) and (4-b) and amending Subdivision (5) to define "Nationwide Mortgage Licensing System and Registry" and "recovery fund" and to redefine "residential mortgage loan."

SECTION 46. Amends Sections 157.003(b) and (e), Finance Code, as follows:



(b) Requires a mortgage banker, to register under this chapter, to enroll with NMLSR and comply with all other applicable rules adopted by the finance commission under this chapter, rather than to file with the commissioner a statement that contains certain information.

(e) Provides that the registration of a mortgage banker is valid on approval of the commissioner and may be denied, withdrawn, or revoked, rather than is valid until withdrawn or revoked. Provides that registration is valid for a term not to exceed one year following the date of approval. Deletes existing text providing that periodic renewal of the registration is not required.

SECTION 47. Amends Section 157.005, Finance Code, as follows:

Sec. 157.005. New heading: UPDATE OF REGISTRATION. Requires a mortgage banker to update information contained in the registration, rather than statement, not later than the 30th day after the date the information changes.

SECTION 48. Amends Section 157.006, Finance Code, to authorize the commissioner to charge a mortgage banker a reasonable fee to cover the costs of the registration and of administering this chapter, rather than the costs of filing the registration statement and administering this chapter. Prohibits the fee from exceeding \$500 a year.

SECTION 49. Amends Chapter 157, Finance Code, by adding Sections 157.0061 and 157.0062, as follows:

Sec. 157.0061. RENEWAL OF REGISTRATION. (a) Provides that the registration of a mortgage banker expires on December 31 of the year in which the registration is approved, and requires that it to be renewed annually.

(b) Requires a mortgage banker, to renew a registration, to comply with the requirements of Section 157.003 (Registration Required) and pay a renewal fee in an amount not to exceed \$500.

Sec. 157.0062. REINSTATEMENT AFTER EXPIRATION OF REGISTRATION. (a) Prohibits a mortgage banker whose registration has expired from engaging in an activity for which registration is required under this chapter until the registration is renewed.

(b) Authorizes a mortgage banker who is otherwise eligible to renew a registration, but has not done so before January 1, to renew the registration before March 1 by paying the commissioner a reinstatement fee in an amount not to exceed \$500.

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

SECTION 50. Amends Section 157.007, Finance Code, as follows:

Sec. 157.007. DISCLOSURE STATEMENT. Requires a mortgage banker that is a residential mortgage loan originator to include a notice to a residential mortgage loan applicant with an application for a residential mortgage loan. Requires the finance commission by rule to adopt a standard disclosure form to be used by the mortgage banker. Deletes existing text setting forth the required language of the notice.

SECTION 51. Reenacts Section 157.012, Finance Code, as added by Chapters 1104 (H.B. 10) and 1147 (H.B. 2779), Acts of the 81st Legislature, Regular Session, 2009, and amends it, as follows:

Sec. 157.012. LICENSE REQUIRED FOR CERTAIN EMPLOYEES OF MORTGAGE BANKERS. (a) Redesignates existing Subsection (b) as Subsection (a). Deletes existing text defining "Nationwide Mortgage Licensing System and Registry" and "residential mortgage loan originator." Prohibits an employee of a mortgage banker from acting in the capacity of a residential mortgage loan originator unless the employee:

(1) is licensed under this chapter, sponsored by a registered mortgage banker, and enrolled with NMLSR as required by Section 180.052 (Enrollment or Registration with Nationwide Mortgage Licensing System and Registry); and

(2) complies with other applicable requirements of Chapter 180 and rules adopted by the finance commission under that chapter.

(b) Redesignates existing Subsection (c) as Subsection (b). Makes no further changes.

(c) Redesignates existing Subsection (d) as Subsection (c). 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 (a), to meet certain criteria, including to not be in violation of this chapter, Chapter 180, or any rules adopted under this chapter or Chapter 180, and to be a citizen of the United States or a lawfully admitted alien.

(d) Provides that a mortgage banker employee who is not a residential mortgage loan originator is not required to enroll with NMLSR or be licensed under this chapter.

SECTION 52. Amends Section 157.013(b), Finance Code, to require an application for a residential mortgage loan originator license to be accompanied by an application fee in an amount determined by the commissioner, not to exceed \$500, and by a recovery fund fee in an amount determined by the commissioner, not to exceed \$20.

SECTION 53. Amends the heading to Section 157.016, Finance Code, to read as follows:

Sec. 157.016. REINSTATEMENT AFTER EXPIRATION OF LICENSE; NOTICE.

SECTION 54. Amends Section 157.019, Finance Code, by adding Subsection (c) as follows:

(c) Requires a mortgage banker employee who is a residential mortgage loan originator to notify the commissioner or authorized designee in writing of a change of sponsorship. Requires that the notice be accompanied by a fee of \$25.

SECTION 55. Amends Section 157.020, Finance Code, as follows:

Sec. 157.020. New heading: MORTGAGE CALL REPORT. (a) Requires each mortgage banker to file a mortgage call report, rather than an annual call report, with the commissioner or the commissioner's authorized designee on a form prescribed by the commissioner or authorized designee. Requires the report to be filed as frequently as required by NMLSR. 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, and any other similar information required by NMLSR.

(b) Provides that the information contained in the mortgage call report related to residential mortgage loan origination volume or other trade information is confidential and may not be disclosed by the commissioner, the commissioner's authorized designee, or any other employee of the Department of Savings and Mortgage Lending.

SECTION 56. Amends Chapter 157, Finance, Code by adding Section 157.0201, as follows:

Sec. 157.0201. RECOVERY FUND. Requires the recovery fund established, administered, and maintained under Section 13.016 and Subchapter F, Chapter 156, to be used as provided by Subchapter F, Chapter 156, to reimburse residential mortgage loan applicants for actual damages incurred because of acts committed by residential mortgage loan originators licensed under this chapter when the act was committed.

SECTION 57. Amends Sections 157.023(a) and (b), Finance Code, as follows:

(a) Authorizes the commissioner, after notice and opportunity for a hearing, to impose an administrative penalty on an individual who is licensed or required to be licensed under this chapter as a residential mortgage loan originator and who violates this chapter or a rule or order adopted under this chapter.

(b) Prohibits the amount of the penalty from exceeding \$25,000 for each violation. Deletes existing text prohibiting the amount of the penalty from exceeding \$2,500, and providing 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 certain factors, including the economic harm to property caused by the violation. Makes nonsubstantive changes.

SECTION 58. Amends Section 157.024, Finance Code, by amending Subsection (j) and adding Subsection (l), as follows:

(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 performing certain actions, including being an employee, officer, director, manager, shareholder, member, agent, contractor, or processor of a mortgage banker, residential mortgage loan company, rather than a mortgage broker, or residential mortgage loan originator for a residential mortgage loan company, rather than a mortgage broker loan officer.

(l) Provides that the commissioner has sole discretion to amend, rescind, or vacate any previously issued order under this chapter.

SECTION 59. Amends Chapter 157, Finance Code, by adding Section 157.0241, as follows:

Sec. 157.0241. REVOCATION OR SUSPENSION OF LICENSE FOR PAYMENT FROM RECOVERY FUND. (a) Authorizes the commissioner to revoke or suspend a license issued under this chapter on proof that the commissioner has made a payment from the recovery fund of any amount toward satisfaction of a claim against a residential mortgage loan originator licensed under this chapter.

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

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

(d) Provides that a person on whose behalf payment was made from the recovery fund is not eligible to receive a new license or have a suspension lifted under this chapter until the person has repaid in full, plus interest at the current legal rate, the amount paid from the recovery fund on the person's behalf and any costs

associated with investigating and processing the claim against the recovery fund or with collection of reimbursement for payments from the recovery fund.

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

SECTION 60. Amends Section 180.002(19), Finance Code, to redefine "residential mortgage loan originator."

SECTION 61. Amends Section 180.003, Finance Code, as follows:

Sec. 180.003. EXEMPTION. Provides that certain persons are exempt from this chapter, including an owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured. Deletes existing text providing that an individual who is an exclusive agent of a registered financial services company, is exempt from regulation under Chapter 156 as provided by Section 156.202(5) (relating to exempting an individual who is an exclusive agent of a registered financial services company under a written agreement prohibiting certain actions), and is individually enrolled as a registered mortgage loan originator with NMLSR is exempt from this chapter.

SECTION 62. Amends Section 180.056, Finance Code, by adding Subsection (h), to require an individual who fails to maintain a residential mortgage loan originator license for at least five consecutive years to retake the prelicensing education requirements prescribed by the S.A.F.E. Mortgage Licensing Act.

SECTION 63. Section 342.051, Finance Code, by adding Section (c-1), to provide that a person who is licensed or registered under Chapter 156 or 157 is not required to obtain a license under this section to make, negotiate, or transact a residential mortgage loan, as defined by Section 180.002 (Definitions).

SECTION 64. (a) Repealers:

(1) Sections 156.002(4) (defining "fund"), (5) (defining "loan officer"), (6) (defining "loan processor"), (9) (defining "mortgage broker"), and (10) (defining "mortgage loan"), Finance Code;

(2) Section 156.2011 (Provisional Loan Officer License), Finance Code;

(3) Section 156.2015(a) (defining "credit union subsidiary organization," "Nationwide Mortgage Licensing System and Registry," and "residential mortgage loan originator"), Finance Code;

(4) Section 156.202(b) (relating to an exclusive agent being considered an employee of the registered financial services company), Finance Code;

(5) Section 156.204 (Qualifications), Finance Code;

(6) Section 156.2071 (Person Licensed in Other Jurisdiction), Finance Code;

(7) Sections 156.208(f) (relating to adopting a system under which licenses expire on certain dates), (g) (relating to adopting rules related to the approval of courses for continuing education credit), (h) (relating to the conditions under which a person is considered convicted), and (i) (relating to adopting a rule to require a

mortgage broker or loan officer to attend not less than eight hours of continuing education courses before renewing a license), Finance Code;

(8) Sections 156.2081(d) (relating to obtaining a new license for a certain person previously licensed in this state) and (e) (relating to requiring the commissioner to send written notice of an impending expiration), Finance Code;

(9) Sections 156.214(e) (relating to restrictions to being an exclusive agent of a registered financial services company), (f) (relating to requiring a registered financial services company to submit certain information to the commissioner), and (g) (relating to requiring the commissioner to notify a person and the registered financial services company as to whether or not the person is eligible to be an exclusive agent), Finance Code;

(10) Section 156.215 (Approval of Courses), Finance Code;

(11) Sections 157.003(b-1) (relating to requiring the list of mortgage banker employees to be promptly updated to reflect any changes), (c) (relating to an employee of a mortgage banker who is not a residential mortgage loan originator not being required to register or be licensed), and (d) (relating to prohibiting the commissioner from requiring a mortgage banker to provide certain information), Finance Code;

(12) Section 157.009(b) (relating to authorizing the commissioner to revoke registration of a mortgage banker under certain conditions), Finance Code;

(13) Section 157.016(d) (relating to requiring the commissioner or an authorized representative to send written notice of an impending expiration), Finance Code; and

(14) Section 157.018 (Probationary and Provisional Licenses), Finance Code.

(b) Repealer: Section 156.213 (Annual Report), Finance Code, as added by Chapter 407 (H.B. 1493), Acts of the 77th Legislature, Regular Session, 2001.

SECTION 65. Provides that, to the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 66. Effective date: September 1, 2011.