

By: Solomons

H.B. No. 716

Substitute the following for H.B. No. 716:

By: Solomons

C.S.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 that includes the name, employment information, and annual income information of the loan applicant, as stated on the mortgage loan documents.

(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."

(c) On receipt of the notice, the loan applicant shall

1 verify the information and execute the notice.

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

4 Sec. 402.031. REPORTING FRAUDULENT ACTIVITIES. (a) In
5 this section:

6 (1) "Authorized governmental agency" means:

7 (A) the attorney general;

8 (B) a local or state law enforcement agency of
9 this state or a federal law enforcement agency;

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

12 (D) the Department of Public Safety, the Texas
13 Department of Insurance, the Office of Consumer Credit
14 Commissioner, the Texas Department of Banking, the credit union
15 department, the Department of Savings and Mortgage Lending, the
16 Texas Real Estate Commission, or the Texas Appraiser Licensing and
17 Certification Board.

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

21 (b) If a person determines or reasonably suspects that
22 fraudulent activity has been committed or is about to be committed,
23 the person shall report the information to an authorized
24 governmental agency. If a person reports the information to the
25 attorney general, the attorney general shall notify each agency
26 with representation on the residential mortgage fraud task force
27 under Section 402.032. If a financial institution or person

1 voluntarily or pursuant to this section reports fraudulent activity
2 to an authorized governmental agency, the financial institution or
3 person may not notify any person involved in the fraudulent
4 activity that the fraudulent activity has been reported, and the
5 authorized governmental agency who has any knowledge that such
6 report was made shall not disclose to any person involved in the
7 fraudulent activity that the fraudulent activity has been reported.
8 Any financial institution or person that makes a voluntary report
9 of any possible violation of law or regulation to an authorized
10 governmental agency shall not be liable to any person under any law
11 or regulation of the state or the United States for such report.

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

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

17 (b) The office of the attorney general shall establish the
18 task force to form a strategic partnership between state, federal,
19 and local law enforcement agencies to better enable law enforcement
20 and state agencies to take a proactive stance towards tracking and
21 prosecuting mortgage fraud and the perpetrators of mortgage fraud
22 statewide.

23 (c) The task force consists of the following persons or
24 their appointees:

- 25 (1) the attorney general;
26 (2) the consumer credit commissioner;
27 (3) the banking commissioner;

- 1 (4) the credit union commissioner;
2 (5) the commissioner of insurance;
3 (6) the savings and mortgage lending commissioner;
4 (7) the presiding officer of the Texas Real Estate
5 Commission; and
6 (8) the presiding officer of the Texas Appraiser
7 Licensing and Certification Board.

8 (d) The task force may request assistance from the Federal
9 Bureau of Investigation, United States Secret Service, United
10 States Department of Justice, United States Department of Homeland
11 Security, Internal Revenue Service, and the United States Postal
12 Service.

13 (e) The task force shall focus its efforts in:
14 (1) sharing information and resources; and
15 (2) successfully enforcing administrative and
16 criminal actions against perpetrators of mortgage fraud.

17 (f) The agencies of the persons listed in Subsection (c) may
18 share confidential information or information to which access is
19 otherwise restricted by law with one or more of the other agencies
20 of the persons listed in Subsection (c) for investigative purposes
21 described by Subsection (b). Except as provided by this
22 subsection, confidential information that is shared under this
23 subsection remains confidential and legal restrictions on access to
24 the information apply.

25 (g) The task force shall submit to the governor, lieutenant
26 governor, and speaker of the house of representatives an annual
27 report on the progress of each agency of the persons listed in

1 Subsection (c) in accomplishing the purposes described by
2 Subsection (b).

3 (h) The office of the attorney general shall oversee the
4 administration of the task force. The attorney general shall
5 provide the necessary staff and facilities to assist the task force
6 in performing its duties.

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

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

14 (a) This section applies only to information held by or for
15 the office of the attorney general, the Texas Department of
16 Insurance, the Texas State Board of Public Accountancy, the Public
17 Utility Commission of Texas, ~~[or]~~ the State Securities Board, the
18 Department of Savings and Mortgage Lending, the Texas Real Estate
19 Commission, the Texas Appraiser Licensing and Certification Board,
20 the Texas Department of Banking, the credit union department, or
21 the Office of Consumer Credit Commissioner that relates to the
22 possible commission of corporate fraud or mortgage fraud by a
23 person who is licensed or otherwise regulated by any of those state
24 agencies. In this subsection, "corporate fraud" means a violation
25 of state or federal law or rules relating to fraud committed by a
26 corporation, limited liability company, or registered limited
27 liability partnership or an officer, director, or partner of those

1 entities while acting in a representative capacity.

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

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

6 (1) a loan of money;

7 (2) furnishing property or service on credit;

8 (3) extending the due date of an obligation;

9 (4) comaking, endorsing, or guaranteeing a note or
10 other instrument for obtaining credit;

11 (5) a line or letter of credit; ~~and~~

12 (6) a credit card, as defined in Section 32.31 (Credit
13 Card or Debit Card Abuse); and

14 (7) a mortgage loan.

15 (b) A person commits an offense if he intentionally or
16 knowingly makes a materially false or misleading written statement
17 to obtain property or credit, including a mortgage loan ~~[for~~
18 ~~himself or another]~~.

19 (d) The following agencies shall assist a prosecuting
20 attorney of the United States or of a county or judicial district of
21 this state, a county or state law enforcement agency of this state,
22 or a federal law enforcement agency in the investigation of an
23 offense under this section involving a mortgage loan:

24 (1) the office of the attorney general;

25 (2) the Department of Public Safety;

26 (3) the Texas Department of Insurance;

27 (4) the Office of Consumer Credit Commissioner;

- 1 (5) the Texas Department of Banking;
- 2 (6) the credit union department;
- 3 (7) the Department of Savings and Mortgage Lending;
- 4 (8) the Texas Real Estate Commission; and
- 5 (9) the Texas Appraiser Licensing and Certification
- 6 Board.

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

9 Art. 12.01. FELONIES. Except as provided in Article 12.03,
10 felony indictments may be presented within these limits, and not
11 afterward:

- 12 (1) no limitation:
 - 13 (A) murder and manslaughter;
 - 14 (B) sexual assault, if during the investigation
 - 15 of the offense biological matter is collected and subjected to
 - 16 forensic DNA testing and the testing results show that the matter
 - 17 does not match the victim or any other person whose identity is
 - 18 readily ascertained; or
 - 19 (C) an offense involving leaving the scene of an
 - 20 accident under Section 550.021, Transportation Code, if the
 - 21 accident resulted in the death of a person;

- 22 (2) ten years from the date of the commission of the
- 23 offense:
 - 24 (A) theft of any estate, real, personal or mixed,
 - 25 by an executor, administrator, guardian or trustee, with intent to
 - 26 defraud any creditor, heir, legatee, ward, distributee,
 - 27 beneficiary or settlor of a trust interested in such estate;

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

3 (C) forgery or the uttering, using or passing of
4 forged instruments;

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

8 (E) sexual assault, except as provided by
9 Subdivision (1) or (5); or

10 (F) arson;

11 (3) seven years from the date of the commission of the
12 offense:

13 (A) misapplication of fiduciary property or
14 property of a financial institution;

15 (B) securing execution of document by deception;
16 [~~or~~]

17 (C) a violation under Sections 162.403(22)-(39),
18 Tax Code;

19 (D) false statement to obtain property or credit;
20 or

21 (E) money laundering;

22 (4) five years from the date of the commission of the
23 offense:

24 (A) theft, burglary, robbery;

25 (B) kidnapping;

26 (C) injury to a child, elderly individual, or
27 disabled individual that is not punishable as a felony of the first

1 degree under Section 22.04, Penal Code;

2 (D) abandoning or endangering a child; or

3 (E) insurance fraud;

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

6 (A) indecency with a child under Section
7 21.11(a)(1) or (2), Penal Code; or

8 (B) except as provided by Subdivision (1), sexual
9 assault under Section 22.011(a)(2), Penal Code, or aggravated
10 sexual assault under Section 22.021(a)(1)(B), Penal Code; or

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

13 SECTION 6. The change in law made by this Act to Article
14 12.01, Code of Criminal Procedure, does not apply to an offense if
15 the prosecution of that offense became barred by limitation before
16 the effective date of this Act. The prosecution of that offense
17 remains barred as if this Act had not taken effect.

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

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