

1-1 By: Paxton (Senate Sponsor - Wentworth) H.B. No. 2138
1-2 (In the Senate - Received from the House April 27, 2007;
1-3 May 1, 2007, read first time and referred to Committee on
1-4 Jurisprudence; May 18, 2007, reported favorably, as amended, by
1-5 the following vote: Yeas 4, Nays 0; May 18, 2007, sent to
1-6 printer.)

1-7 COMMITTEE AMENDMENT NO. 1 By: Wentworth

1-8 Amend SECTION 1 of the bill by adding a new section 351.164 to
1-9 read as follows:

1-10 Sec. 351.164. REPORTING REQUIREMENT. (a) Each year, a
1-11 license holder shall file with the commissioner a report that
1-12 contains relevant information concerning its transactions
1-13 conducted under this chapter.

1-14 (b) A report under this section must be:

1-15 (1) under oath; and

1-16 (2) in the form prescribed by the commissioner.

1-17 (c) A report under this section is confidential.

1-18 (d) Annually the commissioner shall prepare and publish a
1-19 consolidated analysis and recapitulation of reports filed under
1-20 this section.

1-21 A BILL TO BE ENTITLED
1-22 AN ACT

1-23 relating to regulation of property tax lenders; providing a
1-24 penalty.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Subtitle B, Title 4, Finance Code, is amended by
1-27 adding Chapter 351 to read as follows:

1-28 CHAPTER 351. PROPERTY TAX LENDERS

1-29 SUBCHAPTER A. GENERAL PROVISIONS

1-30 Sec. 351.001. SHORT TITLE. This chapter may be cited as the
1-31 Property Tax Lender License Act.

1-32 Sec. 351.002. DEFINITIONS. In this chapter:

1-33 (1) "Property tax lender" means a person that engages
1-34 in activity requiring a license under Section 351.051. The term
1-35 does not include:

1-36 (A) a person who is sponsored by a licensed
1-37 property tax lender to assist with or perform the acts of a property
1-38 tax lender; or

1-39 (B) a person who performs only clerical functions
1-40 such as delivering a loan application to a property tax lender,
1-41 gathering or requesting information related to a property tax loan
1-42 application on behalf of the prospective borrower or property tax
1-43 lender, word processing, sending correspondence, or assembling
1-44 files.

1-45 (2) "Property tax loan" means an advance of money:

1-46 (A) in connection with a transfer of lien under
1-47 Section 32.06, Tax Code, or a contract under Section 32.065, Tax
1-48 Code;

1-49 (B) in connection with which the person making
1-50 the transfer arranges for the payment, with a property owner's
1-51 written consent, of property taxes and related closing costs on
1-52 behalf of the property owner in accordance with Section 32.06, Tax
1-53 Code; and

1-54 (C) that is secured by a special lien against
1-55 property transferred from a taxing unit to the property tax lender
1-56 and which may be further secured by the lien or security interest
1-57 created by a deed of trust, security deed, or other security
1-58 instrument.

1-59 Sec. 351.003. SECONDARY MARKET TRANSACTIONS. This chapter
1-60 does not prohibit a property tax lender from receiving compensation
1-61 from a party other than the property tax loan applicant for the
1-62 sale, transfer, assignment, or release of rights on the closing of a

2-1 property tax loan transaction.

2-2 Sec. 351.004. AFFILIATED BUSINESS ARRANGEMENTS. This
 2-3 chapter may not be construed to prevent affiliated or controlled
 2-4 business arrangements or loan origination services by or between a
 2-5 property tax lender and other professionals.

2-6 Sec. 351.005. APPLICATION OF TAX CODE. This chapter does
 2-7 not affect the application of Section 32.06 or 32.065, Tax Code.

2-8 Sec. 351.006. ENFORCEMENT. In addition to any other
 2-9 applicable enforcement provisions, Subchapters E, F, and G, Chapter
 2-10 14, apply to a violation of this chapter or Section 32.06 or 32.065,
 2-11 Tax Code, in connection with property tax loans.

2-12 Sec. 351.007. RULES. The finance commission may adopt
 2-13 rules to ensure compliance with this chapter and Sections 32.06 and
 2-14 32.065, Tax Code.

2-15 [Sections 351.008-351.050 reserved for expansion]

2-16 SUBCHAPTER B. AUTHORIZED ACTIVITIES; LICENSE

2-17 Sec. 351.051. LICENSE REQUIRED. (a) A person must hold a
 2-18 license issued under this chapter to:

2-19 (1) engage in the business of making, transacting, or
 2-20 negotiating property tax loans; or

2-21 (2) contract for, charge, or receive, directly or
 2-22 indirectly, in connection with a property tax loan subject to this
 2-23 chapter, a charge, including interest, compensation,
 2-24 consideration, or another expense, authorized under this chapter
 2-25 that in the aggregate exceeds the charges authorized under other
 2-26 law.

2-27 (b) A person may not use any device, subterfuge, or pretense
 2-28 to evade the application of this section.

2-29 (c) This chapter does not apply to:

2-30 (1) any of the following entities or an employee of any
 2-31 of the following entities, if the employee is acting for the benefit
 2-32 of the employer:

2-33 (A) a bank, savings bank, or savings and loan
 2-34 association, or a subsidiary or an affiliate of a bank, savings
 2-35 bank, or savings and loan association; or

2-36 (B) a state or federal credit union, or a
 2-37 subsidiary, affiliate, or credit union service organization of a
 2-38 state or federal credit union; or

2-39 (2) an individual who:
 2-40 (A) makes a property tax loan from the
 2-41 individual's own funds to a spouse, former spouse, or persons in the
 2-42 lineal line of consanguinity of the individual lending the money;
 2-43 or

2-44 (B) makes five or fewer property tax loans in any
 2-45 consecutive 12-month period from the individual's own funds.

2-46 (d) A property tax lender licensed under this chapter is not
 2-47 required to be licensed under Chapter 156 or any other provision of
 2-48 this code.

2-49 Sec. 351.052. ISSUANCE OF MORE THAN ONE LICENSE FOR
 2-50 PROPERTY TAX LENDER. (a) The commissioner may issue more than one
 2-51 license to a property tax lender on compliance with this chapter for
 2-52 each license.

2-53 (b) A person who is required to hold a license under this
 2-54 chapter must hold a separate license for each office at which
 2-55 property tax loans are made, negotiated, serviced, held, or
 2-56 collected under this chapter.

2-57 (c) A license is not required under this chapter for a place
 2-58 of business:

2-59 (1) devoted to accounting or other recordkeeping; and
 2-60 (2) at which property tax loans are not made,
 2-61 negotiated, serviced, held, or collected under this chapter.

2-62 Sec. 351.053. AREA OF BUSINESS; PROPERTY TAX LOANS BY MAIL.
 2-63 (a) A property tax lender is not limited to making property tax
 2-64 loans to residents of the community in which the office for which
 2-65 the license or other authority is granted is located.

2-66 (b) A property tax lender may make, negotiate, arrange, and
 2-67 collect property tax loans by mail from a licensed office.

2-68 Sec. 351.054. NOTICE TO TAXING UNIT. (a) A transferee of a
 2-69 tax lien must include with the sworn document filed with the
 2-70 collector of a taxing unit under Section 32.06(a-1), Tax Code, the

3-1 information required by this section.

3-2 (b) If the transferee is licensed under this chapter, the
3-3 transferee shall include with the filing the licensee's license
3-4 number assigned by the commissioner.

3-5 (c) If the transferee is exempt from this chapter under
3-6 Section 351.051(c)(1), the transferee shall include with the filing
3-7 an affidavit stating the entity's type of organization that
3-8 qualifies it for the exemption, any charter number assigned by the
3-9 governmental authority that issued the entity's charter, and the
3-10 address of the entity's main office.

3-11 (d) If the transferee is exempt from this chapter under
3-12 Section 351.051(c)(2), the transferee shall include a certificate
3-13 issued by the commissioner indicating the entity's exemption. The
3-14 commissioner shall establish procedures for issuance of a
3-15 certificate under this subsection, application requirements, and
3-16 requirements regarding information that must be submitted with an
3-17 application.

3-18 [Sections 351.055-351.100 reserved for expansion]

3-19 SUBCHAPTER C. APPLICATION FOR AND ISSUANCE OF LICENSE

3-20 Sec. 351.101. APPLICATION REQUIREMENTS. (a) The
3-21 application for a license under this chapter must:

- 3-22 (1) be under oath;
3-23 (2) give the approximate location from which business
3-24 is to be conducted;
3-25 (3) identify the business's principal parties in
3-26 interest; and
3-27 (4) contain other relevant information that the
3-28 commissioner requires for the findings required under Section
3-29 351.104.

3-30 (b) On the filing of one or more license applications, the
3-31 applicant shall pay to the commissioner an investigation fee not to
3-32 exceed \$200.

3-33 (c) On the filing of each license application, the applicant
3-34 shall pay to the commissioner for the license's year of issuance a
3-35 license fee in an amount determined as provided by Section 14.107.

3-36 Sec. 351.102. BOND. (a) If the commissioner requires, an
3-37 applicant for a license under this chapter shall file with the
3-38 application a bond that is:

- 3-39 (1) in an amount not to exceed the total of:
3-40 (A) \$50,000 for the first license; and
3-41 (B) \$10,000 for each additional license;
3-42 (2) satisfactory to the commissioner; and
3-43 (3) issued by a surety company qualified to do
3-44 business as a surety in this state.

3-45 (b) The bond must be in favor of this state for the use of
3-46 this state and the use of a person who has a cause of action under
3-47 this chapter against the license holder.

3-48 (c) The bond must be conditioned on:
3-49 (1) the license holder's faithful performance under
3-50 this chapter and rules adopted under this chapter; and
3-51 (2) the payment of all amounts that become due to the
3-52 state or another person under this chapter during the calendar year
3-53 for which the bond is given.

3-54 (d) The aggregate liability of a surety to all persons
3-55 damaged by the license holder's violation of this chapter may not
3-56 exceed the amount of the bond.

3-57 Sec. 351.103. INVESTIGATION OF APPLICATION. On the filing
3-58 of an application and, if required, a bond, and on payment of the
3-59 required fees, the commissioner shall conduct an investigation to
3-60 determine whether to issue the license.

3-61 Sec. 351.104. APPROVAL OR DENIAL OF APPLICATION. (a) The
3-62 commissioner shall approve the application and issue to the
3-63 applicant a license to make property tax loans under this chapter if
3-64 the commissioner finds that:

- 3-65 (1) the financial responsibility, experience,
3-66 character, and general fitness of the applicant are sufficient to:
3-67 (A) command the confidence of the public; and
3-68 (B) warrant the belief that the business will be
3-69 operated lawfully and fairly, within the purposes of this chapter;
3-70 and

4-1 (2) the applicant has net assets of at least \$25,000
 4-2 available for the operation of the business.

4-3 (b) If the commissioner does not find that the eligibility
 4-4 requirements of Subsection (a) are met, the commissioner shall
 4-5 notify the applicant.

4-6 (c) If an applicant requests a hearing on the application
 4-7 not later than the 30th day after the date of notification under
 4-8 Subsection (b), the applicant is entitled to a hearing not later
 4-9 than the 60th day after the date of the request.

4-10 (d) The commissioner shall approve or deny the application
 4-11 not later than the 60th day after the date of the filing of a
 4-12 completed application with payment of the required fees, or if a
 4-13 hearing is held, after the date of the completion of the hearing on
 4-14 the application. The commissioner and the applicant may agree to a
 4-15 later date in writing.

4-16 Sec. 351.105. DISPOSITION OF FEES ON DENIAL OF APPLICATION.
 4-17 If the commissioner denies the application, the commissioner shall
 4-18 retain the investigation fee and shall return to the applicant the
 4-19 license fee submitted with the application.

4-20 [Sections 351.106-351.150 reserved for expansion]

4-21 SUBCHAPTER D. LICENSE

4-22 Sec. 351.151. NAME AND PLACE ON LICENSE. (a) A license must
 4-23 state:

4-24 (1) the name of the license holder; and

4-25 (2) the address of the office from which the business
 4-26 is to be conducted.

4-27 (b) A license holder may not conduct business under this
 4-28 chapter under a name or at a place of business in this state other
 4-29 than the name or office stated on the license.

4-30 Sec. 351.152. LICENSE DISPLAY. A license holder shall
 4-31 display a license at the place of business provided on the license.

4-32 Sec. 351.153. MINIMUM ASSETS FOR LICENSE. A license holder
 4-33 shall maintain for each office for which a license is held net
 4-34 assets of at least \$25,000 that are used or readily available for
 4-35 use in conducting the business of that office.

4-36 Sec. 351.154. ANNUAL LICENSE FEE. Not later than December
 4-37 1, a license holder shall pay to the commissioner for each license
 4-38 held an annual fee for the year beginning the next January 1, in an
 4-39 amount determined as provided by Section 14.107.

4-40 Sec. 351.155. EXPIRATION OF LICENSE ON FAILURE TO PAY
 4-41 ANNUAL FEE. If the annual fee for a license is not paid before the
 4-42 16th day after the date on which the written notice of delinquency
 4-43 of payment has been given to the license holder, the license expires
 4-44 on the later of:

4-45 (1) that day; or

4-46 (2) December 31 of the last year for which an annual
 4-47 fee was paid.

4-48 Sec. 351.156. LICENSE SUSPENSION OR REVOCATION. After
 4-49 notice and a hearing the commissioner may suspend or revoke a
 4-50 license if the commissioner finds that:

4-51 (1) the license holder failed to pay the annual
 4-52 license fee, an examination fee, an investigation fee, or another
 4-53 charge imposed by the commissioner under this chapter;

4-54 (2) the license holder, knowingly or without the
 4-55 exercise of due care, violated this chapter or Section 32.06 or
 4-56 32.065, Tax Code, or a rule adopted or an order issued under this
 4-57 chapter or Section 32.06 or 32.065, Tax Code; or

4-58 (3) a fact or condition exists that, if it had existed
 4-59 or had been known to exist at the time of the original application
 4-60 for the license, clearly would have justified the commissioner's
 4-61 denial of the application.

4-62 Sec. 351.157. CORPORATE CHARTER FORFEITURE. (a) A license
 4-63 holder who violates this chapter is subject to revocation of the
 4-64 holder's license and, if the license holder is a corporation,
 4-65 forfeiture of its charter.

4-66 (b) When the attorney general is notified of a violation of
 4-67 this chapter and revocation of a license, the attorney general
 4-68 shall file suit in a district court in Travis County, if the license
 4-69 holder is a corporation, for forfeiture of the license holder's
 4-70 charter.

5-1 Sec. 351.158. LICENSE SUSPENSION OR REVOCATION FILED WITH
 5-2 PUBLIC RECORDS. The decision of the commissioner on the suspension
 5-3 or revocation of a license and the evidence considered by the
 5-4 commissioner in making the decision shall be filed in the public
 5-5 records of the commissioner.

5-6 Sec. 351.159. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE
 5-7 OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a
 5-8 suspended license or issue a new license on application to a person
 5-9 whose license has been revoked if at the time of the reinstatement
 5-10 or issuance no fact or condition exists that clearly would have
 5-11 justified the commissioner's denial of an original application for
 5-12 the license.

5-13 Sec. 351.160. SURRENDER OF LICENSE. A license holder may
 5-14 surrender a license issued under this chapter by delivering to the
 5-15 commissioner:

5-16 (1) the license; and

5-17 (2) a written notice of the license's surrender.

5-18 Sec. 351.161. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR
 5-19 SURRENDER. (a) The suspension, revocation, or surrender of a
 5-20 license issued under this chapter does not affect the obligation of
 5-21 a contract between the license holder and a debtor entered into
 5-22 before the revocation, suspension, or surrender.

5-23 (b) Surrender of a license does not affect the license
 5-24 holder's civil or criminal liability for an act committed before
 5-25 surrender.

5-26 Sec. 351.162. MOVING AN OFFICE. (a) A license holder shall
 5-27 give written notice to the commissioner before the 30th day
 5-28 preceding the date the license holder moves an office from the
 5-29 location provided on the license.

5-30 (b) The commissioner shall amend a license holder's license
 5-31 accordingly.

5-32 Sec. 351.163. TRANSFER OR ASSIGNMENT OF LICENSE. A license
 5-33 may be transferred or assigned only with the approval of the
 5-34 commissioner.

5-35 SECTION 2. Sections 349.502(a) and (c), Finance Code, are
 5-36 amended to read as follows:

5-37 (a) A person commits an offense if the person engages in a
 5-38 business that is subject to Chapter 342, ~~or~~ 346, or 351 without
 5-39 holding the license or other authorization required under that
 5-40 chapter.

5-41 (c) Each loan made without the authority required by Chapter
 5-42 342, ~~or~~ 346, or 351 is a separate offense.

5-43 SECTION 3. Section 32.06(a-1), Tax Code, is amended to read
 5-44 as follows:

5-45 (a-1) A person may authorize another person to pay the
 5-46 delinquent taxes imposed by a taxing unit on the person's real
 5-47 property by filing with the collector for the unit:

5-48 (1) a sworn document stating:

5-49 (A) ~~(1)~~ the authorization;

5-50 (B) ~~(2)~~ the name and street address of the
 5-51 transferee authorized to pay the taxes of the property owner; and

5-52 (C) ~~(3)~~ a description of the property by street
 5-53 address, if applicable, and legal description; and

5-54 (2) the information required by Section 351.054,
 5-55 Finance Code.

5-56 SECTION 4. Section 32.065(d), Tax Code, is amended to read
 5-57 as follows:

5-58 (d) Chapters 342, 343, and 346, Finance Code, do not apply
 5-59 to a transaction covered by this section. ~~[The transferee of a tax~~
 5-60 ~~lien under this section is not required to obtain a license under~~
 5-61 ~~Title 4, Finance Code.]~~

5-62 SECTION 5. A person is not required to be licensed under or
 5-63 comply with Chapter 351, Finance Code, as added by this Act, before
 5-64 March 1, 2008.

5-65 SECTION 6. This Act takes effect September 1, 2007.

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