

BILL ANALYSIS

C.S.H.B. 2138
By: Paxton
Financial Institutions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The practice of property tax lien transfers, whereby an owner of real property consents to the payment of their real property taxes by a third party, to whom the taxing unit then transfers its preexisting lien on the property has been practiced even prior to its codification into the Texas Property Tax Code by the 66th Legislature. The 74th Legislature, with SB1387, revised the statutes in such a way that property tax lending became, for the first time, a financially viable industry for lenders. However, no statute specifically addresses licensing or regulation of property tax lenders. As a result, ambiguity has arisen over whether property tax lenders should be licensed and if so, under whose authority.

C.S.H.B. 2138 requires that the Office of Consumer Credit Commissioner license property tax lenders, regulate the making of property tax loans in accordance with the Tax Code, and levy fines and penalties.

RULEMAKING AUTHORITY

It is the opinion of the committee that rulemaking authority is expressly granted to the Office of Consumer Credit Commissioner in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 2138 amends the Finance Code by adding Chapter 351, entitled "Property Tax Lenders." C.S.H.B. 2138 defines property tax lender and property tax loan and provides that the chapter does not prohibit a property tax lender from receiving compensation from certain parties. C.S.H.B. 2138 prohibits Chapter 351 from being construed to prevent Property Tax Lenders from having affiliations, controlled business arrangements, or loan origination services with other professionals, if the lender complies with all applicable laws. C.S.H.B. 2138 provides that Subchapters E, F and G, Chapter 14, Finance Code apply to a violation of this chapter or Section 32.06 or 32.065, Tax Code, in connection with property tax loans. C.S.H.B. 2138 provides that Subchapters E, F and G, Chapter 14, Finance Code apply to a violation of this chapter or Section 32.06 or 32.065, Tax Code, in connection with property tax loans. C.S.H.B. 2138 authorizes the Finance Commission to adopt rules to ensure compliance with this chapter and Sections 32.06 and 32.065, Tax Code.

C.S.H.B. 2138 prohibits a person from acting as a property tax lender without first obtaining a mortgage broker license, unless the person is exempt. C.S.H.B. 2138 sets forth the persons to whom this article does not apply. C.S.H.B. 2138 clarifies that persons who are licensed under this Chapter are not required to be licensed under other provisions in order to act as a property tax lender.

C.S.H.B. 2138 authorizes the Commissioner to issue more than one license to a property tax lender on compliance with this chapter for each license. C.S.H.B. 2138 defines which offices are not required to bear separate licenses.

C.S.H.B. 2138 provides that a property tax lender is not limited to making property tax loans to residents of the community in which the office for which the license or other authority is granted is located. C.S.H.B. 2138 permits a property tax lender to conduct certain functions by mail.

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C.S.H.B. 2138 mandates that tax lien transferees must provide their property tax license or exemption information with each request for a transfer to a tax collector. C.S.H.B. 2138 sets forth the procedures a transferee must follow to prove exemption from the licensing requirement.

C.S.H.B. 2138 requires applications to be in writing, under oath, and to provide certain information as required by the Commissioner. C.S.H.B. 2138 authorizes the Commissioner to collect investigation and license fees. C.S.H.B. 2138 gives the Commissioner discretion to require applicants to file a bond with each application. C.S.H.B. 2138 sets forth the conditions on which the bond is based. C.S.H.B. 2138 requires that the Commissioner investigate each applicant for a license to determine whether to issue the license. C.S.H.B. 2138 requires the Commissioner to issue a license or to deny an application for a license, depending on whether the Commissioner finds that the applicant meets certain criteria, including character, fitness, and financial stability. C.S.H.B. 2138 requires the Commissioner to notify the applicant if the license eligibility requirements are not met, and sets forth the procedures under which an applicant can appeal notice that the eligibility requirements were not met. C.S.H.B. 2138 requires the Commissioner to retain the investigation fee and return the license fee to an applicant whose application was denied.

C.S.H.B. 2138 requires certain information on a property tax license, and states that a license holder may not conduct business under this chapter under a name or at a place of business in this state other than the name or office stated on the license. C.S.H.B. 2138 requires that a license holder shall display a license at the place of business provided on the license. C.S.H.B. 2138 requires that license holders maintain net assets of at least \$25,000 that are used or readily available for use for each office for which a license is held. C.S.H.B. 2138 mandates an annual fee for each license holder, to be paid to the Commissioner no later than December 1, for the year beginning the next January 1, in an amount determined as provided by Section 14.107. C.S.H.B. 2138 provides that a license expires if the annual fee for a license is not timely paid.

C.S.H.B. 2138 authorizes the Commissioner to suspend or revoke a license after notice and a hearing if the Commissioner finds that the license holder fails to pay certain required fees and charges or violates certain rules or statutes. Also, if the Commissioner discovers a fact or condition that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the Commissioner's denial of the application. C.S.H.B. 2138 provides that a license holder who violates this chapter is subject to revocation of the holder's license and, if the license holder is a corporation, forfeiture of its charter. If the license holder is a corporation, C.S.H.B. 2138 requires the attorney general to file suit upon notification of a violation of this chapter and revocation of a license for forfeiture of the license holder's charter.

C.S.H.B. 2138 requires that the decision of the Commissioner on the suspension or revocation of a license as well as the evidence considered by the Commissioner in making the decision be filed in the public records of the Commissioner. C.S.H.B. 2138 permits the Commissioner to reinstate or issue a license to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the Commissioner's denial of an original application for the license. C.S.H.B. 2138 permits a license holder to surrender a license issued under this chapter by delivering written notice and the license to the Commissioner.

C.S.H.B. 2138 provides that the loss of a license does not affect the obligations of a contract between the license holder and a debtor entered into prior to the loss, and that a licensee's surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender. C.S.H.B. 2138 requires a license holder who moves from the location provided on the license to give written notice to the Commissioner before the 30th day preceding the move, and that the Commissioner shall amend the license accordingly. C.S.H.B. 2138 permits the transfer or assignment of a license only with the approval of the Commissioner.

C.S.H.B. 2138 amends the Finance Code in Sections 349.502(a) and (c), provides that a person commits an offense if the person engages in a business that is subject to Chapter 351 without holding the license or other authorization required under that chapter. C.S.H.B. 2138 provides that each loan made without the authority required by Chapter 351 is a separate offense.

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C.S.H.B. 2138 amends the Tax Code, Section 32.06(a-1) by adding an additional requirement to the sworn document of a person who authorizes another person to pay their delinquent taxes that the document include the information required by Section 351.054, Finance Code. C.S.H.B. 2138 amends Section 32.065(d), Tax Code, to add Chapter 343 to the list of chapters which do not apply to a transaction and removes the exemption from having to obtain a license under Title 4, Finance Code.

C.S.H.B. 2138 provides that a person need not be licensed under or comply with Chapter 351, Finance Code, as added by this Act, before March 1, 2008.

EFFECTIVE DATE

The Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 2138 modifies the original bill by clarifying the language in 351.006. C.S.H.B. 2138 adds Subchapter G, Chapter 14 to the applicable enforcement provisions in Sec. 351.006. C.S.H.B. 2138 adds chapter 343 to the list of chapters which do not apply to transactions covered by Sec. 32.065(d).