

By: Paxton

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, to
25 transfer of a tax lien or to the making of a property tax loan,
26 including interest and fees that a property tax lender may charge.

27 Sec. 351.006. ENFORCEMENT. In addition to any other

1 applicable enforcement provisions, Subchapters E and F, Chapter 14,
2 apply to a violation of this chapter or Section 32.06 or 32.065, Tax
3 Code, in connection with property tax loans.

4 Sec. 351.007. RULES. The finance commission may adopt
5 rules to ensure compliance with this chapter and Sections 32.06 and
6 32.065, Tax Code.

7 [Sections 351.008-351.050 reserved for expansion]

8 SUBCHAPTER B. AUTHORIZED ACTIVITIES; LICENSE

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

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

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

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

21 (c) This chapter does not apply to:

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

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

1 (B) a state or federal credit union, or a
2 subsidiary, affiliate, or credit union service organization of a
3 state or federal credit union; or

4 (2) an individual who:

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

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

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

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

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

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

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

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

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

1 (a) A property tax lender is not limited to making property tax
2 loans to residents of the community in which the office for which
3 the license or other authority is granted is located.

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

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

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

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

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

26 [Sections 351.055-351.100 reserved for expansion]

SUBCHAPTER C. APPLICATION FOR AND ISSUANCE OF LICENSE

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

- (1) be under oath;
- (2) give the approximate location from which business is to be conducted;
- (3) identify the business's principal parties in interest; and
- (4) contain other relevant information that the commissioner requires for the findings required under Section 351.104.

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

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

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

- (1) in an amount not to exceed the total of:
 - (A) \$50,000 for the first license; and
 - (B) \$10,000 for each additional license;
- (2) satisfactory to the commissioner; and
- (3) issued by a surety company qualified to do business as a surety in this state.

(b) The bond must be in favor of this state for the use of

1 this state and the use of a person who has a cause of action under
2 this chapter against the license holder.

3 (c) The bond must be conditioned on:

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

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

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

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

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

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

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

23 (B) warrant the belief that the business will be
24 operated lawfully and fairly, within the purposes of this chapter;
25 and

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

1 (b) If the commissioner does not find that the eligibility
2 requirements of Subsection (a) are met, the commissioner shall
3 notify the applicant.

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

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

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

18 [Sections 351.106-351.150 reserved for expansion]

19 SUBCHAPTER D. LICENSE

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

22 (1) the name of the license holder; and
23 (2) the address of the office from which the business
24 is to be conducted.

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

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

3 Sec. 351.153. MINIMUM ASSETS FOR LICENSE. A license holder
4 shall maintain for each office for which a license is held net
5 assets of at least \$25,000 that are used or readily available for
6 use in conducting the business of that office.

7 Sec. 351.154. ANNUAL LICENSE FEE. Not later than December
8 1, a license holder shall pay to the commissioner for each license
9 held an annual fee for the year beginning the next January 1, in an
10 amount determined as provided by Section 14.107.

11 Sec. 351.155. EXPIRATION OF LICENSE ON FAILURE TO PAY
12 ANNUAL FEE. If the annual fee for a license is not paid before the
13 16th day after the date on which the written notice of delinquency
14 of payment has been given to the license holder, the license expires
15 on the later of:

16 (1) that day; or

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

19 Sec. 351.156. LICENSE SUSPENSION OR REVOCATION. After
20 notice and a hearing the commissioner may suspend or revoke a
21 license if the commissioner finds that:

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

25 (2) the license holder, knowingly or without the
26 exercise of due care, violated this chapter or Section 32.06 or
27 32.065, Tax Code, or a rule adopted or an order issued under this

1 chapter or Section 32.06 or 32.065, Tax Code; or

2 (3) a fact or condition exists that, if it had existed
3 or had been known to exist at the time of the original application
4 for the license, clearly would have justified the commissioner's
5 denial of the application.

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

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

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

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

27 Sec. 351.160. SURRENDER OF LICENSE. A license holder may

1 surrender a license issued under this chapter by delivering to the
2 commissioner:

3 (1) the license; and

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

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

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

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

17 (b) The commissioner shall amend a license holder's license
18 accordingly.

19 Sec. 351.163. TRANSFER OR ASSIGNMENT OF LICENSE. A license
20 may be transferred or assigned only with the approval of the
21 commissioner.

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

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

1 (c) Each loan made without the authority required by Chapter
2 342, ~~[or]~~ 346, or 351 is a separate offense.

3 SECTION 3. Section 32.06(a-1), Tax Code, is amended to read
4 as follows:

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

8 (1) a sworn document stating:

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

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

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

14 (2) the information required by Section 351.054,
15 Finance Code.

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

18 (d) Chapters 342 and 346, Finance Code, do not apply to a
19 transaction covered by this section. ~~[The transferee of a tax lien~~
20 ~~under this section is not required to obtain a license under Title~~
21 ~~4, Finance Code.]~~

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

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