CHAPTER 159

S.B. No. 984
AN ACT
relating to the meeting of a governmental body held by videoconference call.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsections (c), (e), (f), and (h), Section 551.127, Government Code, are amended to read as follows:

(c) A meeting of a state governmental body or a governmental body that extends into three or more counties may be held by videoconference call only if the member [a majority of the quorum] of the governmental body presiding over the meeting is physically present at one location of the meeting that is open to the public during the open portions of the meeting.

(e) The notice of a meeting to be held by videoconference call must specify as a location of the meeting the location where a quorum of the governmental body will be physically present and specify the intent to have a quorum present at that location, except that the notice of a meeting to be held by videoconference call under Subsection (c) must specify as a location of the meeting the [each] location where the member [a majority of the quorum] of the governmental body presiding over the meeting will be physically present and specify the intent to have the member [a majority of the quorum] of the governmental body presiding over the meeting present at that location. The location where the member of the governmental body presiding over the meeting is physically present [in addition, the notice of the meeting must specify as a location of the meeting each other location where a member of the governmental body who will participate in the meeting will be physically present during the meeting. Each of the locations] shall be open to the public during the open portions of the meeting.

(f) Each portion of a meeting held by videoconference call that is required to be open to the public shall be visible and audible to the public at the [each] location specified under Subsection (e). If a problem occurs that causes a meeting to no longer be visible and audible to the public at that location, the meeting must be recessed until the problem is resolved. If the problem is not resolved in six hours or less, the meeting must be adjourned.

(h) The [each] location specified under Subsection (e), and each remote location from which a member of the governmental body participates, shall have two-way communication with each other location during the entire meeting. The face of each [each] participant in the videoconference call, while that participant is speaking, shall be clearly visible, and the voice audible, to each other participant and, during the open portion of the meeting, to the members of the public in attendance at a location of the meeting.

SECTION 2. This Act takes effect September 1, 2013.

Passed the Senate on April 23, 2013: Yeas 31, Nays 0; passed the House on May 8, 2013: Yeas 147, Nays 0, two present not voting.

Approved May 24, 2013.

Effective September 1, 2013.

CHAPTER 160

S.B. No. 1004
AN ACT
relating to the regulation of residential mortgage loan originators, residential mortgage loan companies,
mortgage bankers, and residential mortgage loan servicers under the jurisdiction of the Department of Savings and Mortgage Lending; changing a fee.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The heading to Chapter 156, Finance Code, is amended to read as follows:

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

SECTION 2. Section 156.001, Finance Code, is amended to read as follows:

Sec. 156.001. SHORT TITLE. This chapter may be cited as the Residential Mortgage Loan Company [and Residential Mortgage Loan Originator] Licensing and Registration Act.

SECTION 3. Section 156.002, Finance Code, is amended by adding Subdivision (4-b) and amending Subdivisions (10-b) and (11) to read as follows:

(4-b) "Inspection" includes examination.

(10-b) "Qualifying individual" means an individual who is:

(A) licensed under Chapter 157 [this chapter] as a residential mortgage loan originator; and

(B) [is] designated by a residential mortgage loan company as the company's representative [for purposes of the Nationwide Mortgage Licensing System and Registry].

(11) "Registered financial services company" means a person registered under Section 156.2012 [156.214].

SECTION 4. Section 156.003, Finance Code, is amended to read as follows:

Sec. 156.003. SECONDARY MARKET TRANSACTIONS. This chapter does not prohibit a residential mortgage loan originator sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter from receiving compensation from a party other than the mortgage applicant for the sale, transfer, assignment, or release of rights on the closing of a mortgage transaction.

SECTION 5. Subsection (a), Section 156.004, Finance Code, is amended to read as follows:

(a) At the time an applicant submits an application to a residential mortgage loan originator sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter, the residential mortgage loan originator shall provide to the applicant a disclosure that specifies:

(1) the nature of the relationship between the applicant and the residential mortgage loan originator;

(2) the duties the residential mortgage loan originator has to the applicant; and

(3) how the residential mortgage loan originator will be compensated.

SECTION 6. Section 156.005, Finance Code, is amended to read as follows:

Sec. 156.005. AFFILIATED BUSINESS ARRANGEMENTS. Unless prohibited by federal or state law, this chapter may not be construed to prevent affiliated or controlled business arrangements or loan origination services by or between residential mortgage loan originators, sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter, and other professionals if the residential mortgage loan originator complies with all applicable federal and state laws permitting those arrangements or services.

SECTION 7. The heading to Section 156.101, Finance Code, is amended to read as follows:

Sec. 156.101. ADMINISTRATION AND ENFORCEMENT OF CHAPTER; PARTICIPATION IN NATIONAL MORTGAGE LENDING SYSTEM AND REGISTRY.

SECTION 8. Subsection (a), Section 156.101, Finance Code, as amended by Chapters 1104 (H.B. 10) and 1317 (H.B. 2774), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:
(a) The commissioner shall administer and enforce this chapter.

SECTION 9. Subsection (a), Section 156.102, Finance Code, is amended to read as follows:

(a) The finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with this chapter, except as provided by Section 15.4024 with respect to employees of credit union subsidiary organizations subject to regulation under Section 156.2045.

SECTION 10. Subsections (f) and (h), Section 156.104, Finance Code, are amended to read as follows:

(f) The commissioner may remove a member of the advisory committee if:

(1) the member does not maintain the qualifications required by Subsection (b); or

(2) the commissioner determines that the member cannot discharge the member's duties for a substantial part of the term for which the member is appointed.

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

(1) the proposal and adoption of rules relating to the mortgage industry;

[(A) the licensing of residential mortgage loan originators or residential mortgage loan companies;

[(B) the education and experience requirements for licensing residential mortgage loan originators;

[(C) the conduct and ethics of residential mortgage loan originators;

(2) the form of or format for any applications or other documents under this chapter or Chapter 157; and

(3) the interpretation, implementation, and enforcement of this chapter and Chapter 157.

SECTION 11. Section 156.105, Finance Code, is amended to read as follows:

Sec. 156.105. STANDARD FORMS. (a) The finance commission shall adopt one or more standard forms for use by a residential mortgage loan originator sponsored by or conducting business for a licensed or registered residential mortgage loan company under this chapter in representing that an applicant for a residential mortgage loan is preapproved or has prequalified for the loan.

(b) The finance commission shall adopt rules requiring a residential mortgage loan originator licensed under Chapter 157 to use the forms adopted by the finance commission under Subsection (a).

SECTION 12. The heading to Subchapter C, Chapter 156, Finance Code, is amended to read as follows:

SUBCHAPTER C. RESIDENTIAL MORTGAGE LOAN COMPANY [AND RESIDENTIAL MORTGAGE LOAN ORIGINATOR] LICENSES AND REGISTRATION

SECTION 13. Subsections (a) and (c), Section 156.201, Finance Code, are amended to read as follows:

(a) A person may not act in the capacity of, engage in the business of, or advertise or hold that person out as engaging in or conducting the business of a residential mortgage loan company in this state unless the person holds an active residential mortgage loan company license, is registered under Section 156.2012 (156.214), or is exempt under Section 156.202.

(c) Each residential mortgage loan company and the company's qualifying individual licensed under Chapter 157 is responsible to the commissioner and members of the public for any act or conduct performed by the residential mortgage loan originator sponsored by or acting for the residential mortgage loan company 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 knew or should have known of the transaction.

SECTION 14. Subsections (a) and (a-1), Section 156.202, Finance Code, are amended to
read as follows:
(a) In this section, "depository institution," "dwelling," and "federal banking agency[;]
and "immediate family member[;]" have the meanings assigned by Section 180.002.
(a-1) The following [individuals or] entities[, and employees of those entities when acting
for the benefit of those entities,] are exempt from this chapter:
(1) [a registered mortgage loan originator when acting for:
   [(A) a depository institution;
   [(B) a subsidiary of a depository institution that is:
   [(i) owned and controlled by the depository institution; and
   [(ii) 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;
   (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; and
   (8) an entity that is:
       (A) a depository institution;
       (B) a subsidiary of a depository institution that is:
       (i) owned and controlled by the depository institution; and
       (ii) regulated by a federal banking agency; or
       (C) an institution regulated by the Farm Credit Administration[; and
   (9) an individual who is exempt as provided by Section 180.003(b)].

SECTION 15. The heading to Section 156.203, Finance Code, is amended to read as
follows:

Sec. 156.203. APPLICATION [FOR A LICENSE]; FEES.

SECTION 16. Subsections (a-1) and (a-2), Section 156.203, Finance Code, are amended to
read as follows:
(a-1) An application for a residential mortgage loan company license [and a residential
mortgage loan originator license] must be:
(1) in writing;
(2) under oath; and
(3) on the form prescribed by the commissioner.
(a-2) An application for a financial services company registration under Section 156.2012 [156.214] must be:

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

SECTION 17. The heading to Section 156.2041, Finance Code, is amended to read as follows:

Sec. 156.2041. QUALIFICATIONS AND REQUIREMENTS FOR LICENSEES: MORTGAGE COMPANY [AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS].

SECTION 18. Subsection (a), Section 156.2041, Finance Code, is amended to read as follows:

(a) To be issued a mortgage company license, an applicant must:

1. submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;
2. designate control persons for the mortgage company through the Nationwide Mortgage Licensing System and Registry;
3. designate an individual licensed as a residential mortgage loan originator under Chapter 157 [this chapter] as the company's qualifying individual;
4. submit a completed branch application through the Nationwide Mortgage Licensing System and Registry 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;
7. maintain a physical office in this state; and
8. provide financial statements and any other information required by the commissioner.

SECTION 19. The heading to Section 156.2042, Finance Code, is amended to read as follows:

Sec. 156.2042. QUALIFICATIONS AND REQUIREMENTS FOR LICENSEES: CREDIT UNION SUBSIDIARY ORGANIZATION [AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS].

SECTION 20. Subsection (a), Section 156.2042, Finance Code, is amended to read as follows:

(a) To be issued a credit union subsidiary organization license, an applicant must:

1. submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;
2. designate control persons for the organization through the Nationwide Mortgage Licensing System and Registry;
3. designate an individual licensed as a residential mortgage loan originator under Chapter 157 [this chapter] as the company's qualifying individual;
4. submit a completed branch application through the Nationwide Mortgage Licensing System and Registry 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; and
6. maintain a physical office in this state.

SECTION 21. The heading to Section 156.2043, Finance Code, is amended to read as follows:
Sec. 156.2043. QUALIFICATIONS AND REQUIREMENTS FOR LICENSE (LICENSEES): AUXILIARY MORTGAGE LOAN ACTIVITY COMPANY (AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS).

SECTION 22. Subsection (a), Section 156.2043, Finance Code, is amended to read as follows:

(a) To be issued an auxiliary mortgage loan activity company license, an applicant must:

(1) submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;

(2) designate control persons for the company through the Nationwide Mortgage Licensing System and Registry;

(3) designate an individual licensed as a residential mortgage loan originator under Chapter 157 [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.

SECTION 23. The heading to Section 156.2044, Finance Code, is amended to read as follows:

Sec. 156.2044. QUALIFICATIONS AND REQUIREMENTS FOR LICENSE (LICENSEES): INDEPENDENT CONTRACTOR LOAN PROCESSOR OR UNDERWRITER COMPANY (AND INDIVIDUAL LOAN PROCESSORS OR UNDERWRITERS).

SECTION 24. Subsections (a) and (b), Section 156.2044, Finance Code, are amended to read as follows:

(a) To be issued an independent contractor loan processor or underwriter company license under this chapter, an applicant must:

(1) submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;

(2) designate control persons for the company through the Nationwide Mortgage Licensing System and Registry;

(3) designate an individual licensed as a residential mortgage loan originator under Chapter 157 [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) An independent contractor loan processor or underwriter company or a sponsored residential mortgage loan originator is not authorized to originate residential mortgage loans with a license issued under Subsection (a).

SECTION 25. Section 156.2046, Finance Code, is amended to read as follows:

Sec. 156.2046. CONVICTION OF OFFENSE. A [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 26. Subsections (b) and (c), Section 156.206, Finance Code, are amended to read as follows:

(b) The commissioner shall conduct criminal background and credit history checks on a person required to be licensed under this chapter [in accordance with Section 180.054, and, in connection with each application for a residential mortgage loan originator license or other individual license, the commissioner may conduct a criminal background check through the Department of Public Safety].

(c) The commissioner shall keep confidential any background information obtained under this section and may not release or disclose the information unless:
(1) the information is a public record at the time the commissioner obtains the information; or
(2) the commissioner releases the information:
   (A) under order from a court; or
   (B) with the permission of the applicant;
   (C) to a person through whom the applicant is conducting or will conduct business; or
   (D) to a governmental agency.

SECTION 27. The heading to Section 156.207, Finance Code, is amended to read as follows:

Sec. 156.207. ISSUANCE OF LICENSE.

SECTION 28. Subsections (a-i) and (c), Section 156.208, Finance Code, are amended to read as follows:

(a-i) 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; and
   (3) continues to meet the minimum requirements for license issuance.

(c) An application for renewal shall be in the form prescribed by the commissioner.

SECTION 29. Subsection (g), Section 156.209, Finance Code, is amended to read as follows:

(g) A person whose application for or request to renew 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 as determined by the commissioner after evaluating the specific circumstances of the denial [person's subsequent application]. The finance commission may adopt rules to provide conditions for which the commissioner may shorten the period of ineligibility.

SECTION 30. Subsections (b) and (b-1), Section 156.211, Finance Code, are amended to read as follows:

(b) When the sponsorship of a residential mortgage loan originator is terminated, the residential mortgage loan originator or [and] the residential mortgage loan company shall immediately notify the commissioner. [The residential mortgage loan originator's license then becomes inactive. The residential mortgage loan originator's license may 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) Not later than the 10th day before a residential mortgage loan company begins doing business under an assumed name, the residential mortgage loan company shall 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 and pay a $25 registration fee for each assumed name. [A residential mortgage loan originator may not conduct business under any assumed name that is not the registered assumed name of the sponsoring residential mortgage loan company.]

SECTION 31. Subsection (a), Section 156.213, Finance Code, is amended to read as follows:
(a) Each licensed residential mortgage loan company [or licensed residential mortgage loan originator, as required by the commissioner] shall file a mortgage call report with the commissioner or the commissioner’s authorized designee on a form prescribed by the commissioner or authorized designee. 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.

SECTION 32. Section 156.214, Finance Code, is redesignated as Section 156.2012, Finance Code, and amended to read as follows:

Sec. 156.2012 [156.214]. REGISTERED FINANCIAL SERVICES COMPANY. (a) A [registered] financial services company may perform the services of a [another] residential mortgage loan company [as] if the company is registered [were licensed as a residential mortgage loan company] under this chapter[; through individuals who are the exclusive agents of the registered financial services company].

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

(1) be a depository institution exempt from this chapter under Section 156.202(a-1)(4)(A) [156.292(a 1)(8)(A)] 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 for 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 of each exclusive agent;]

(3) [provide a business plan satisfactory to the commissioner that sets forth the person's plan to:

(A) provide education to its sponsored residential mortgage loan originators;

(B) [exclusive agents,] handle consumer complaints relating to its sponsored residential mortgage loan originators; and

(C) [exclusive agents, and] supervise the residential mortgage loan origination activities of its sponsored residential mortgage loan originators [exclusive agents];

(4) pay a [an annual] registration fee in an amount not to exceed $500 [determined as follows:

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

(i) one-half of the license fee for a residential mortgage loan originator under Section 156.203(a)(1), multiplied by the number of exclusive agents under contract to act for the person in this state; or

(ii) $200,000;

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

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

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

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

(4) [and

(5)] designate an officer of the person to be responsible for the activities of its sponsored residential mortgage loan originators;]
(5) submit a completed application through the Nationwide Mortgage Licensing System and Registry together with the applicable fee required by Subdivision (3) or Subsection (c); 

(6) obtain preapproval from the commissioner that the person meets the eligibility requirements for registration as a financial services company; and 

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

c) If the commissioner determines that a person has met the requirements of Subsection (b) [and Section 156.2045(c)], the commissioner shall issue a registration to the person. The registration is valid for one year, expires on December 31 of each year, and must be renewed annually by meeting the requirements under Subsection (b) and paying a renewal fee in an amount not to exceed $500. A person must renew an expired registration in the manner determined by the commissioner.

d) A registered financial services company is subject to Subchapters D and E as if the company were licensed as a residential mortgage loan company.

SECTION 33. Subsections (a), (b), (c), and (h), Section 156.301, Finance Code, are amended to read as follows:

(a) The commissioner may conduct inspections of a person licensed under this chapter or a residential mortgage loan originator who is licensed under Chapter 157 and sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter as the commissioner determines necessary to determine whether the person or the residential mortgage loan originator is complying with this chapter and applicable rules. The inspections may include inspection of the books, records, documents, operations, and facilities of the person or the residential mortgage loan originator and access to any documents required under rules adopted under this chapter. The commissioner may share evidence of criminal activity gathered during an inspection or investigation with any state or federal law enforcement agency.

(b) On the signed written complaint of a person, the commissioner shall investigate the actions and records of a person licensed under this chapter or a residential mortgage loan originator who is licensed under Chapter 157 and sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter if the complaint, or the complaint and documentary or other evidence presented in connection with the complaint, provides reasonable cause. The commissioner, before commencing an investigation, shall notify the [a] residential mortgage loan company or the residential mortgage loan originator in writing of the complaint and that the commissioner intends to investigate the matter.

(c) For reasonable cause, the commissioner at any time may investigate a person licensed under this chapter or a residential mortgage loan originator who is licensed under Chapter 157 and sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter to determine whether the person or the residential mortgage loan originator is complying with this chapter and applicable rules.

(h) The commissioner may require reimbursement of expenses [in an amount not to exceed $325] for each examiner [a-day] for on-site examination or investigation of a license holder [residential mortgage loan company] if records are located out of state or if the review is considered necessary beyond the routine examination process. The finance commission by rule shall set the maximum amount for the reimbursement of expenses authorized under this subsection.

SECTION 34. Section 156.309, Finance Code, is amended by amending Subsections (a), (a-1), (g), and (i) and adding Subsection (k) to read as follows:

(a) The commissioner may order disciplinary action against a licensed or registered residential mortgage loan company [or a licensed residential mortgage loan originator] when the commissioner, after notice and opportunity for hearing, has determined that the company [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 [or residential mortgage loan originator] 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 [or residential mortgage loan originator] 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];

(7) failed within a reasonable time to honor a credit card charge back or a check issued to the commissioner after the commissioner has mailed a request for payment, including payment of 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 or Chapter 157 for acts for which a license or registration under this chapter or Chapter 157 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 [or residential mortgage loan originator, as applicable];

(11) established an association, by employment or otherwise, with a person not licensed, registered, or exempt under this chapter or Chapter 157 who was expected or required to act as a residential mortgage loan company or residential mortgage loan originator;

(12) aided, abetted, or conspired with a person to circumvent the requirements of this chapter or Subchapter D, Chapter 157;

(13) acted in the dual capacity of a residential mortgage loan company [or 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;

(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 a [the] residential mortgage loan originator 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
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conduces residential mortgage loan origination 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) The commissioner may also order disciplinary action after notice and opportunity for hearing against a licensed or registered residential mortgage loan company [or—licensed residential mortgage loan originator] 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) 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 the commissioner, on not less than 10 days' notice to the person, may without a prior hearing suspend the person's residential mortgage loan company license or registration [or residential mortgage loan originator license]. The suspension shall continue until the person has complied with the order or paid the administrative penalty. During the period of suspension, the person may not originate 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).

(i) An order revoking the license or registration of a residential mortgage loan company [or the license of a residential mortgage loan originator] may 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; or

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

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

(k) The commissioner may, at the commissioner's discretion, rescind or vacate any previously issued order.

SECTION 35. Subsection (a), Section 156.304, Finance Code, is amended to read as follows:

(a) Before the completion of all services to be performed, a residential mortgage loan originator sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter may charge and receive, unless prohibited by law, the following fees for services in assisting a mortgage applicant to obtain a residential mortgage loan:

(1) a fee to obtain a credit report;

(2) a fee for the appraisal of the real estate;

(3) a fee for processing a residential mortgage loan application;

(4) a fee for taking a residential mortgage loan application;

(5) a fee for automated underwriting;

(6) a fee for a courier service;

(7) a fee to issue a loan commitment; or

(8) subject to Subsection (b), a fee for locking in an interest rate.
SECTION 36. Section 156.305, Finance Code, is amended to read as follows:

Sec. 156.305. RESTITUTION. The commissioner may order a person to make restitution for any amount received by that person in violation of this chapter. A residential mortgage loan company may be required to make restitution for any amount received by a sponsored residential mortgage loan originator in violation of Chapter 157 [this chapter].

SECTION 37. Subsection (d), Section 156.401, Finance Code, is amended to read as follows:

(d) A person [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. An appeal under this subsection is governed by Chapter 2001, Government Code.

SECTION 38. Subsection (a), Section 156.406, Finance Code, is amended to read as follows:

(a) A person, unless otherwise exempt, commits an offense if the person conducts regulated activities under this chapter without first obtaining a license or registration as required by Section 156.201, 156.2012, or 157.012, as applicable. [A person who is not exempt under this chapter and who acts as a residential mortgage loan originator without first obtaining a license required under this chapter commits an offense.] An offense under this subsection is a Class B misdemeanor. A second or subsequent conviction for an offense under this subsection shall be punished as a Class A misdemeanor.

SECTION 39. The heading to Subchapter F, Chapter 156, Finance Code, is amended to read as follows:

SUBCHAPTER F. [MORTGAGE BROKER] RECOVERY FUND

SECTION 40. Subsection (b), Section 156.501, Finance Code, is amended to read as follows:

(b) Subject to this subsection, the recovery fund shall be used to reimburse residential mortgage loan applicants for actual damages incurred because of acts committed by a residential mortgage loan originator who was licensed [under this chapter or] under Chapter 157 when the act was committed. 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 that constitutes a violation of Section 155.303(a)(2), (3), (5), (6), (8), (9), (10), (11), (12), (13), or (16) or 156.304;

(2) a residential mortgage loan originator licensed under Chapter 157 that constitutes a violation of Section 157.024(a)(2), (3), (5), (7), (8), (9), (10), (13), or (16), (17), or (18) or 156.304(b).

SECTION 41. Subsection (a), Section 156.502, Finance Code, is amended to read as follows:

(a) On an application for an original license or for renewal of a license issued under Chapter 157 [this chapter], the applicant, in addition to paying the original application fee or renewal fee, shall pay a fee in an amount determined by the commissioner, not to exceed $20. The fee shall be deposited in the recovery fund.

SECTION 42. Subsection (a), Section 156.503, Finance Code, is amended to read as follows:

(a) An application for the recovery of actual damages from the recovery fund under Section 156.504 may not be filed after the fourth [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.

SECTION 43. Subsection (b), Section 156.504, Finance Code, is amended to read as follows:

(b) The residential mortgage loan applicant is required to show:

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

(A) is not a spouse of the licensed residential mortgage loan originator;

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

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

(D) is not a person who has aided, abetted, or participated other than as a victim with the licensed residential mortgage loan originator in any activity that is illegal under Section 156.303(a)(2), (3), (5), (6), (8), (9), (10), (11), (12), (13), or (16), or Section 156.304, or Section 156.304(a)(2), (3), (5), (6), (8), (9), (10), (13), or (18); and

(E) is not licensed as a residential mortgage loan originator under Chapter 157 who is seeking to recover any compensation in the transaction or transactions for which the application for payment is made.

SECTION 44. Subsection (b), Section 156.505, Finance Code, is amended to read as follows:

(b) A payment from the recovery fund may be made as provided by Section 156.504 and this section. A payment for claims:

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

(2) against a single person licensed as a residential mortgage loan originator under Chapter 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.

SECTION 45. Subsections (a), (c), and (d), Section 156.506, Finance Code, are amended to read as follows:

(a) The commissioner may revoke or suspend a license issued under Chapter 157 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 under Chapter 157.

(c) 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 or Chapter 157 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) This section does not limit the authority of the commissioner to take disciplinary action against a residential mortgage loan originator for a violation of Chapter 157 or the rules adopted by the finance commission under that chapter. 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 Chapter 157.

SECTION 46. The heading to Chapter 157, Finance Code, is amended to read as follows:

CHAPTER 157. [REGISTRATION OF] MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

SECTION 47. Sections 157.001 and 157.002, Finance Code, are designated as Subchapter A, Chapter 157, Finance Code, and a heading is added to that subchapter to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 48. Section 157.002, Finance Code, is amended by adding Subdivisions (3-a) and (5-a) to read as follows:

(3-a) "Inspection" includes examination.
"Residential mortgage loan company" has the meaning assigned by Section 156.002.

SECTION 49. Chapter 157, Finance Code, is amended by adding Subchapter B to read as follows:

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

Sec. 157.0024. MORTGAGE INDUSTRY ADVISORY COMMITTEE. The mortgage industry advisory committee shall advise and assist the commissioner with respect to this chapter as provided by Section 156.104.

SECTION 50. Sections 157.003, 157.004, 157.005, 157.006, 157.0061, 157.0062, 157.009, and 157.010, Finance Code, are designated as Subchapter C, Chapter 157, Finance Code, and a heading is added to that subchapter to read as follows:

**SUBCHAPTER C. REGISTRATION OF MORTGAGE BANKERS**

SECTION 51. Subsection (b), Section 157.003, Finance Code, is amended to read as follows:

(b) To register under this chapter, a mortgage banker shall:
(1) enroll with the Nationwide Mortgage Licensing System and Registry;
(2) be in good standing with the secretary of state;
(3) have a valid federal employer identification number;
(4) meet the qualification requirements for a mortgage banker; [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; and
(6) provide to the commissioner a list of any offices that are separate and distinct from the primary office identified on the mortgage banker registration and that conduct residential mortgage loan business relating to this state, regardless of whether the offices are located in this state.

SECTION 52. Section 157.004, Finance Code, is amended to read as follows:

Sec. 157.004. EXEMPTIONS. This chapter does not apply to:
(1) a federally insured bank, savings bank, savings and loan association, Farm Credit System Institution, or credit union;
(2) a subsidiary of a federally insured bank, savings bank, savings and loan association, Farm Credit System Institution, or credit union;
(3) a residential mortgage loan company licensed [person licensed as a mortgage banker] under Chapter 156;
(4) an authorized lender licensed under Chapter 342; or
(5) 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.

SECTION 53. Section 157.005, Finance Code, is amended to read as follows:

Sec. 157.005. UPDATE OF REGISTRATION. A mortgage banker shall update information contained in the registration not later than the 10th day after the date the information changes.

SECTION 54. Sections 157.007 and 157.008, Finance Code, are transferred to Subchapter B, Chapter 157, Finance Code, as added by this Act, and redesignated as Sections 157.0021 and 157.0022, Finance Code, to read as follows:

Sec. 157.0021 [157.0002]. DISCLOSURE STATEMENT. (a) A mortgage banker that is a residential mortgage loan originator shall include a notice to a residential mortgage loan applicant with an application for a residential mortgage loan. The finance commission by rule shall adopt a standard disclosure form to be used by the mortgage banker. The form must:
(1) include the name, address, and toll-free telephone number for the Department of Savings and Mortgage Lending;

(2) contain information on how to file a complaint or recovery fund claim; and

(3) prescribe a method for proof of delivery to the consumer.

(b) A mortgage banker that indicates in its registration that it acts as a residential mortgage loan servicer shall provide to the borrower of each residential mortgage loan it services the following notice not later than the 30th day after the date the mortgage banker commences servicing the loan:

"COMPLAINTS REGARDING THE SERVICING OF YOUR MORTGAGE SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, __________________________ (street address of the Department of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT __________________________ (telephone number of the Department of Savings and Mortgage Lending's toll-free consumer hotline)."

Sec. 157.0022 [157.008]. COMPLAINTS. (a) If the Department of Savings and Mortgage Lending receives a signed written complaint from a person concerning a mortgage banker, the commissioner shall notify the representative designated by the mortgage banker under Section 157.003(b) in writing of the complaint and provide a copy of the complaint to the representative.

(b) The commissioner may request documentary and other evidence considered by the commissioner as necessary to effectively evaluate the complaint, including correspondence, loan documents, and disclosures. A mortgage banker shall promptly provide any evidence requested by the commissioner.

(c) The commissioner may require the mortgage banker to resolve the complaint or to provide the commissioner with a response to the complaint. The commissioner may direct the mortgage banker in writing to take specific action to resolve the complaint.

SECTION 55. Section 157.009, Finance Code, is amended by adding Subsection (d-1) and amending Subsection (e) to read as follows:

(d-1) The commissioner, after review of the circumstances, may revoke the registration of a mortgage banker if the mortgage banker has had a license, registration, or other certification revoked by a state or federal regulatory authority.

(e) If the commissioner proposes to revoke a registration under Subsection (c), (d), or (d-1), the mortgage banker is entitled to a hearing before the commissioner or a hearings officer, who shall propose a decision to the commissioner. The commissioner or hearings officer shall prescribe the time and place of the hearing. The hearing is governed by Chapter 2001, Government Code.

SECTION 56. Section 157.011, Finance Code, is transferred to Subchapter B, Chapter 157, Finance Code, as added by this Act, and redesignated as Section 157.0023, Finance Code, to read as follows:

Sec. 157.0023 [457.04]. RULEMAKING AUTHORITY. (a) The Finance Commission of Texas may adopt rules necessary to implement or fulfill the purpose of this chapter.

(b) The Finance Commission of Texas may by rule adopt standard forms for, and require the use of the forms by, a mortgage banker who represents that an applicant for a loan is preapproved or has prequalified for the loan.

(c) The finance commission may adopt rules under this chapter as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110–289).

SUBCHAPTER D. LICENSING OF RESIDENTIAL MORTGAGE LOAN ORIGINATORS; DISCLOSURES AND REQUIREMENTS

SECTION 58. The heading to Section 157.012, Finance Code, is amended to read as follows:

Sec. 157.012. LICENSE REQUIRED FOR RESIDENTIAL MORTGAGE LOAN ORIGINATORS [CERTAIN EMPLOYEES OF MORTGAGE BANKERS].

SECTION 59. Section 157.012, Finance Code, is amended by amending Subsections (a) and (c) and adding Subsection (e) to read as follows:

(a) An individual [An employee of a mortgage banker] may not act or attempt to act in the capacity of a residential mortgage loan originator unless the individual is exempt under Section 157.0121 or 180.003(b) or [employee]:

(1) is licensed under this chapter, sponsored by an appropriate entity [a registered mortgage banker], and enrolled with the Nationwide Mortgage Licensing System and Registry as required by Section 180.052; and

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

(c) To be eligible to be licensed as a residential mortgage loan originator, the individual [an employee of a mortgage banker], in addition to meeting the requirements of Subsection (a), must:

(1) satisfy the commissioner as to the individual's [employee's] good moral character, including the individual's [employee's] honesty, trustworthiness, and integrity;

(2) not be in violation of this chapter, Chapter 180, or any rules adopted under this chapter or Chapter 180;

(3) provide the commissioner with satisfactory evidence that the individual [employee] meets the qualifications provided by Chapter 180; and

(4) be a citizen of the United States or a lawfully admitted alien.

(e) In this section, “appropriate entity” means an entity:

(1) that is licensed or registered under this chapter or Chapter 156; and

(2) for which the individual is acting as a residential mortgage loan originator.

SECTION 60. Subchapter D, Chapter 157, Finance Code, as added by this Act, is amended by adding Section 157.0121 to read as follows:

Sec. 157.0121. EXEMPTIONS FROM RESIDENTIAL MORTGAGE LOAN ORIGINATOR REQUIREMENTS. (a) In this section, “depository institution,” “dwelling,” “federal banking agency,” and “immediate family member” have the meanings assigned by Section 180.002.

(b) The following individuals are exempt from this chapter:

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

(A) a depository institution;

(B) a subsidiary of a depository institution that is:

(i) owned and controlled by the depository institution; and

(ii) 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) 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; and

(6) an individual who is exempt as provided by Section 180.003(b).

(c) Employees of the following entities, when acting for the benefit of those entities, are exempt from the licensing and other requirements of this chapter applicable to residential mortgage loan originators:

(1) 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;

(2) 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; and

(3) an entity that is:
   (A) a depository institution;
   (B) a subsidiary of a depository institution that is:
      (i) owned and controlled by the depository institution; and
      (ii) regulated by a federal banking agency; or
   (C) an institution regulated by the Farm Credit Administration.

(d) A person is not required to obtain a license under this chapter to originate a loan subject to Chapter 342 or a loan governed by Section 50(a)(6), Article XVI, Texas Constitution, if the person:

(1) is enrolled in the Nationwide Mortgage Licensing System and Registry;

(2) is licensed under Chapter 342; and

(3) makes consumer loans subject to:
   (A) Subchapter G, Chapter 342; and
   (B) Subchapter E or F, Chapter 342.

(e) The finance commission may grant an exemption from the residential mortgage loan originator licensing requirements of this chapter to a municipality, county, community development corporation, or public or private grant administrator to the extent the entity is administering the Texas HOME Investment Partnerships program if the commission determines that granting the exemption is not inconsistent with the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

SECTION 61. Section 157.013, Finance Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) An application for a residential mortgage loan originator license must be accompanied by:

(1) an application fee in an amount determined by the commissioner, not to exceed $500;[1] and

(2) a recovery fund fee in an amount determined by the commissioner, not to exceed $20.

(d) In addition to the disciplinary action by the commissioner authorized under Section 157.024(a)(6), the commissioner may collect a fee in an amount not to exceed $50 for any returned check or credit card charge back.

SECTION 62. Subchapter D, Chapter 157, Finance Code, as added by this Act, is amended by adding Sections 157.0131 and 157.0132 to read as follows:
Sec. 157.0131. CONVICTION OF OFFENSE. 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.

Sec. 157.0132. CRIMINAL AND OTHER BACKGROUND CHECKS. (a) On receipt of an application for a residential mortgage loan originator license, the commissioner shall, at a minimum, conduct a criminal background and credit history check of the applicant.

(b) The commissioner shall conduct criminal background and credit history checks in accordance with Section 180.054, and, in connection with each application for a residential mortgage loan originator license or other individual license, the commissioner may conduct a criminal background check through the Department of Public Safety.

(c) The commissioner shall keep confidential any background information obtained under this section and may not release or disclose the information unless:

1. the information is a public record at the time the commissioner obtains the information; or
2. the commissioner releases the information:
   (A) under order from a court; or
   (B) to a governmental agency.

(d) Notwithstanding Subsection (c), criminal history record information obtained from the Federal Bureau of Investigation may be released or disclosed only to a governmental entity or as authorized by federal statute, federal rule, or federal executive order.

SECTION 63. Subchapter D, Chapter 157, Finance Code, as added by this Act, is amended by adding Section 157.0141 to read as follows:

Sec. 157.0141. CONDITIONAL LICENSE. The commissioner may issue a conditional license. The finance commission by rule shall adopt reasonable terms and conditions for a conditional license.

SECTION 64. Section 157.015, Finance Code, is amended by amending Subsections (a), (c), (d), and (g) and adding Subsections (d-1) and (h) to read as follows:

(a) A residential mortgage loan originator 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 originator:

1. pays to the commissioner a renewal fee in an amount determined by the commissioner not to exceed $500 and a recovery fund fee as 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 [A residential mortgage loan originator license issued under this chapter is valid for one year and may be renewed on or before its expiration date].

(c) An application for renewal [of a residential mortgage loan originator license] shall be in the form prescribed by the commissioner [meet the requirements of Section 157.013].

(d) On receipt of a request for a renewal of a license issued under this subchapter, the commissioner may conduct a criminal background check under Section 157.0132 [An application for renewal of a residential mortgage loan originator license must meet all of the standards and qualifications for license renewal under Chapter 180].

(d-1) A renewal fee is not refundable and may not be credited or applied to any other fee or indebtedness owed by the person paying the fee.

(g) The commissioner may deny the renewal application for a residential mortgage loan originator license if:
(1) the person seeking the renewal of the residential mortgage loan originator license is in violation of this chapter, Chapter 156, or Chapter 180, an applicable rule adopted under this chapter, Chapter 156, or Chapter 180, or any order previously issued to the person by the commissioner;

(2) the person seeking renewal of the residential mortgage loan originator license is in default in the payment of any administrative penalty, fee, charge, or other indebtedness owed under this title;

(3) the person seeking the renewal of the residential mortgage loan originator license is in default on a student loan administered by the Texas Guaranteed Student Loan Corporation, under Section 57.491, Education Code; or

(4) 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.

(h) In addition to the disciplinary action by the commissioner authorized under Section 157.024(a)(6), the commissioner may collect a fee in an amount not to exceed $50 for any returned check or credit card charge back.

SECTION 65. Subsection (a), Section 157.016, Finance Code, is amended to read as follows:

(a) A person whose residential mortgage loan originator license has expired may not engage in activities that require a license until the license has been reinstated or a new license has been issued [renewed].

SECTION 66. Subsection (g), Section 157.017, Finance Code, is amended to read as follows:

(g) A person whose application for or request to renew 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 as determined by the commissioner after evaluating the specific circumstances of the denial [person’s subsequent application]. The finance commission may adopt rules to provide conditions for which the commissioner may shorten the period of ineligibility [time for eligibility for a new license].

SECTION 67. The heading to Section 157.019, Finance Code, is amended to read as follows:

Sec. 157.019. MODIFICATION OF LICENSE; CHANGE OF SPONSORSHIP.

SECTION 68. Section 157.019, Finance Code, is amended by amending Subsections (a) and (c) and adding Subsections (d) and (e) to read as follows:

(a) Before the 10th day preceding the effective date of an address change, a mortgage banker employee who is a residential mortgage loan originator shall notify the commissioner or authorized designee in writing of the new address.

(c) When the sponsorship of a residential mortgage loan originator is terminated, the residential mortgage loan originator or the former sponsoring entity licensed or registered under this chapter or Chapter 156 shall immediately notify the commissioner. The residential mortgage loan originator's license then becomes inactive. The residential mortgage loan originator license may be activated if, before the license expires, an entity licensed or registered under this chapter or Chapter 156 files a request, accompanied by a $25 fee, notifying the commissioner that the entity will sponsor the residential mortgage loan originator and will assume responsibility for the actions of the residential mortgage loan originator. A mortgage banker employee who is a residential mortgage loan originator shall notify the commissioner or authorized designee in writing of a change of sponsorship. The notice must be accompanied by a fee of $25.

(d) A residential mortgage loan originator may not conduct business under any assumed name that is not the registered assumed name of the entity licensed or registered under this chapter or Chapter 156 that is sponsoring the originator.

(e) A 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.
SECTION 69. Section 157.020, Finance Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A licensed residential mortgage loan originator, as required by the commissioner, shall file a mortgage call report with the commissioner or the commissioner's authorized designee on a form prescribed by the commissioner or authorized designee. The report:

(1) is a statement of condition of the residential mortgage loan originator;
(2) must include any information required by the commissioner; and
(3) must be filed as frequently as required by the commissioner.

SECTION 70. Subchapter D, Chapter 157, Finance Code, as added by this Act, is amended by adding Sections 157.02012, 157.02013, 157.02014, 157.02015, and 157.02016 to read as follows:

Sec. 157.02012. STANDARD FORMS. (a) The finance commission by rule shall adopt one or more standard forms for use by a residential mortgage loan originator, sponsored by and conducting business for a registered mortgage banker under this chapter, in representing that an applicant for a residential mortgage loan is preapproved or has prequalified for the loan.

(b) The finance commission shall adopt rules requiring a residential mortgage loan originator licensed under this chapter to use the forms adopted by the finance commission under Subsection (a).

Sec. 157.02013. SECONDARY MARKET TRANSACTIONS. This chapter does not prohibit a residential mortgage loan originator sponsored by and conducting business for a registered mortgage banker under this chapter from receiving compensation from a party other than the mortgage applicant for the sale, transfer, assignment, or release of rights on the closing of a mortgage transaction.

Sec. 157.02014. AFFILIATED BUSINESS ARRANGEMENTS. Unless prohibited by federal or state law, this chapter may not be construed to prevent affiliated or controlled business arrangements or loan origination services by or between residential mortgage loan originators sponsored by and conducting business for a registered mortgage banker under this chapter and other professionals if the residential mortgage loan originator complies with all applicable federal and state laws permitting those arrangements or services.

Sec. 157.02015. RULEMAKING AUTHORITY WITH RESPECT TO RESIDENTIAL MORTGAGE LOAN ORIGINATORS. (a) The finance commission may adopt rules to prohibit false, misleading, or deceptive practices by residential mortgage loan originators but may not adopt any other rules restricting competitive bidding or advertising by residential mortgage loan originators. When adopting rules under this subsection, the finance commission may not restrict:

(1) the use of any medium for an advertisement;
(2) the personal appearance of or voice of a person in an advertisement;
(3) the size or duration of an advertisement; or
(4) a residential mortgage loan originator's advertisement under a trade name.

(b) The finance commission may adopt rules regarding books and records that a residential mortgage loan originator licensed under this chapter is required to keep, including the location at which the books and records must be kept.

(c) The finance commission shall consult with the commissioner when proposing and adopting rules under this section.

Sec. 157.02016. ADMINISTRATION OF SUBCHAPTER. The commissioner shall administer and enforce this subchapter.

SECTION 72. Section 157.021, Finance Code, is amended by amending Subsection (a) and adding Subsection (h) to read as follows:

(a) The commissioner may 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. An inspection under this subsection may include inspection of the books, records, documents, operations, and facilities of the person. The commissioner may request the assistance and cooperation of the sponsoring mortgage banker in providing needed documents and records. The commissioner may not make a request of the sponsoring mortgage banker for documents and records unrelated to the person being investigated or inspected. The commissioner may share evidence of criminal activity gathered during an inspection or investigation with any state or federal law enforcement agency.

(h) The commissioner may require reimbursement of expenses for each examiner for an on-site examination or inspection of a licensed residential mortgage loan originator if records are located out of state and are not made available for examination or inspection by the examiner in this state. The finance commission by rule shall set the maximum amount for the reimbursement of expenses authorized under this subsection.

SECTION 73. Section 157.0211, Finance Code, is amended to read as follows:

Sec. 157.0211. MULTI-STATE EXAMINATION AUTHORITY OF RESIDENTIAL MORTGAGE LOAN SERVICER. To ensure that mortgage bankers that act as residential mortgage loan servicers operate in this state in compliance with this chapter and with other law in accordance with this chapter, the commissioner or the commissioner's designee may participate in multi-state mortgage examinations as scheduled by the Conference of State Bank Supervisors Multi-State Mortgage Committee or by the Consumer Financial Protection Bureau in accordance with the protocol for such examinations.

SECTION 74. Subsection (a), Section 157.023, Finance Code, is amended to read as follows:

(a) The commissioner, after notice and opportunity for a hearing, may 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, Chapter 156, or a rule or order adopted under this chapter or Chapter 156.

SECTION 75. Subsections (a), (h), and (i), Section 157.024, Finance Code, are amended to read as follows:

(a) The commissioner may 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:

   (A) was misleading;
   (B) was likely to deceive the public;
   (C) in any manner tended to create a misleading impression;
   (D) failed to identify as a licensed residential mortgage loan originator the person causing the advertisement to be published; or
   (E) violated federal or state law;

3. while performing an act for which a license under this chapter or Chapter 156 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 credit card charge back or a check issued to the commissioner after the commissioner mailed a request for payment, including any applicable fees, by mail to the person's last known home 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 or Chapter 156;

(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:

(A) 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;

(B) 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

(C) 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 possession of 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, Chapter 156, a rule adopted under this chapter or Chapter 156, or an order issued by the commissioner under this chapter or Chapter 156;

(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 or Chapter 156 who was expected or required to act as a residential mortgage loan originator or residential mortgage loan company; or

(17) established an association, by employment or otherwise, with a person not licensed, registered, or exempt under this chapter or Chapter 156 who was expected or required to act as a residential mortgage loan originator or residential mortgage loan company; or

(18) charged or received, directly or indirectly, a fee for assisting a mortgage applicant in obtaining a residential mortgage loan under Chapter 156 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 156.301.

(h) 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, the commissioner, on not less than 10 days'
notice to the residential mortgage loan originator, may without a prior hearing suspend the residential mortgage loan originator’s license. The suspension continues until the residential mortgage loan originator has complied with the administrative order or paid the administrative penalty. During the period of suspension, the residential mortgage loan originator may not originate a residential mortgage loan and all compensation received by the residential mortgage loan originator during the period of suspension is subject to forfeiture as provided by Section 157.031(a-1), as defined by Section 180.002.

(j) An order revoking the license of a residential mortgage loan originator may provide that the person is prohibited, without previously obtaining written consent of the commissioner, from:

(1) engaging in the business of originating or making residential mortgage loans, as defined by Section 180.002;

(2) 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

(3) being an employee, officer, director, manager, shareholder, member, agent, contractor, or processor of a mortgage banker, residential mortgage loan company, or residential mortgage loan originator for a residential mortgage loan company.

SECTION 76. Subsection (e), Section 157.0241, Finance Code, is amended to read as follows:

(e) 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, Chapter 156, or the rules adopted by the finance commission under this chapter or Chapter 156. 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 or Chapter 156.

SECTION 77. Section 157.025, Finance Code, is amended to read as follows:

Sec. 157.025. RESTITUTION. The commissioner may order a residential mortgage loan originator to make restitution for any amount received by that person in violation of this chapter or Chapter 156.

SECTION 78. Section 157.026, Finance Code, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) 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 residential mortgage loan originator license under this chapter, the applicant or license holder is entitled to a hearing before the commissioner or an administrative law judge who shall make a proposal for decision to the commissioner. The commissioner or administrative law judge shall prescribe the time and place of the hearing. The hearing is governed by Chapter 2001, Government Code.

(e) The commissioner may, in the commissioner’s discretion, rescind or vacate any previously issued revocation order.

SECTION 79. Subsection (a), Section 157.027, Finance Code, is amended to read as follows:

(a) A residential mortgage loan applicant injured by a violation of this chapter or Chapter 156 by a residential mortgage loan originator may bring an action for recovery of actual monetary damages and reasonable attorney’s fees and court costs.

SECTION 80. Subsection (b), Section 157.030, Finance Code, is amended to read as follows:

(b) This section does not limit or preclude the liability of a residential mortgage loan originator for:

(1) failing to comply with this chapter, Chapter 156, or a rule adopted under this chapter or Chapter 156;

(2) failing to comply with a provision of or duty arising under an agreement with a residential mortgage loan applicant under this chapter or Chapter 156; or
(3) violating any other state or federal law.

SECTION 81. Section 157.031, Finance Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) An individual who is not exempt under this chapter or other applicable law and who acts as a residential mortgage loan originator without first obtaining a license required under this chapter commits an offense. An offense under this subsection is a Class B misdemeanor. A second or subsequent conviction for an offense under this subsection is a Class A misdemeanor.

(a-1) An individual who received money, or the equivalent of money, as a fee or profit because of or in consequence of the individual acting as a residential mortgage loan originator without an active license or being exempt under this chapter is liable for damages in an amount that is not less than the amount of the fee or profit received and not to exceed three times the amount of the fee or profit received, as may be determined by the court. An aggrieved person may recover damages under this subsection in a court.

SECTION 82. Subchapter E, Chapter 157, Finance Code, as added by this Act, is amended by adding Section 157.032 to read as follows:

Sec. 157.032. POWERS OF COMMISSIONER. (a) In addition to any other action, proceeding, or remedy authorized by law, the commissioner may institute an action in the commissioner's name to enjoin a violation of Subchapter D or a rule adopted under Subchapter D. To sustain an action filed under this subsection, it is not necessary to allege or prove that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation of Subchapter D.

(b) The commissioner is not required to provide an appeal bond in any action or proceeding to enforce Subchapter D.

(c) The commissioner may authorize specific employees to conduct hearings and make recommendations for final decisions in contested cases.

SECTION 83. Section 158.104, Finance Code, is amended to read as follows:

Sec. 158.104. MULTI-STATE EXAMINATION AUTHORITY. To ensure that residential mortgage loan servicers to whom this chapter applies operate in this state in compliance with this chapter and with other law in accordance with this chapter, the commissioner or the commissioner's designee may participate in multi-state mortgage examinations as scheduled by the Conference of State Bank Supervisors Multi-State Mortgage Committee or by the Consumer Financial Protection Bureau in accordance with the [Conference of State Bank Supervisors] protocol for such examinations.

SECTION 84. Subdivisions (17) and (21), Section 180.002, Finance Code, are amended to read as follows:

(17) "Regulatory official" means:
   (A) with respect to Subtitles A, F, and G of this title, the banking commissioner of Texas;
   (B) with respect to Chapters 156 and 157 [except as provided by Paragraph (D)], the savings and mortgage lending commissioner; and
   (C) with respect to Chapters 342, 347, 348, and 351, the consumer credit commissioner; and
   (D) with respect to credit unions, to the examination, investigation, or inspection of employees of credit union subsidiary organizations licensed under Chapter 156, and to the enforcement of compliance with this chapter and Chapter 156 by those employees, the credit union commissioner.

(21) "Rulemaking authority" means:
   (A) the finance commission, except as provided by Paragraph (B); or
   (B) with respect to credit unions and the rulemaking authority granted by Section 15.4024, the Credit Union Commission.
SECTION 85. Subsection (a), Section 180.056, Finance Code, is amended to read as follows:

(a) An applicant for a residential mortgage loan originator license must complete education courses that include, at a minimum, at least the minimum number of hours and type of courses required by the S.A.F.E. Mortgage Licensing Act and the minimum number of hours of training related to lending standards for the nontraditional mortgage product marketplace required by that Act and any additional requirements established by the regulatory official and adopted by rule of the rulemaking authority.

SECTION 86. Subsection (a), Section 180.251, Finance Code, is amended to read as follows:

(a) The savings and mortgage lending commissioner shall administer and enforce this chapter with respect to individuals licensed under Chapter 156.

SECTION 87. The following provisions of the Finance Code are repealed:

(1) Section 15.4024;
(2) Sections 156.2015, 156.205, and 156.405;
(3) Subsections (a–1) and (a–2), Section 156.101;
(4) Subsections (b), (b–1), and (b–2), Section 156.201;
(5) Subsection (b), Section 156.102, Subsection (c), Section 156.202, Subsection (c), Section 156.203, Subsection (b), Section 156.2041, Subsection (b), Section 156.2042, Subsection (b), Section 156.2043, Subsection (c), Section 156.2044, Section 156.2045, Subsection (a), Section 156.206, Subsections (b), (c), and (d), Section 156.207, and Subsection (c), Section 156.208;
(6) Subsections (b–1), (b–2), and (j), Section 156.208;
(7) Subsection (f), Section 157.003, Finance Code, as added by Chapter 655 (Senate Bill No. 1124), Acts of the 82nd Legislature, Regular Session, 2011;
(8) Subsection (d), Section 157.012, and Subsection (b), Section 157.015; and
(9) Subsection (b), Section 180.251.

SECTION 88. The changes in law made by this Act do not affect any pending proceeding or action brought under Subchapter D, Chapter 156, Finance Code, as that subchapter existed immediately before amendment by this Act, and the former law is continued in effect for that purpose.

SECTION 89. The changes in law made by this Act apply only to a license or registration issued or renewed on or after the effective date of this Act. A license or registration issued or renewed before the effective date of this Act is governed by the law in effect on the date the license or registration was issued or renewed, and the former law is continued in effect for that purpose.

SECTION 90. This Act takes effect September 1, 2013.

Passed the Senate on April 18, 2013: Yeas 31, Nays 0; passed the House on May 8, 2013: Yeas 146, Nays 1, two present not voting.

Approved May 24, 2013.

Effective September 1, 2013.

CHAP.ER 161

S.B. No. 1093

AN ACT

relating to nonsubstantive additions to and corrections in enacted codes, to the nonsubstantive codification or disposition of various laws omitted from enacted codes, and to conforming codifications enacted by the 82nd Legislature to other Acts of that legislature.