

By: Harper-Brown

H.B. No. 2204

A BILL TO BE ENTITLED

AN ACT

relating to residential mortgage fraud; providing criminal penalties.

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

SECTION 1. Title 3, Business & Commerce Code, is amended by adding Chapter 28 to read as follows:

CHAPTER 28. RESIDENTIAL MORTGAGE FRAUD ACT

Sec. 28.001. SHORT TITLE. This chapter may be cited as the Texas Residential Mortgage Fraud Act.

Sec. 28.002. DEFINITIONS. In this chapter:

(1) "Mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan. The term includes the solicitation, origination, negotiation of terms, underwriting, signing and closing, and funding of the loan and the provision of third-party provider services and application for the loan.

(2) "Mortgage lending process document" includes:

(A) a uniform residential loan application or other loan application;

(B) an appraisal report;

(C) a HUD-1 settlement statement;

(D) supporting personal documentation for a loan application such as a W-2 form, verification of income and employment, bank statement, tax return, or payroll stub; and

1 (E) any required disclosure.

2 (3) "Residential mortgage loan" means a loan or
3 agreement to extend credit made to a person and secured by a
4 mortgage or other lien on residential real property, including the
5 refinancing or renewal of a loan secured by residential real
6 property.

7 (4) "Residential real property" means real property:

8 (A) used as a residence; and

9 (B) containing no more than four families housed
10 separately.

11 Sec. 28.003. RESIDENTIAL MORTGAGE FRAUD. (a) A person
12 commits an offense if the person:

13 (1) with the intent to mislead:

14 (A) knowingly, and with the intent that the
15 misstatement, misrepresentation, or omission be relied on by a
16 mortgage lender, borrower, or other party to the mortgage lending
17 process:

18 (i) makes a misstatement,
19 misrepresentation, or omission during the mortgage lending
20 process; or

21 (ii) uses or facilitates the use of a
22 mortgage lending process document during the mortgage lending
23 process that contains a misstatement, misrepresentation, or
24 omission; or

25 (B) files or causes to be filed with a county
26 clerk or governmental entity a mortgage lending process document
27 concerning residential real property, knowing that the document

1 contains a misstatement, misrepresentation, or omission;

2 (2) receives funds in connection with a residential
3 mortgage closing that the person knows resulted from conduct
4 described by Subdivision (1); or

5 (3) conspires to engage in conduct described by
6 Subdivision (1).

7 (b) An offense under this section is a felony of the third
8 degree, except as provided by Section 28.004.

9 (c) Each residential property transaction that violates
10 this section constitutes a separate offense.

11 Sec. 28.004. PATTERN OF RESIDENTIAL MORTGAGE FRAUD. A
12 second or subsequent offense under Section 28.003 is a felony of the
13 second degree if the first and the second or subsequent offenses:

14 (1) involve two or more residential properties; and

15 (2) have the same or similar intents, results,
16 accomplices, victims, or methods of commission or otherwise are
17 interrelated by distinguishing characteristics.

18 Sec. 28.005. VENUE. For the purpose of venue, an offense
19 under Section 28.003 is considered to have been committed in any
20 county in which:

21 (1) the residential property for which a mortgage loan
22 is being sought is located;

23 (2) an act was performed in furtherance of the
24 offense;

25 (3) a person alleged to have committed an offense
26 under this chapter had control or possession of any proceeds of the
27 alleged offense;

1 (4) the closing occurred; or

2 (5) a mortgage lending process document containing a
3 deliberate misstatement, misrepresentation, or omission is filed
4 with the county clerk or another governmental entity.

5 Sec. 28.006. ENFORCEMENT OFFICERS. The attorney general
6 and each district attorney, within the attorney's respective
7 jurisdiction, shall prosecute all criminal proceedings under this
8 chapter.

9 SECTION 2. Section 71.02(a), Penal Code, is amended to read
10 as follows:

11 (a) A person commits an offense if, with the intent to
12 establish, maintain, or participate in a combination or in the
13 profits of a combination or as a member of a criminal street gang,
14 he commits or conspires to commit one or more of the following:

15 (1) murder, capital murder, arson, aggravated
16 robbery, robbery, burglary, theft, aggravated kidnapping,
17 kidnapping, aggravated assault, aggravated sexual assault, sexual
18 assault, forgery, deadly conduct, assault punishable as a Class A
19 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
20 motor vehicle;

21 (2) any gambling offense punishable as a Class A
22 misdemeanor;

23 (3) promotion of prostitution, aggravated promotion
24 of prostitution, or compelling prostitution;

25 (4) unlawful manufacture, transportation, repair, or
26 sale of firearms or prohibited weapons;

27 (5) unlawful manufacture, delivery, dispensation, or

1 distribution of a controlled substance or dangerous drug, or
2 unlawful possession of a controlled substance or dangerous drug
3 through forgery, fraud, misrepresentation, or deception;

4 (6) any unlawful wholesale promotion or possession of
5 any obscene material or obscene device with the intent to wholesale
6 promote the same;

7 (7) any offense under Subchapter B, Chapter 43,
8 depicting or involving conduct by or directed toward a child
9 younger than 18 years of age;

10 (8) any felony offense under Chapter 32;

11 (9) any offense under Chapter 36;

12 (10) any offense under Chapter 34 or 35;

13 (11) any offense under Section 37.11(a); ~~[or]~~

14 (12) any offense under Chapter 20A; or

15 (13) any offense under Chapter 28, Business & Commerce
16 Code.

17 SECTION 3. Articles 59.01(1) and (2), Code of Criminal
18 Procedure, are amended to read as follows:

19 (1) "Attorney representing the state" means the
20 prosecutor with felony jurisdiction in the county in which a
21 forfeiture proceeding is held under this chapter or, in a
22 proceeding for forfeiture of contraband as defined under
23 Subdivision (2)(B)(v) of this article, the city attorney of a
24 municipality if the property is seized in that municipality by a
25 peace officer employed by that municipality and the governing body
26 of the municipality has approved procedures for the city attorney
27 acting in a forfeiture proceeding. In a proceeding for forfeiture

1 of contraband as defined under Subdivision (2)(B)(vii) or (2)(F) of
2 this article, the term includes the attorney general.

3 (2) "Contraband" means property of any nature,
4 including real, personal, tangible, or intangible, that is:

5 (A) used in the commission of:

6 (i) any first or second degree felony under
7 the Penal Code;

8 (ii) any felony under Section 15.031(b),
9 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
10 31, 32, 33, 33A, or 35, Penal Code;

11 (iii) any felony under The Securities Act
12 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

13 (iv) any offense under Chapter 49, Penal
14 Code, that is punishable as a felony of the third degree or state
15 jail felony, if the defendant has been previously convicted three
16 times of an offense under that chapter;

17 (B) used or intended to be used in the commission
18 of:

19 (i) any felony under Chapter 481, Health
20 and Safety Code (Texas Controlled Substances Act);

21 (ii) any felony under Chapter 483, Health
22 and Safety Code;

23 (iii) a felony under Chapter 153, Finance
24 Code;

25 (iv) any felony under Chapter 34, Penal
26 Code;

27 (v) a Class A misdemeanor under Subchapter

1 B, Chapter 365, Health and Safety Code, if the defendant has been
2 previously convicted twice of an offense under that subchapter;

3 (vi) any felony under Chapter 152, Finance
4 Code;

5 (vii) any felony under Chapter 31, 32, or
6 37, Penal Code, that involves the state Medicaid program, or any
7 felony under Chapter 36, Human Resources Code; or

8 (viii) a Class B misdemeanor under Section
9 35.60, Business & Commerce Code;

10 (C) the proceeds gained from the commission of a
11 felony listed in Paragraph (A) or (B) of this subdivision, a
12 misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a
13 crime of violence;

14 (D) acquired with proceeds gained from the
15 commission of a felony listed in Paragraph (A) or (B) of this
16 subdivision, a misdemeanor listed in Paragraph (B)(viii) of this
17 subdivision, or a crime of violence; ~~or~~

18 (E) used to facilitate or intended to be used to
19 facilitate the commission of a felony under Section 15.031 or
20 43.25, Penal Code; or

21 (F) used in, intended to be used in, or realized
22 from the commission of a felony under Chapter 28, Business &
23 Commerce Code.

24 SECTION 4. The changes in law made by this Act apply only to
25 an offense committed on or after the effective date of this Act. An
26 offense committed before the effective date of this Act is covered
27 by the law in effect when the offense was committed, and the former

1 law is continued in effect for that purpose. For purposes of this
2 section, an offense is committed before the effective date of this
3 Act if any element of the offense occurs before the effective date.

4 SECTION 5. This Act takes effect September 1, 2007.