

By: Paxton

H.B. No. 2138

Substitute the following for H.B. No. 2138:

By: Orr

C.S.H.B. No. 2138

A BILL TO BE ENTITLED

AN ACT

relating to regulation of property tax lenders; providing a penalty.

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

SECTION 1. Subtitle B, Title 4, Finance Code, is amended by adding Chapter 351 to read as follows:

CHAPTER 351. PROPERTY TAX LENDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 351.001. SHORT TITLE. This chapter may be cited as the Property Tax Lender License Act.

Sec. 351.002. DEFINITIONS. In this chapter:

(1) "Property tax lender" means a person that engages in activity requiring a license under Section 351.051. The term does not include:

(A) a person who is sponsored by a licensed property tax lender to assist with or perform the acts of a property tax lender; or

(B) a person who performs only clerical functions such as delivering a loan application to a property tax lender, gathering or requesting information related to a property tax loan application on behalf of the prospective borrower or property tax lender, word processing, sending correspondence, or assembling files.

(2) "Property tax loan" means an advance of money:

1           (A) in connection with a transfer of lien under  
2 Section 32.06, Tax Code, or a contract under Section 32.065, Tax  
3 Code;

4           (B) in connection with which the person making  
5 the transfer arranges for the payment, with a property owner's  
6 written consent, of property taxes and related closing costs on  
7 behalf of the property owner in accordance with Section 32.06, Tax  
8 Code; and

9           (C) that is secured by a special lien against  
10 property transferred from a taxing unit to the property tax lender  
11 and which may be further secured by the lien or security interest  
12 created by a deed of trust, security deed, or other security  
13 instrument.

14       Sec. 351.003. SECONDARY MARKET TRANSACTIONS. This chapter  
15 does not prohibit a property tax lender from receiving compensation  
16 from a party other than the property tax loan applicant for the  
17 sale, transfer, assignment, or release of rights on the closing of a  
18 property tax loan transaction.

19       Sec. 351.004. AFFILIATED BUSINESS ARRANGEMENTS. This  
20 chapter may not be construed to prevent affiliated or controlled  
21 business arrangements or loan origination services by or between a  
22 property tax lender and other professionals.

23       Sec. 351.005. APPLICATION OF TAX CODE. This chapter does  
24 not affect the application of Section 32.06 or 32.065, Tax Code.

25       Sec. 351.006. ENFORCEMENT. In addition to any other  
26 applicable enforcement provisions, Subchapters E, F, and G, Chapter  
27 14, apply to a violation of this chapter or Section 32.06 or 32.065,

1 Tax Code, in connection with property tax loans.

2 Sec. 351.007. RULES. The finance commission may adopt  
3 rules to ensure compliance with this chapter and Sections 32.06 and  
4 32.065, Tax Code.

5 [Sections 351.008-351.050 reserved for expansion]

6 SUBCHAPTER B. AUTHORIZED ACTIVITIES; LICENSE

7 Sec. 351.051. LICENSE REQUIRED. (a) A person must hold a  
8 license issued under this chapter to:

9 (1) engage in the business of making, transacting, or  
10 negotiating property tax loans; or

11 (2) contract for, charge, or receive, directly or  
12 indirectly, in connection with a property tax loan subject to this  
13 chapter, a charge, including interest, compensation,  
14 consideration, or another expense, authorized under this chapter  
15 that in the aggregate exceeds the charges authorized under other  
16 law.

17 (b) A person may not use any device, subterfuge, or pretense  
18 to evade the application of this section.

19 (c) This chapter does not apply to:

20 (1) any of the following entities or an employee of any  
21 of the following entities, if the employee is acting for the benefit  
22 of the employer:

23 (A) a bank, savings bank, or savings and loan  
24 association, or a subsidiary or an affiliate of a bank, savings  
25 bank, or savings and loan association; or

26 (B) a state or federal credit union, or a  
27 subsidiary, affiliate, or credit union service organization of a

1 state or federal credit union; or

2 (2) an individual who:

3 (A) makes a property tax loan from the  
4 individual's own funds to a spouse, former spouse, or persons in the  
5 lineal line of consanguinity of the individual lending the money;  
6 or

7 (B) makes five or fewer property tax loans in any  
8 consecutive 12-month period from the individual's own funds.

9 (d) A property tax lender licensed under this chapter is not  
10 required to be licensed under Chapter 156 or any other provision of  
11 this code.

12 Sec. 351.052. ISSUANCE OF MORE THAN ONE LICENSE FOR A  
13 PROPERTY TAX LENDER. (a) The commissioner may issue more than one  
14 license to a property tax lender on compliance with this chapter for  
15 each license.

16 (b) A person who is required to hold a license under this  
17 chapter must hold a separate license for each office at which  
18 property tax loans are made, negotiated, serviced, held, or  
19 collected under this chapter.

20 (c) A license is not required under this chapter for a place  
21 of business:

22 (1) devoted to accounting or other recordkeeping; and

23 (2) at which property tax loans are not made,  
24 negotiated, serviced, held, or collected under this chapter.

25 Sec. 351.053. AREA OF BUSINESS; PROPERTY TAX LOANS BY MAIL.

26 (a) A property tax lender is not limited to making property tax  
27 loans to residents of the community in which the office for which

1 the license or other authority is granted is located.

2 (b) A property tax lender may make, negotiate, arrange, and  
3 collect property tax loans by mail from a licensed office.

4 Sec. 351.054. NOTICE TO TAXING UNIT. (a) A transferee of a  
5 tax lien must include with the sworn document filed with the  
6 collector of a taxing unit under Section 32.06(a-1), Tax Code, the  
7 information required by this section.

8 (b) If the transferee is licensed under this chapter, the  
9 transferee shall include with the filing the licensee's license  
10 number assigned by the commissioner.

11 (c) If the transferee is exempt from this chapter under  
12 Section 351.051(c)(1), the transferee shall include with the filing  
13 an affidavit stating the entity's type of organization that  
14 qualifies it for the exemption, any charter number assigned by the  
15 governmental authority that issued the entity's charter, and the  
16 address of the entity's main office.

17 (d) If the transferee is exempt from this chapter under  
18 Section 351.051(c)(2), the transferee shall include a certificate  
19 issued by the commissioner indicating the entity's exemption. The  
20 commissioner shall establish procedures for issuance of a  
21 certificate under this subsection, application requirements, and  
22 requirements regarding information that must be submitted with an  
23 application.

24 [Sections 351.055-351.100 reserved for expansion]

25 SUBCHAPTER C. APPLICATION FOR AND ISSUANCE OF LICENSE

26 Sec. 351.101. APPLICATION REQUIREMENTS. (a) The  
27 application for a license under this chapter must:

1           (1) be under oath;

2           (2) give the approximate location from which business  
3 is to be conducted;

4           (3) identify the business's principal parties in  
5 interest; and

6           (4) contain other relevant information that the  
7 commissioner requires for the findings required under Section  
8 351.104.

9           (b) On the filing of one or more license applications, the  
10 applicant shall pay to the commissioner an investigation fee not to  
11 exceed \$200.

12           (c) On the filing of each license application, the applicant  
13 shall pay to the commissioner for the license's year of issuance a  
14 license fee in an amount determined as provided by Section 14.107.

15           Sec. 351.102. BOND. (a) If the commissioner requires, an  
16 applicant for a license under this chapter shall file with the  
17 application a bond that is:

18                   (1) in an amount not to exceed the total of:

19                           (A) \$50,000 for the first license; and

20                           (B) \$10,000 for each additional license;

21                   (2) satisfactory to the commissioner; and

22                   (3) issued by a surety company qualified to do  
23 business as a surety in this state.

24           (b) The bond must be in favor of this state for the use of  
25 this state and the use of a person who has a cause of action under  
26 this chapter against the license holder.

27           (c) The bond must be conditioned on:

1           (1) the license holder's faithful performance under  
2 this chapter and rules adopted under this chapter; and

3           (2) the payment of all amounts that become due to the  
4 state or another person under this chapter during the calendar year  
5 for which the bond is given.

6           (d) The aggregate liability of a surety to all persons  
7 damaged by the license holder's violation of this chapter may not  
8 exceed the amount of the bond.

9           Sec. 351.103. INVESTIGATION OF APPLICATION. On the filing  
10 of an application and, if required, a bond, and on payment of the  
11 required fees, the commissioner shall conduct an investigation to  
12 determine whether to issue the license.

13           Sec. 351.104. APPROVAL OR DENIAL OF APPLICATION. (a) The  
14 commissioner shall approve the application and issue to the  
15 applicant a license to make property tax loans under this chapter if  
16 the commissioner finds that:

17           (1) the financial responsibility, experience,  
18 character, and general fitness of the applicant are sufficient to:

19                   (A) command the confidence of the public; and

20                   (B) warrant the belief that the business will be  
21 operated lawfully and fairly, within the purposes of this chapter;  
22 and

23           (2) the applicant has net assets of at least \$25,000  
24 available for the operation of the business.

25           (b) If the commissioner does not find that the eligibility  
26 requirements of Subsection (a) are met, the commissioner shall  
27 notify the applicant.

1       (c) If an applicant requests a hearing on the application  
2 not later than the 30th day after the date of notification under  
3 Subsection (b), the applicant is entitled to a hearing not later  
4 than the 60th day after the date of the request.

5       (d) The commissioner shall approve or deny the application  
6 not later than the 60th day after the date of the filing of a  
7 completed application with payment of the required fees, or if a  
8 hearing is held, after the date of the completion of the hearing on  
9 the application. The commissioner and the applicant may agree to a  
10 later date in writing.

11       Sec. 351.105. DISPOSITION OF FEES ON DENIAL OF APPLICATION.  
12 If the commissioner denies the application, the commissioner shall  
13 retain the investigation fee and shall return to the applicant the  
14 license fee submitted with the application.

15       [Sections 351.106-351.150 reserved for expansion]

16                               SUBCHAPTER D. LICENSE

17       Sec. 351.151. NAME AND PLACE ON LICENSE. (a) A license must  
18 state:

- 19                       (1) the name of the license holder; and  
20                       (2) the address of the office from which the business  
21 is to be conducted.

22       (b) A license holder may not conduct business under this  
23 chapter under a name or at a place of business in this state other  
24 than the name or office stated on the license.

25       Sec. 351.152. LICENSE DISPLAY. A license holder shall  
26 display a license at the place of business provided on the license.

27       Sec. 351.153. MINIMUM ASSETS FOR LICENSE. A license holder

1 shall maintain for each office for which a license is held net  
2 assets of at least \$25,000 that are used or readily available for  
3 use in conducting the business of that office.

4 Sec. 351.154. ANNUAL LICENSE FEE. Not later than December  
5 1, a license holder shall pay to the commissioner for each license  
6 held an annual fee for the year beginning the next January 1, in an  
7 amount determined as provided by Section 14.107.

8 Sec. 351.155. EXPIRATION OF LICENSE ON FAILURE TO PAY  
9 ANNUAL FEE. If the annual fee for a license is not paid before the  
10 16th day after the date on which the written notice of delinquency  
11 of payment has been given to the license holder, the license expires  
12 on the later of:

13 (1) that day; or

14 (2) December 31 of the last year for which an annual  
15 fee was paid.

16 Sec. 351.156. LICENSE SUSPENSION OR REVOCATION. After  
17 notice and a hearing the commissioner may suspend or revoke a  
18 license if the commissioner finds that:

19 (1) the license holder failed to pay the annual  
20 license fee, an examination fee, an investigation fee, or another  
21 charge imposed by the commissioner under this chapter;

22 (2) the license holder, knowingly or without the  
23 exercise of due care, violated this chapter or Section 32.06 or  
24 32.065, Tax Code, or a rule adopted or an order issued under this  
25 chapter or Section 32.06 or 32.065, Tax Code; or

26 (3) a fact or condition exists that, if it had existed  
27 or had been known to exist at the time of the original application

1 for the license, clearly would have justified the commissioner's  
2 denial of the application.

3 Sec. 351.157. CORPORATE CHARTER FORFEITURE. (a) A license  
4 holder who violates this chapter is subject to revocation of the  
5 holder's license and, if the license holder is a corporation,  
6 forfeiture of its charter.

7 (b) When the attorney general is notified of a violation of  
8 this chapter and revocation of a license, the attorney general  
9 shall file suit in a district court in Travis County, if the license  
10 holder is a corporation, for forfeiture of the license holder's  
11 charter.

12 Sec. 351.158. LICENSE SUSPENSION OR REVOCATION FILED WITH  
13 PUBLIC RECORDS. The decision of the commissioner on the suspension  
14 or revocation of a license and the evidence considered by the  
15 commissioner in making the decision shall be filed in the public  
16 records of the commissioner.

17 Sec. 351.159. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE  
18 OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a  
19 suspended license or issue a new license on application to a person  
20 whose license has been revoked if at the time of the reinstatement  
21 or issuance no fact or condition exists that clearly would have  
22 justified the commissioner's denial of an original application for  
23 the license.

24 Sec. 351.160. SURRENDER OF LICENSE. A license holder may  
25 surrender a license issued under this chapter by delivering to the  
26 commissioner:

27 (1) the license; and

1           (2) a written notice of the license's surrender.

2           Sec. 351.161. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR  
3 SURRENDER. (a) The suspension, revocation, or surrender of a  
4 license issued under this chapter does not affect the obligation of  
5 a contract between the license holder and a debtor entered into  
6 before the revocation, suspension, or surrender.

7           (b) Surrender of a license does not affect the license  
8 holder's civil or criminal liability for an act committed before  
9 surrender.

10          Sec. 351.162. MOVING AN OFFICE. (a) A license holder shall  
11 give written notice to the commissioner before the 30th day  
12 preceding the date the license holder moves an office from the  
13 location provided on the license.

14          (b) The commissioner shall amend a license holder's license  
15 accordingly.

16          Sec. 351.163. TRANSFER OR ASSIGNMENT OF LICENSE. A license  
17 may be transferred or assigned only with the approval of the  
18 commissioner.

19          SECTION 2. Sections 349.502(a) and (c), Finance Code, are  
20 amended to read as follows:

21          (a) A person commits an offense if the person engages in a  
22 business that is subject to Chapter 342, ~~or~~ 346, or 351 without  
23 holding the license or other authorization required under that  
24 chapter.

25          (c) Each loan made without the authority required by Chapter  
26 342, ~~or~~ 346, or 351 is a separate offense.

27          SECTION 3. Section 32.06(a-1), Tax Code, is amended to read

1 as follows:

2 (a-1) A person may authorize another person to pay the  
3 delinquent taxes imposed by a taxing unit on the person's real  
4 property by filing with the collector for the unit:

5 (1) a sworn document stating:

6 (A) ~~[(1)]~~ the authorization;

7 (B) ~~[(2)]~~ the name and street address of the  
8 transferee authorized to pay the taxes of the property owner; and

9 (C) ~~[(3)]~~ a description of the property by street  
10 address, if applicable, and legal description; and

11 (2) the information required by Section 351.054,  
12 Finance Code.

13 SECTION 4. Section 32.065(d), Tax Code, is amended to read  
14 as follows:

15 (d) Chapters 342, 343, and 346, Finance Code, do not apply  
16 to a transaction covered by this section. [~~The transferee of a tax~~  
17 ~~lien under this section is not required to obtain a license under~~  
18 ~~Title 4, Finance Code.~~]

19 SECTION 5. A person is not required to be licensed under or  
20 comply with Chapter 351, Finance Code, as added by this Act, before  
21 March 1, 2008.

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