

BILL ANALYSIS

Senate Research Center

H.B. 2783
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Business & Commerce
5/18/2007
Committee Report (Amended)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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

H.B. 2783 provides for the regulation of mortgage brokers and financial businesses by the department.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 156.002(10), Finance Code, to redefine "mortgage loan."

SECTION 2. Amends Section 156.201(b), Finance Code, to prohibit an individual from acting or attempting to act as a loan officer unless the individual at the time is licensed under this chapter and sponsored by a licensed mortgage broker and acting for the mortgage broker.

SECTION 3. Amends Section 156.202, Finance Code, as follows:

Sec. 156.202. EXEMPTIONS. Provides that this chapter does not apply to an owner of real property who in any 12-consecutive-month period makes no more than five mortgage loans to purchasers, rather than makes a loan to a purchaser, of the property for all or part of the purchase price of the real estate against which the mortgage is secured.

SECTION 4. Amends Section 156.203(c), Finance Code, to require an application for a loan officer license must be accompanied by an application fee in an amount determined by the commissioner not to exceed \$275, rather than \$175.

SECTION 5. Amends Sections 156.204(a) and (b), Finance Code, as follows:

(a) Requires the individual, rather than a person, to be eligible to be licensed as a mortgage broker as an individual, to be at least 18 years of age, rather than an individual who is 18 year of age provide the savings and loan commissioner (commissioner) with satisfactory evidence that the applicant satisfies certain requirements.

(b) Prohibits a corporation, limited liability company, or limited partnership from acting as a mortgage broker unless the entity obtains a mortgage broker license. Requires the entity to designate an individual licensed as a mortgage broker as its designated representative and pay an application fee in an amount to be determined by the commissioner not to exceed \$175 to be eligible for a mortgage broker license. Requires the designated representative to be if the entity is a corporation, an officer of the corporation, if the entity is a limited liability company, a manager of the limited liability company, or if the entity is a limited partnership an individual who is a general partner, an officer of a general partner that is a corporation, or a manager of a general partner that is a limited liability company. Deletes existing text authorizing a mortgage broker to conduct business under a corporate structure, partnership, or any other business form or

as an independent contractor for a corporation, partnership, or any other business entity. Deletes existing text requiring a mortgage broker to notify the commissioner, in writing, of any corporate name, partnership name, assumed name, or any other name under, through, or for which the mortgage broker conducts activities for which a license is required under this chapter before conducting mortgage broker activities under, through, or for a corporation, partnership, or other business entity. Deletes existing text providing that the corporation, partnership, or other business entity under, through, or for which the mortgage broker conducts business is not required to be separately licensed as a mortgage broker provided that all individuals who perform mortgage broker activities are licensed as mortgage brokers or loan officers. Deletes existing text requiring the commissioner to require proof of compliance with this subsection at the time the mortgage broker applies for and renews a license.

SECTION 6. Reletters Section 156.208(i), Finance Code, as added by Chapter 1018, Acts of the 79th Legislature, Regular Session, 2005, as Subsection (j), Section 156.208, Finance Code, and amends it as follows:

(j) Authorizes the commissioner to deny the renewal of a mortgage broker license or a loan officer license if 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.

SECTION 7. Amends Section 156.211, Finance Code, by adding Subsections (b-1), (b-2), and (b-3), as follows:

(b-1) Requires a mortgage broker, not later than the 10th day before the mortgage broker 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 mortgage broker intends to conduct business and pay a \$25 registration fee for each assumed name. Prohibits a loan officer from conducting business under any assumed name that is not the registered assumed name of the sponsoring mortgage broker.

(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 and pay to the commissioner a change of name fee of \$25 for the issuance of an amended license certificate.

(b-3) Requires a business entity licensed under this chapter to notify the commissioner of any change of its designated representative. Authorizes the commissioner to charge a fee of \$25 for each change of a designated representative.

SECTION 8. Amends Subchapter C, Chapter 156, Finance Code, by adding Section 156.214, as follows:

Sec. 156.214. APPROVAL OF COURSES. (a) Authorizes the finance commission to adopt rules establishing minimum standards for courses, approved course providers, and approved course instructors, and a fee not to exceed \$200 for the review and approval of each course not provided and approved by a duly organized trade association the purpose of which is primarily to represent residential mortgage originators.

(b) Provides that an approval is for up to two years.

SECTION 9. Amends Section 156.303, Finance Code, by amending Subsection (a) and adding Subsection (j), as follows:

(a) Authorizes the commissioner to order disciplinary action against a licensed mortgage broker or a licensed loan officer when the commissioner, after a hearing, has determined that among other determinations the person provided false information to the commissioner during the course of an investigation or inspection.

(j) Authorizes the commissioner, on notice and opportunity for hearing, to suspend a person's license under this chapter if an indictment or information is filed or returned alleging that the person committed a criminal offense involving fraud, theft, or dishonesty. Provides that the suspension continues until the criminal case is dismissed or the person is acquitted.

SECTION 10. Amends The heading of Section 341.103, Finance Code, to read as follows:

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

SECTION 11. Amends Section 341.103(a), Finance Code, to require the savings and mortgage lending commissioner, rather than loan commissioner, to enforce this subtitle relating to the regulation of state savings associations operating under this subtitle, and persons licensed under Chapter 156.

SECTION 12. Amends Section 342.051, Finance Code, by adding Subsection (f) to provide that a mortgage broker licensed under Chapter 156 is not required to obtain a license under this chapter to make, negotiate, or transact a mortgage loan, as defined by Chapter 156.

SECTION 13. Provides that a corporation, limited liability company, or limited partnership is not required to obtain a mortgage broker license, as required by Section 156.204(b), Finance Code, as amended by this Act, to act as a mortgage broker before January 1, 2008.

SECTION 14. Effective date: September 1, 2007.

SUMMARY OF COMMITTEE CHANGES

Committee Amendment No.1

Inserts the appropriately numbered sections, as follows:

(1) SECTION __. Amends Subchapter C, Chapter 156, Finance code, by adding Section 156.2011, as follows:

Sec. 156.2011. PROVISIONAL LOAN OFFICER LICENSE. (a) Authorizes an applicant for a loan officer license to be issued a provisional loan officer license as provided by this section only if the applicant during the 20 months immediately preceding the application, has at least 18 months of experience as a loan officer employed by a person exempt from this chapter under Section 156.202 and meets the qualifications for a loan officer license, other than the educational and examination requirements.

(b) Requires the commissioner to use best efforts to issue the provisional loan officer license within a certain time frame.

(c) Provides that, for purposes of Subsection (b)(2), a person is considered convicted as provided by Section 156.204(d).

(d) Provides that a provisional loan officer license is valid for 90 days after the date the license is issued, except as provided by Subsection (e).

(e) Authorizes the commissioner to revoke a provisional loan officer license if the commissioner discovers that the applicant has made a misrepresentation relating to the applicant's qualifications for a loan officer license, has violated this chapter, or does not meet the qualifications for a provisional loan officer license. Provides that the revocation of a provisional loan officer license is not subject to appeal.

(f) Authorizes the finance commission by rule to impose a fee not to exceed \$100 for an expedited issuance of a provisional loan officer

license. Provides that the fee is nonrefundable and is in addition to the fee for the application for a regular loan officer license.

SECTION __. Provides that the changes in law made by Section 156.2011, Finance Code, as added by this Act, and Section 156.204, Finance Code, as amended by this Act, apply only to a loan officer or mortgage broker license for which any part of an application is submitted on or after September 1, 2007.

(2) Amends the recital to SECTION 5 of the bill (Engrossed Version, page 3, line 13), by striking "Sections 156.204(a) and (b)," and substituting "Sections 156.204(a), (b), (c), and (e)."

(3) - (4) Amends Section 156.204(a), Finance Code, to require an individual to provide the commissioner with satisfactory evidence that the individual has completed a certain amount of related classroom hours of education courses approved by the commissioner in order to be eligible to be licensed as a mortgage broker as an individual.

(5) Amends Section 156.204, Finance Code, as follows:

(c) Requires a person to successfully complete 60 classroom, rather than 30, hours of education courses approved by the commissioner or has successfully completed 30 classroom hours of education courses approved by the commissioner in addition to a certain amount of experience as a loan officer.

(e) Requires the education courses required for a mortgage broker or loan officer license under Subsection (a)(9) or (c)(4), rather than (c)(4)(B), to cover ethics, the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. Section 2601 et seq.), the Equal Credit Opportunity Act (15 U.S.C. Section 1691 et seq.), and the provisions of this chapter.