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H.B. No. 716

A BILL TO BE ENTITLED

AN ACT

relating to mortgage fraud; providing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 343, Finance Code, is amended by adding Section 343.105 to read as follows:

Sec. 343.105. NOTICE OF PENALTIES FOR MAKING FALSE OR MISLEADING WRITTEN STATEMENT. (a) A lender, mortgage banker, or licensed mortgage broker shall provide to each applicant for a home loan a written notice at closing.

(b) The notice must:

(1) be provided on a separate document;

(2) be in at least 14-point type; and

(3) have the following or substantially similar

language:

"Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of Section 32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000.

"I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written

1 statement to obtain a home loan.

2 "I/we represent that all statements and representations
3 contained in my/our written home loan application, including
4 statements or representations regarding my/our identity,
5 employment, annual income, and intent to occupy the
6 residential real property secured by the home loan, are true
7 and correct as of the date of loan closing."

8 (c) On receipt of the notice, the loan applicant shall
9 verify the information and execute the notice.

10 (d) The failure of a lender, mortgage banker, or licensed
11 mortgage broker to provide a notice complying with this section to
12 each applicant for a home loan does not affect the validity or
13 enforceability of the home loan by any holder of the loan.

14 SECTION 2. Subchapter B, Chapter 402, Government Code, is
15 amended by adding Sections 402.031 and 402.032 to read as follows:

16 Sec. 402.031. REPORTING FRAUDULENT ACTIVITIES. (a) In
17 this section:

18 (1) "Authorized governmental agency" means:

19 (A) the attorney general;

20 (B) a local or state law enforcement agency of
21 this state or a federal law enforcement agency;

22 (C) a prosecuting attorney of the United States
23 or of a county or judicial district of this state; or

24 (D) the Department of Public Safety, the Texas
25 Department of Insurance, the Office of Consumer Credit
26 Commissioner, the Texas Department of Banking, the credit union
27 department, the Department of Savings and Mortgage Lending, the

1 Texas Real Estate Commission, or the Texas Appraiser Licensing and
2 Certification Board.

3 (2) "Fraudulent activity" means any act that
4 constitutes a violation of a penal law and is part of an attempt or
5 scheme to defraud any person.

6 (b) If a person determines or reasonably suspects that
7 fraudulent activity has been committed or is about to be committed,
8 the person shall report the information to an authorized
9 governmental agency. If a person reports the information to the
10 attorney general, the attorney general shall notify each agency
11 with representation on the residential mortgage fraud task force
12 under Section 402.032. If a financial institution or person
13 voluntarily or pursuant to this section reports fraudulent activity
14 to an authorized governmental agency, the financial institution or
15 person may not notify any person involved in the fraudulent
16 activity that the fraudulent activity has been reported, and the
17 authorized governmental agency who has any knowledge that such
18 report was made shall not disclose to any person involved in the
19 fraudulent activity that the fraudulent activity has been reported.
20 Any financial institution or person that makes a voluntary report
21 of any possible violation of law or regulation to an authorized
22 governmental agency shall not be liable to any person under any law
23 or regulation of the state or the United States for such report.

24 (c) This section does not eliminate or diminish any common
25 law or statutory privilege or immunity.

26 Sec. 402.032. RESIDENTIAL MORTGAGE FRAUD TASK FORCE. (a)
27 In this section, "task force" means the residential mortgage fraud

1 task force.

2 (b) The office of the attorney general shall establish the
3 task force to form a strategic partnership between state, federal,
4 and local law enforcement agencies to better enable law enforcement
5 and state agencies to take a proactive stance towards tracking and
6 prosecuting mortgage fraud and the perpetrators of mortgage fraud
7 statewide.

8 (c) The task force consists of the following persons or
9 their appointees:

- 10 (1) the attorney general;
11 (2) the consumer credit commissioner;
12 (3) the banking commissioner;
13 (4) the credit union commissioner;
14 (5) the commissioner of insurance;
15 (6) the savings and mortgage lending commissioner;
16 (7) the presiding officer of the Texas Real Estate
17 Commission; and
18 (8) the presiding officer of the Texas Appraiser
19 Licensing and Certification Board.

20 (d) The task force may request assistance from the Federal
21 Bureau of Investigation, United States Secret Service, United
22 States Department of Justice, United States Department of Homeland
23 Security, Internal Revenue Service, and the United States Postal
24 Service.

25 (e) The task force shall focus its efforts in:

- 26 (1) sharing information and resources; and
27 (2) successfully enforcing administrative and

1 criminal actions against perpetrators of mortgage fraud.

2 (f) The agencies of the persons listed in Subsection (c) may
3 share confidential information or information to which access is
4 otherwise restricted by law with one or more of the other agencies
5 of the persons listed in Subsection (c) for investigative purposes
6 described by Subsection (b). Except as provided by this
7 subsection, confidential information that is shared under this
8 subsection remains confidential and legal restrictions on access to
9 the information apply.

10 (g) The task force shall submit to the governor, lieutenant
11 governor, and speaker of the house of representatives an annual
12 report on the progress of each agency of the persons listed in
13 Subsection (c) in accomplishing the purposes described by
14 Subsection (b).

15 (h) The office of the attorney general shall oversee the
16 administration of the task force. The attorney general shall
17 provide the necessary staff and facilities to assist the task force
18 in performing its duties.

19 (i) The attorney general may solicit and accept gifts,
20 grants, and donations of money, services, or property on behalf of
21 the state for disbursement to any state agency or local law
22 enforcement agency to aid the task force in the investigation and
23 prosecution of mortgage fraud in this state.

24 SECTION 3. Section 555.051(a), Government Code, is amended
25 to read as follows:

26 (a) This section applies only to information held by or for
27 the office of the attorney general, the Texas Department of

1 Insurance, the Texas State Board of Public Accountancy, the Public
2 Utility Commission of Texas, [~~or~~] the State Securities Board, the
3 Department of Savings and Mortgage Lending, the Texas Real Estate
4 Commission, the Texas Appraiser Licensing and Certification Board,
5 the Texas Department of Banking, the credit union department, or
6 the Office of Consumer Credit Commissioner that relates to the
7 possible commission of corporate fraud or mortgage fraud by a
8 person who is licensed or otherwise regulated by any of those state
9 agencies. In this subsection, "corporate fraud" means a violation
10 of state or federal law or rules relating to fraud committed by a
11 corporation, limited liability company, or registered limited
12 liability partnership or an officer, director, or partner of those
13 entities while acting in a representative capacity.

14 SECTION 4. Section 32.32, Penal Code, is amended by
15 amending Subsections (a) and (b) and adding Subsection (d) to read
16 as follows:

17 (a) For purposes of this section, "credit" includes:

- 18 (1) a loan of money;
- 19 (2) furnishing property or service on credit;
- 20 (3) extending the due date of an obligation;
- 21 (4) comaking, endorsing, or guaranteeing a note or
22 other instrument for obtaining credit;
- 23 (5) a line or letter of credit; [~~and~~]
- 24 (6) a credit card, as defined in Section 32.31 (Credit
25 Card or Debit Card Abuse); and
- 26 (7) a mortgage loan.

27 (b) A person commits an offense if he intentionally or

1 knowingly makes a materially false or misleading written statement
2 to obtain property or credit, including a mortgage loan [~~for~~
3 ~~himself or another~~].

4 (d) The following agencies shall assist a prosecuting
5 attorney of the United States or of a county or judicial district of
6 this state, a county or state law enforcement agency of this state,
7 or a federal law enforcement agency in the investigation of an
8 offense under this section involving a mortgage loan:

- 9 (1) the office of the attorney general;
10 (2) the Department of Public Safety;
11 (3) the Texas Department of Insurance;
12 (4) the Office of Consumer Credit Commissioner;
13 (5) the Texas Department of Banking;
14 (6) the credit union department;
15 (7) the Department of Savings and Mortgage Lending;
16 (8) the Texas Real Estate Commission; and
17 (9) the Texas Appraiser Licensing and Certification
18 Board.

19 SECTION 5. Article 12.01, Code of Criminal Procedure, is
20 amended to read as follows:

21 Art. 12.01. FELONIES. Except as provided in Article 12.03,
22 felony indictments may be presented within these limits, and not
23 afterward:

- 24 (1) no limitation:
25 (A) murder and manslaughter;
26 (B) sexual assault, if during the investigation
27 of the offense biological matter is collected and subjected to

1 forensic DNA testing and the testing results show that the matter
2 does not match the victim or any other person whose identity is
3 readily ascertained; or

4 (C) an offense involving leaving the scene of an
5 accident under Section 550.021, Transportation Code, if the
6 accident resulted in the death of a person;

7 (2) ten years from the date of the commission of the
8 offense:

9 (A) theft of any estate, real, personal or mixed,
10 by an executor, administrator, guardian or trustee, with intent to
11 defraud any creditor, heir, legatee, ward, distributee,
12 beneficiary or settlor of a trust interested in such estate;

13 (B) theft by a public servant of government
14 property over which he exercises control in his official capacity;

15 (C) forgery or the uttering, using or passing of
16 forged instruments;

17 (D) injury to a child, elderly individual, or
18 disabled individual punishable as a felony of the first degree
19 under Section 22.04, Penal Code;

20 (E) sexual assault, except as provided by
21 Subdivision (1) or (5); or

22 (F) arson;

23 (3) seven years from the date of the commission of the
24 offense:

25 (A) misapplication of fiduciary property or
26 property of a financial institution;

27 (B) securing execution of document by deception;

1 [~~or~~]

2 (C) a violation under Sections 162.403(22)-(39),
3 Tax Code;

4 (D) false statement to obtain property or credit;
5 or

6 (E) money laundering;

7 (4) five years from the date of the commission of the
8 offense:

9 (A) theft, burglary, robbery;

10 (B) kidnapping;

11 (C) injury to a child, elderly individual, or
12 disabled individual that is not punishable as a felony of the first
13 degree under Section 22.04, Penal Code;

14 (D) abandoning or endangering a child; or

15 (E) insurance fraud;

16 (5) ten years from the 18th birthday of the victim of
17 the offense:

18 (A) indecency with a child under Section
19 21.11(a)(1) or (2), Penal Code; or

20 (B) except as provided by Subdivision (1), sexual
21 assault under Section 22.011(a)(2), Penal Code, or aggravated
22 sexual assault under Section 22.021(a)(1)(B), Penal Code; or

23 (6) three years from the date of the commission of the
24 offense: all other felonies.

25 SECTION 6. The change in law made by this Act to Article
26 12.01, Code of Criminal Procedure, does not apply to an offense if
27 the prosecution of that offense became barred by limitation before

1 the effective date of this Act. The prosecution of that offense
2 remains barred as if this Act had not taken effect.

3 SECTION 7. To the extent of a conflict, this Act prevails
4 over any other Act of the 80th Legislature, Regular Session, 2007,
5 regardless of the relative dates of enactment.

6 SECTION 8. This Act takes effect September 1, 2007.