

**House Bill 2138**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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:

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

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

(C) that is secured by a special lien against property transferred from a taxing unit to the property tax lender

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(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:

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

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

(C) that is secured by a special lien against property transferred from a taxing unit to the property tax lender

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and which may be further secured by the lien or security interest created by a deed of trust, security deed, or other security instrument.

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

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

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

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

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

[Sections 351.008-351.050 reserved for expansion]

SUBCHAPTER B. AUTHORIZED ACTIVITIES; LICENSE

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

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and which may be further secured by the lien or security interest created by a deed of trust, security deed, or other security instrument.

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

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

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

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

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[Sections 351.008-351.050 reserved for expansion]

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

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- (1) engage in the business of making, transacting, or negotiating property tax loans; or
- (2) contract for, charge, or receive, directly or indirectly, in connection with a property tax loan subject to this chapter, a charge, including interest, compensation, consideration, or another expense, authorized under this chapter that in the aggregate exceeds the charges authorized under other law.
- (b) A person may not use any device, subterfuge, or pretense to evade the application of this section.
- (c) This chapter does not apply to:
  - (1) any of the following entities or an employee of any of the following entities, if the employee is acting for the benefit of the employer:
    - (A) a bank, savings bank, or savings and loan association, or a subsidiary or an affiliate of a bank, savings bank, or savings and loan association; or
    - (B) a state or federal credit union, or a subsidiary, affiliate, or credit union service organization of a state or federal credit union; or
  - (2) an individual who:
    - (A) makes a property tax loan from the individual's own funds to a spouse, former spouse, or persons in the lineal line of consanguinity of the individual lending the money; or
    - (B) makes five or fewer property tax loans in any consecutive 12-month period from the individual's own funds.
- (d) A property tax lender licensed under this chapter is not required to be licensed under Chapter 156 or any

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- (1) engage in the business of making, transacting, or negotiating property tax loans; or
- (2) contract for, charge, or receive, directly or indirectly, in connection with a property tax loan subject to this chapter, a charge, including interest, compensation, consideration, or another expense, authorized under this chapter that in the aggregate exceeds the charges authorized under other law.
- (b) A person may not use any device, subterfuge, or pretense to evade the application of this section.
- (c) This chapter does not apply to:
  - (1) any of the following entities or an employee of any of the following entities, if the employee is acting for the benefit of the employer:
    - (A) a bank, savings bank, or savings and loan association, or a subsidiary or an affiliate of a bank, savings bank, or savings and loan association; or
    - (B) a state or federal credit union, or a subsidiary, affiliate, or credit union service organization of a state or federal credit union; or
  - (2) an individual who:
    - (A) makes a property tax loan from the individual's own funds to a spouse, former spouse, or persons in the lineal line of consanguinity of the individual lending the money; or
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other provision of this code.

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

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

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

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

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

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

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

(b) If the transferee is licensed under this chapter, the transferee shall include with the filing the licensee's

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

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license number assigned by the commissioner.

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

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

[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

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license number assigned by the commissioner.

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

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- 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

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

(c) The bond must be conditioned on:

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

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

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

Sec. 351.103. INVESTIGATION OF APPLICATION. On the filing of an application and, if required, a bond, and on payment of the required fees, the commissioner

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

(c) The bond must be conditioned on:

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

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

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shall conduct an investigation to determine whether to issue the license.

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

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

(A) command the confidence of the public; and

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

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

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

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

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

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

[Sections 351.106-351.150 reserved for expansion]

SUBCHAPTER D. LICENSE

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

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

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

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

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

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

Sec. 351.155. EXPIRATION OF LICENSE ON FAILURE TO PAY ANNUAL FEE. If the annual fee

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

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

Sec. 351.155. EXPIRATION OF LICENSE ON FAILURE TO PAY ANNUAL FEE. If the annual fee

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for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on the later of:

- (1) that day; or
- (2) December 31 of the last year for which an annual fee was paid.

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

- (1) the license holder failed to pay the annual license fee, an examination fee, an investigation fee, or another charge imposed by the commissioner under this chapter;
  - (2) the license holder, knowingly or without the exercise of due care, violated this chapter or Section 32.06 or 32.065, Tax Code, or a rule adopted or an order issued under this chapter or Section 32.06 or 32.065, Tax Code;
- or
- (3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application.

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

(b) When the attorney general is notified of a violation of this chapter and revocation of a license, the attorney

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- (1) the license holder failed to pay the annual license fee, an examination fee, an investigation fee, or another charge imposed by the commissioner under this chapter;
  - (2) the license holder, knowingly or without the exercise of due care, violated this chapter or Section 32.06 or 32.065, Tax Code, or a rule adopted or an order issued under this chapter or Section 32.06 or 32.065, Tax Code;
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- (3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application.

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general shall file suit in a district court in Travis County, if the license holder is a corporation, for forfeiture of the license holder's charter.

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

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

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

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

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

(b) Surrender of a license does not affect the license

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

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

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

(b) Surrender of a license does not affect the license

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holder's civil or criminal liability for an act committed before surrender.

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

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

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

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

(a) A person commits an offense if the person engages in a business that is subject to Chapter 342, ~~[or]~~ 346, or 351 without holding the license or other authorization

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holder's civil or criminal liability for an act committed before surrender.

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

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

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

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

(b) A report under this section must be:

(1) under oath; and

(2) in the form prescribed by the commissioner.

(c) A report under this section is confidential.

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

Same as House version.

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required under that chapter.

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

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

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

(1) a sworn document stating:

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

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

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

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

Same as House version.

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

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

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

(d) Chapters 342 and 346, Finance Code, and the provisions of Chapter 343, Finance Code, other than Sections 343.203 and 343.205, do not apply to a transaction covered by this section. [~~The transferee of a tax lien under this section is not required to obtain a license under Title 4, Finance Code.~~]

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

Same as House version.

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

Same as House version.