

1-1 By: Solomons, et al. (Senate Sponsor - Averitt) H.B. No. 716  
1-2 (In the Senate - Received from the House April 10, 2007;  
1-3 April 11, 2007, read first time and referred to Committee on  
1-4 Business and Commerce; May 3, 2007, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 9,  
1-6 Nays 0; May 3, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 716 By: Averitt

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to mortgage fraud; providing criminal penalties.  
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
1-12 SECTION 1. Subchapter B, Chapter 343, Finance Code, is  
1-13 amended by adding Section 343.105 to read as follows:  
1-14 Sec. 343.105. NOTICE OF PENALTIES FOR MAKING FALSE OR  
1-15 MISLEADING WRITTEN STATEMENT. (a) A lender, mortgage banker, or  
1-16 licensed mortgage broker shall provide to each applicant for a home  
1-17 loan a written notice at closing.

1-18 (b) The notice must:  
1-19 (1) be provided on a separate document;  
1-20 (2) be in at least 14-point type; and  
1-21 (3) have the following or substantially similar  
1-22 language:

1-23 "Warning: Intentionally or knowingly making a materially  
1-24 false or misleading written statement to obtain property or  
1-25 credit, including a mortgage loan, is a violation of Section  
1-26 32.32, Texas Penal Code, and, depending on the amount of the  
1-27 loan or value of the property, is punishable by imprisonment  
1-28 for a term of 2 years to 99 years and a fine not to exceed  
1-29 \$10,000.

1-30 "I/we, the undersigned home loan applicant(s), represent  
1-31 that I/we have received, read, and understand this notice of  
1-32 penalties for making a materially false or misleading written  
1-33 statement to obtain a home loan.

1-34 "I/we represent that all statements and representations  
1-35 contained in my/our written home loan application, including  
1-36 statements or representations regarding my/our identity,  
1-37 employment, annual income, and intent to occupy the  
1-38 residential real property secured by the home loan, are true  
1-39 and correct as of the date of loan closing."

1-40 (c) On receipt of the notice, the loan applicant shall  
1-41 verify the information and execute the notice.

1-42 (d) The failure of a lender, mortgage banker, or licensed  
1-43 mortgage broker to provide a notice complying with this section to  
1-44 each applicant for a home loan does not affect the validity or  
1-45 enforceability of the home loan by any holder of the loan.

1-46 SECTION 2. Subchapter B, Chapter 402, Government Code, is  
1-47 amended by adding Sections 402.031 and 402.032 to read as follows:

1-48 Sec. 402.031. REPORTING FRAUDULENT ACTIVITIES. (a) In  
1-49 this section:

1-50 (1) "Authorized governmental agency" means:  
1-51 (A) the attorney general;  
1-52 (B) a local or state law enforcement agency of  
1-53 this state or a federal law enforcement agency;  
1-54 (C) a prosecuting attorney of the United States  
1-55 or of a county or judicial district of this state; or  
1-56 (D) the Department of Public Safety, the Texas  
1-57 Department of Insurance, the Office of Consumer Credit  
1-58 Commissioner, the Texas Department of Banking, the credit union  
1-59 department, the Department of Savings and Mortgage Lending, the  
1-60 Texas Real Estate Commission, or the Texas Appraiser Licensing and  
1-61 Certification Board.

1-62 (2) "Fraudulent activity" means any act that  
1-63 constitutes a violation of a penal law and is part of an attempt or

2-1 scheme to defraud any person.

2-2 (b) If a person determines or reasonably suspects that  
 2-3 fraudulent activity has been committed or is about to be committed,  
 2-4 the person shall report the information to an authorized  
 2-5 governmental agency. If a person reports the information to the  
 2-6 attorney general, the attorney general shall notify each agency  
 2-7 with representation on the residential mortgage fraud task force  
 2-8 under Section 402.032. If a financial institution or person  
 2-9 voluntarily or pursuant to this section reports fraudulent activity  
 2-10 to an authorized governmental agency, the financial institution or  
 2-11 person may not notify any person involved in the fraudulent  
 2-12 activity that the fraudulent activity has been reported, and the  
 2-13 authorized governmental agency who has any knowledge that such  
 2-14 report was made shall not disclose to any person involved in the  
 2-15 fraudulent activity that the fraudulent activity has been reported.  
 2-16 Any financial institution or person that makes a voluntary report  
 2-17 of any possible violation of law or regulation to an authorized  
 2-18 governmental agency shall not be liable to any person under any law  
 2-19 or regulation of the state or the United States for such report.

2-20 (c) This section does not eliminate or diminish any common  
 2-21 law or statutory privilege or immunity.

2-22 Sec. 402.032. RESIDENTIAL MORTGAGE FRAUD TASK FORCE. (a)  
 2-23 In this section, "task force" means the residential mortgage fraud  
 2-24 task force.

2-25 (b) The office of the attorney general shall establish the  
 2-26 task force to form a strategic partnership between state, federal,  
 2-27 and local law enforcement agencies to better enable law enforcement  
 2-28 and state agencies to take a proactive stance towards tracking and  
 2-29 prosecuting mortgage fraud and the perpetrators of mortgage fraud  
 2-30 statewide.

2-31 (c) The task force consists of the following persons or  
 2-32 their appointees:

- 2-33 (1) the attorney general;  
 2-34 (2) the consumer credit commissioner;  
 2-35 (3) the banking commissioner;  
 2-36 (4) the credit union commissioner;  
 2-37 (5) the commissioner of insurance;  
 2-38 (6) the savings and mortgage lending commissioner;  
 2-39 (7) the presiding officer of the Texas Real Estate  
 2-40 Commission; and  
 2-41 (8) the presiding officer of the Texas Appraiser  
 2-42 Licensing and Certification Board.

2-43 (d) The task force may request assistance from the Federal  
 2-44 Bureau of Investigation, United States Secret Service, United  
 2-45 States Department of Justice, United States Department of Homeland  
 2-46 Security, Internal Revenue Service, and the United States Postal  
 2-47 Service.

2-48 (e) The task force shall focus its efforts in:  
 2-49 (1) sharing information and resources; and  
 2-50 (2) successfully enforcing administrative and  
 2-51 criminal actions against perpetrators of mortgage fraud.

2-52 (f) The agencies of the persons listed in Subsection (c) may  
 2-53 share confidential information or information to which access is  
 2-54 otherwise restricted by law with one or more of the other agencies  
 2-55 of the persons listed in Subsection (c) for investigative purposes  
 2-56 described by Subsection (b). Except as provided by this  
 2-57 subsection, confidential information that is shared under this  
 2-58 subsection remains confidential and legal restrictions on access to  
 2-59 the information apply.

2-60 (g) The task force shall submit to the governor, lieutenant  
 2-61 governor, and speaker of the house of representatives an annual  
 2-62 report on the progress of each agency of the persons listed in  
 2-63 Subsection (c) in accomplishing the purposes described by  
 2-64 Subsection (b).

2-65 (h) The office of the attorney general shall oversee the  
 2-66 administration of the task force. The attorney general shall  
 2-67 provide the necessary staff and facilities to assist the task force  
 2-68 in performing its duties.

2-69 (i) The attorney general may solicit and accept gifts,

3-1 grants, and donations of money, services, or property on behalf of  
 3-2 the state for disbursement to any state agency or local law  
 3-3 enforcement agency to aid the task force in the investigation and  
 3-4 prosecution of mortgage fraud in this state.

3-5 SECTION 3. Subchapter F, Chapter 411, Government Code, is  
 3-6 amended by adding Section 411.1407 to read as follows:

3-7 Sec. 411.1407. ACCESS TO CRIMINAL HISTORY RECORD  
 3-8 INFORMATION: CREDIT UNION DEPARTMENT. (a) The credit union  
 3-9 commissioner is entitled to obtain from the department criminal  
 3-10 history record information maintained by the department that  
 3-11 relates to a person who is:

3-12 (1) an individual who applies to incorporate a credit  
 3-13 union under Subtitle D, Title 3, Finance Code;

3-14 (2) a board member of a credit union incorporated  
 3-15 under Subtitle D, Title 3, Finance Code;

3-16 (3) an applicant for employment by the credit union  
 3-17 department; or

3-18 (4) an employee of the credit union department.

3-19 (b) Criminal history record information obtained by the  
 3-20 credit union commissioner under this section may not be released by  
 3-21 any person except:

3-22 (1) on court order, unless the information is entered  
 3-23 into evidence by the credit union department or a court at an  
 3-24 administrative proceeding or a civil or criminal action under  
 3-25 Subtitle D, Title 3, Finance Code; or

3-26 (2) with the consent of the person who is the subject  
 3-27 of the criminal history record information.

3-28 SECTION 4. Section 555.051(a), Government Code, is amended  
 3-29 to read as follows:

3-30 (a) This section applies only to information held by or for  
 3-31 the office of the attorney general, the Texas Department of  
 3-32 Insurance, the Texas State Board of Public Accountancy, the Public  
 3-33 Utility Commission of Texas, ~~or~~ the State Securities Board, the  
 3-34 Department of Savings and Mortgage Lending, the Texas Real Estate  
 3-35 Commission, the Texas Appraiser Licensing and Certification Board,  
 3-36 the Texas Department of Banking, the credit union department, or  
 3-37 the Office of Consumer Credit Commissioner that relates to the  
 3-38 possible commission of corporate fraud or mortgage fraud by a  
 3-39 person who is licensed or otherwise regulated by any of those state  
 3-40 agencies. In this subsection, "corporate fraud" means a violation  
 3-41 of state or federal law or rules relating to fraud committed by a  
 3-42 corporation, limited liability company, or registered limited  
 3-43 liability partnership or an officer, director, or partner of those  
 3-44 entities while acting in a representative capacity.

3-45 SECTION 5. Section 32.32, Penal Code, is amended by  
 3-46 amending Subsections (a) and (b) and adding Subsections (d) and (e)  
 3-47 to read as follows:

3-48 (a) For purposes of this section, "credit" includes:

3-49 (1) a loan of money;

3-50 (2) furnishing property or service on credit;

3-51 (3) extending the due date of an obligation;

3-52 (4) comaking, endorsing, or guaranteeing a note or  
 3-53 other instrument for obtaining credit;

3-54 (5) a line or letter of credit; ~~and~~

3-55 (6) a credit card, as defined in Section 32.31 (Credit  
 3-56 Card or Debit Card Abuse); and

3-57 (7) a mortgage loan.

3-58 (b) A person commits an offense if he intentionally or  
 3-59 knowingly makes a materially false or misleading written statement  
 3-60 to obtain property or credit, including a mortgage loan ~~for~~  
 3-61 ~~himself or another~~.

3-62 (d) The following agencies shall assist a prosecuting  
 3-63 attorney of the United States or of a county or judicial district of  
 3-64 this state, a county or state law enforcement agency of this state,  
 3-65 or a federal law enforcement agency in the investigation of an  
 3-66 offense under this section involving a mortgage loan:

3-67 (1) the office of the attorney general;

3-68 (2) the Department of Public Safety;

3-69 (3) the Texas Department of Insurance;

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

4-8 (e) With the consent of the appropriate local county or  
 4-9 district attorney, the attorney general has concurrent  
 4-10 jurisdiction with that consenting local prosecutor to prosecute an  
 4-11 offense under this section that involves a mortgage loan.

4-12 SECTION 6. Article 12.01, Code of Criminal Procedure, is  
 4-13 amended to read as follows:

4-14 Art. 12.01. FELONIES. Except as provided in Article 12.03,  
 4-15 felony indictments may be presented within these limits, and not  
 4-16 afterward:

- 4-17 (1) no limitation:
- 4-18 (A) murder and manslaughter;
- 4-19 (B) sexual assault, if during the investigation  
 4-20 of the offense biological matter is collected and subjected to  
 4-21 forensic DNA testing and the testing results show that the matter  
 4-22 does not match the victim or any other person whose identity is  
 4-23 readily ascertained; or

- 4-24 (C) an offense involving leaving the scene of an  
 4-25 accident under Section 550.021, Transportation Code, if the  
 4-26 accident resulted in the death of a person;

- 4-27 (2) ten years from the date of the commission of the  
 4-28 offense:

- 4-29 (A) theft of any estate, real, personal or mixed,  
 4-30 by an executor, administrator, guardian or trustee, with intent to  
 4-31 defraud any creditor, heir, legatee, ward, distributee,  
 4-32 beneficiary or settlor of a trust interested in such estate;

- 4-33 (B) theft by a public servant of government  
 4-34 property over which he exercises control in his official capacity;

- 4-35 (C) forgery or the uttering, using or passing of  
 4-36 forged instruments;

- 4-37 (D) injury to a child, elderly individual, or  
 4-38 disabled individual punishable as a felony of the first degree  
 4-39 under Section 22.04, Penal Code;

- 4-40 (E) sexual assault, except as provided by  
 4-41 Subdivision (1) or (5); or

- 4-42 (F) arson;

- 4-43 (3) seven years from the date of the commission of the  
 4-44 offense:

- 4-45 (A) misapplication of fiduciary property or  
 4-46 property of a financial institution;

- 4-47 (B) securing execution of document by deception;

- 4-48 ~~[or]~~
- 4-49 (C) a violation under Sections 162.403(22)-(39),  
 4-50 Tax Code;

- 4-51 (D) false statement to obtain property or credit;

- 4-52 or
- 4-53 (E) money laundering;

- 4-54 (4) five years from the date of the commission of the  
 4-55 offense:

- 4-56 (A) theft, burglary, robbery;
- 4-57 (B) kidnapping;

- 4-58 (C) injury to a child, elderly individual, or  
 4-59 disabled individual that is not punishable as a felony of the first  
 4-60 degree under Section 22.04, Penal Code;

- 4-61 (D) abandoning or endangering a child; or

- 4-62 (E) insurance fraud;

- 4-63 (5) ten years from the 18th birthday of the victim of  
 4-64 the offense:

- 4-65 (A) indecency with a child under Section  
 4-66 21.11(a)(1) or (2), Penal Code; or

- 4-67 (B) except as provided by Subdivision (1), sexual  
 4-68 assault under Section 22.011(a)(2), Penal Code, or aggravated  
 4-69 sexual assault under Section 22.021(a)(1)(B), Penal Code; or

5-1 (6) three years from the date of the commission of the  
5-2 offense: all other felonies.

5-3 SECTION 7. The change in law made by this Act to Article  
5-4 12.01, Code of Criminal Procedure, does not apply to an offense if  
5-5 the prosecution of that offense became barred by limitation before  
5-6 the effective date of this Act. The prosecution of that offense  
5-7 remains barred as if this Act had not taken effect.

5-8 SECTION 8. To the extent of a conflict, this Act prevails  
5-9 over any other Act of the 80th Legislature, Regular Session, 2007,  
5-10 regardless of the relative dates of enactment.

5-11 SECTION 9. This Act takes effect September 1, 2007.

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