By: Wentworth S.B. No. 1620

(In the Senate - Filed March 10, 2009; March 17, 2009, read first time and referred to Committee on Business and Commerce; April 8, 2009, reported favorably by the following vote: Yeas 9, Nays 0; April 8, 2009, sent to printer.)

A BILL TO BE ENTITLED
AN ACT
relating to the regulation of property tax lenders.

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

SECTION 1. Section 351.004, Finance Code, as added by Chapter 1220 (H.B. 2138), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

Sec. 351.004. AFFILIATED BUSINESS ARRANGEMENTS. A property tax lender may conduct business under this chapter in an office, office suite, room, or place of business in which any other business is conducted or in combination with any other business unless the commissioner:

(1) determines after a hearing that the conduct of the other business in that office, office suite, room, or place of business has concealed an evasion of this chapter; and
(2) orders the lender in writing to desist from the conduct of the other business in that office, office suite, room, or place of business [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].

SECTION 2. Subchapter A, Chapter 351, Finance Code, as added by Chapter 1220 (H.B. 2138), Acts of the 80th Legislature, Regular Session, 2007, is amended by adding Sections 351.008 through 351.011 to read as follows:

Sec. 351.008. EXAMINATION OF LENDERS; ACCESS TO RECORDS.
(a) The commissioner or the commissioner's representative shall, at the times the commissioner or the representative considers necessary:

(1) examine each place of business of each property tax lender; and
(2) investigate the lender's transactions, including loans, and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter and Sections 32.06 and 32.065, Tax Code.

(b) The property tax lender shall:

(1) give the commissioner or the commissioner's representative free access to the lender's office, place of business, files, safes, and vaults; and
(2) allow the commissioner or the representative to make a copy of an item that may be investigated under Subsection (a)(2).

(c) During an examination, the commissioner or the commissioner's representative may administer oaths and examine any person under oath on any subject pertinent to a matter that the commissioner or the representative is authorized or required to consider, investigate, or secure information about under this chapter or Section 32.06 or 32.065, Tax Code.

(d) Information obtained under this section is confidential.

(e) A property tax lender's violation of Subsection (b) is a ground for the suspension or revocation of the lender's license.

Sec. 351.009. GENERAL INVESTIGATION. (a) To discover a violation of this chapter or Section 32.06 or 32.065, Tax Code, or to obtain information required under this chapter or Section 32.06 or 32.065, Tax Code, the commissioner or the commissioner's representative may investigate the records, including books, accounts, papers, and correspondence, of a person, including a
property tax lender, who the commissioner or the representative has
reasonable cause to believe is violating this chapter or Section
32.06 or 32.065, Tax Code, regardless of whether the person claims
to not be subject to this chapter or Section 32.06 or 32.065, Tax
Code.

(b) For the purposes of this section, a person who
advertises, solicits, or otherwise represents that the person is
willing to make a property tax loan is presumed to be engaged in the
business described by Section 351.051.

Sec. 351.010. REFUSAL TO ALLOW EXAMINATION OR INSPECTION.
A property tax lender who fails or refuses to permit an examination
or investigation authorized by this subchapter violates this
chapter. The failure or refusal is grounds for the suspension or
revocation of the lender's license.

Sec. 351.011. VERIFICATION OF NET ASSETS. If the
commissioner questions the amount of a property tax lender's net
assets, the commissioner may require certification by an
independent certified public accountant that:
[1] the accountant has reviewed the property tax
lender's books, other records, and transactions during the
reporting year;
[2] the books and other records are maintained using
generally accepted accounting principles; and
[3] the property tax lender meets the net assets
requirement of Section 351.153.

SECTION 3. Subsection (a-4), Section 32.06, Tax Code, is
amended to read as follows:
(a-4) The Finance Commission of Texas shall:
(1) prescribe the form and content of an appropriate
disclosure statement to be provided to a property owner before the
execution of a tax lien transfer; [and]
(2) adopt rules relating to the reasonableness of
closing costs, fees, and other charges permitted under this
section; and
(3) by rule prescribe the form and content of the sworn
document under Subsection (a-1) and the certified statement under
Subsection (b).

SECTION 4. This Act takes effect September 1, 2009.

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