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S.B. No. 1994

A BILL TO BE ENTITLED

AN ACT

relating to the financing of residential real estate purchases by means of a wrap mortgage loan; creating an offense.

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

SECTION 1. Section 156.002, Finance Code, is amended by adding Subdivision (16) to read as follows:

(16) "Wrap mortgage loan" has the meaning assigned by Section 159.001.

SECTION 2. Section 156.202(a-1), Finance Code, is amended to read as follows:

(a-1) The following entities are exempt from this chapter:

(1) a nonprofit organization:

(A) providing self-help housing that originates zero interest residential mortgage loans for borrowers who have provided part of the labor to construct the dwelling securing the loan; or

(B) that has designation as a Section 501(c)(3) organization by the Internal Revenue Service and originates residential mortgage loans for borrowers who, through a self-help program, have provided at least 200 labor hours or 65 percent of the labor to construct the dwelling securing the loan;

(2) a mortgage banker registered under Chapter 157;

(3) any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential

1 mortgage loans, none of which is a wrap mortgage loan, to purchasers  
2 of the property for all or part of the purchase price of the  
3 residential real estate against which the mortgage is secured; and

4 (4) an entity that is:

5 (A) a depository institution;

6 (B) a subsidiary of a depository institution that  
7 is:

8 (i) owned and controlled by the depository  
9 institution; and

10 (ii) regulated by a federal banking agency;

11 or

12 (C) an institution regulated by the Farm Credit  
13 Administration.

14 SECTION 3. Section 157.002, Finance Code, is amended by  
15 adding Subdivision (7) to read as follows:

16 (7) "Wrap mortgage loan" has the meaning assigned by  
17 Section 159.001.

18 SECTION 4. Sections 157.0121(b) and (c), Finance Code, are  
19 amended to read as follows:

20 (b) The following individuals are exempt from this chapter:

21 (1) a registered mortgage loan originator when acting  
22 for:

23 (A) a depository institution;

24 (B) a subsidiary of a depository institution that  
25 is:

26 (i) owned and controlled by the depository  
27 institution; and

1 (ii) regulated by a federal banking agency;

2 or

3 (C) an institution regulated by the Farm Credit  
4 Administration;

5 (2) an individual who offers or negotiates the terms  
6 of a residential mortgage loan with or on behalf of an immediate  
7 family member of the individual;

8 (3) a licensed attorney who negotiates the terms of a  
9 residential mortgage loan on behalf of a client as an ancillary  
10 matter to the attorney's representation of the client, unless the  
11 attorney:

12 (A) takes a residential mortgage loan  
13 application; and

14 (B) offers or negotiates the terms of a  
15 residential mortgage loan;

16 (4) an individual who offers or negotiates terms of a  
17 residential mortgage loan secured by a dwelling that serves as the  
18 individual's residence;

19 (5) any owner of residential real estate who in any  
20 12-consecutive-month period makes no more than five residential  
21 mortgage loans, none of which is a wrap mortgage loan, to purchasers  
22 of the property for all or part of the purchase price of the  
23 residential real estate against which the mortgage is secured; and

24 (6) an individual who is exempt as provided by Section  
25 [180.003\(b\)](#).

26 (c) Employees of the following entities, when acting for the  
27 benefit of those entities, are exempt from the licensing and other

1 requirements of this chapter applicable to residential mortgage  
2 loan originators:

3 (1) a nonprofit organization:

4 (A) providing self-help housing that originates  
5 zero interest residential mortgage loans for borrowers who have  
6 provided part of the labor to construct the dwelling securing the  
7 loan; or

8 (B) that has designation as a Section 501(c)(3)  
9 organization by the Internal Revenue Service and originates  
10 residential mortgage loans for borrowers who, through a self-help  
11 program, have provided at least 200 labor hours or 65 percent of the  
12 labor to construct the dwelling securing the loan;

13 (2) any owner of residential real estate who in any  
14 12-consecutive-month period makes no more than five residential  
15 mortgage loans, none of which is a wrap mortgage loan, to purchasers  
16 of the property for all or part of the purchase price of the  
17 residential real estate against which the mortgage is secured; and

18 (3) an entity that is:

19 (A) a depository institution;

20 (B) a subsidiary of a depository institution that  
21 is:

22 (i) owned and controlled by the depository  
23 institution; and

24 (ii) regulated by a federal banking agency;

25 or

26 (C) an institution regulated by the Farm Credit  
27 Administration.

1 SECTION 5. Section 158.002, Finance Code, is amended by  
2 adding Subdivisions (8) and (9) to read as follows:

3 (8) "Wrap lender" has the meaning assigned by Section  
4 159.001.

5 (9) "Wrap mortgage loan" has the meaning assigned by  
6 Section 159.001.

7 SECTION 6. Section 158.052, Finance Code, is amended by  
8 amending Subsection (a) and adding Subsection (d) to read as  
9 follows:

10 (a) This chapter does not require registration by:

11 (1) a federal or state depository institution, or a  
12 subsidiary or affiliate of a federal or state depository  
13 institution;

14 (2) a person registered under Chapter 157;

15 (3) a person licensed under Chapter 342 or regulated  
16 under Chapter 343, if the person does not act as a residential  
17 mortgage loan servicer servicing first-lien secured loans; or

18 (4) except as provided by Subsection (d), a person  
19 making a residential mortgage loan with the person's own funds, or  
20 to secure all or a portion of the purchase price of real property  
21 sold by that person.

22 (d) This chapter applies to a wrap lender who services a  
23 wrap mortgage loan.

24 SECTION 7. Subtitle E, Title 3, Finance Code, is amended by  
25 adding Chapter 159 to read as follows:

26 CHAPTER 159. WRAP MORTGAGE LOAN FINANCING

27 SUBCHAPTER A. GENERAL PROVISIONS

1        Sec. 159.001. DEFINITIONS. In this chapter:

2            (1) "Commissioner" means the savings and mortgage  
3 lending commissioner.

4            (2) "Finance commission" means the Finance Commission  
5 of Texas.

6            (3) "Residential mortgage loan" has the meaning  
7 assigned by Section 180.002.

8            (4) "Residential real estate" has the meaning assigned  
9 by Section 180.002.

10           (5) "Wrap borrower" means a person obligated to pay a  
11 wrap mortgage loan.

12           (6) "Wrap lender" means a person who makes a wrap  
13 mortgage loan.

14           (7) "Wrap mortgage loan" means a residential mortgage  
15 loan:

16                (A) made to finance the purchase of residential  
17 real estate that will continue to be subject to an unreleased lien  
18 that:

19                        (i) attached to the residential real estate  
20 before the loan was made; and

21                        (ii) secures a debt incurred by a person  
22 other than the wrap borrower that was not paid off at the time the  
23 loan was made; and

24                (B) obligating the wrap borrower to the wrap  
25 lender for payment of a debt the principal amount of which includes:

26                        (i) the outstanding balance of the debt  
27 described by Paragraph (A)(ii); and

1                   (ii) any remaining amount of the purchase  
2 price financed by the wrap lender.

3                   SUBCHAPTER B. LICENSING

4           Sec. 159.051. LICENSE REQUIRED. (a) An individual may not  
5 make a wrap mortgage loan unless the individual:

6                   (1) is licensed as a residential mortgage loan  
7 originator under Chapter 157;

8                   (2) is sponsored by an appropriate entity;

9                   (3) is enrolled with the Nationwide Mortgage Licensing  
10 System and Registry as required by Section 180.052; and

11                   (4) complies with other requirements of Chapter 180  
12 applicable to residential mortgage loan originators required to be  
13 licensed under Chapter 157 and with rules adopted by the finance  
14 commission under Chapter 180.

15           (b) An entity may not make a wrap mortgage loan unless the  
16 entity holds an active residential mortgage loan company license  
17 under Subchapter C, Chapter 156. The entity must apply for and be  
18 issued a mortgage company license as provided by Section 156.2041.

19           (c) The requirement to obtain a license under Subsection (a)  
20 or (b) applies to an individual or entity making a wrap mortgage  
21 loan regardless of whether the person engages in a specific  
22 activity for which a license is required under Chapter 156 or 157 in  
23 connection with the making of the loan.

24                   SUBCHAPTER C. DISCLOSURES AND CONSENT

25           Sec. 159.101. FOREIGN LANGUAGE REQUIREMENT; OFFENSE. (a)  
26 If the negotiations that precede the execution of a wrap mortgage  
27 loan agreement are conducted primarily in a language other than

1 English, the wrap lender shall provide a copy to the wrap borrower  
2 in that language of all written documents relating to the  
3 transaction, including:

4 (1) the agreement;

5 (2) any disclosure notice required in connection with:

6 (A) the making of the wrap mortgage loan; or

7 (B) the conveyance of the residential real estate  
8 securing the loan;

9 (3) any annual accounting statements regarding the  
10 loan; and

11 (4) any notice of default under the agreement.

12 (b) A person who violates this section commits an offense.

13 An offense under this subsection is a Class A misdemeanor.

14 Sec. 159.102. ENFORCEABILITY OF WRAP LIEN. A lien securing  
15 a wrap mortgage loan is void and considered released without the  
16 necessity of a judicial determination unless:

17 (1) the residential real estate was conveyed to the  
18 purchaser with the written consent of each holder of an unreleased  
19 lien described by Section 159.001(7)(A) and a copy of each  
20 lienholder's written consent is attached to the recorded instrument  
21 conveying the residential real estate; and

22 (2) the wrap mortgage loan and the conveyance of the  
23 residential real estate securing the loan are closed at the office  
24 of a title company and an affidavit of a person knowledgeable of the  
25 facts regarding the closing location that confirms the closing  
26 location is attached to the recorded instrument conveying the  
27 residential real estate.



1       Sec. 159.103. FAILURE TO OBTAIN CONSENT AS DECEPTIVE TRADE  
2 PRACTICE. A wrap lender who makes a wrap mortgage loan without  
3 obtaining the written consent of a lienholder necessary under  
4 Section 159.102, or a person who knowingly assists a wrap lender in  
5 making a wrap mortgage loan without obtaining that consent, engages  
6 in a deceptive trade practice under Subchapter E, Chapter 17,  
7 Business & Commerce Code, and that conduct is actionable under that  
8 subchapter.

9       Sec. 159.104. BUYER AS ATTORNEY IN FACT. (a) A wrap lender  
10 is considered to have given irrevocable consent to the wrap  
11 borrower as the lender's attorney in fact with respect to each  
12 unreleased lien on the property described by Section 159.001(7)(A)  
13 with respect to which the wrap lender:

14               (1) was the grantor of the security interest; or

15               (2) has assumed the debt secured by the lien.

16       (b) As the wrap lender's attorney in fact under this  
17 section, the wrap borrower may:

18               (1) authorize the release of information, negotiate,  
19 and enter into a binding settlement or other agreement with the  
20 lienholder regarding the unreleased lien; and

21               (2) exercise any and all powers granted to an attorney  
22 in fact or agent under Section 752.102, Estates Code, for a real  
23 property transaction under a statutory durable power of attorney  
24 with respect to the residential real estate securing the wrap  
25 mortgage loan.

26       Sec. 159.105. BORROWER'S RIGHT OF ACTION. (a) A wrap  
27 borrower may bring an action to:

1           (1) obtain declaratory or injunctive relief to enforce  
2 this subchapter;

3           (2) recover any actual damages suffered by the wrap  
4 borrower as a result of a violation of this subchapter; or

5           (3) obtain other remedies available in an action under  
6 Section 17.50, Business & Commerce Code, as otherwise authorized  
7 under this subchapter.

8           (b) A wrap borrower who prevails in an action under this  
9 section may recover court costs and reasonable attorney's fees.

10          Sec. 159.106. WAIVER OR AVOIDANCE PROHIBITED. (a) Any  
11 purported waiver of a right of a wrap borrower under this subchapter  
12 or purported exemption of a person from liability for a violation of  
13 this subchapter is void.

14          (b) A person who is a party to a residential real estate  
15 transaction may not evade the application of this subchapter by any  
16 device, subterfuge, or pretense, and any attempt to do so is void  
17 and a deceptive trade practice under Subchapter E, Chapter 17,  
18 Business & Commerce Code, and is actionable under that subchapter.

19                   SUBCHAPTER D. DUTIES OWED TO WRAP BORROWER

20          Sec. 159.151. MONEY HELD IN TRUST. A person who collects or  
21 receives a payment from a wrap borrower under the terms of a wrap  
22 mortgage loan holds the money in trust for the benefit of the  
23 borrower.

24          Sec. 159.152. FIDUCIARY DUTY. A person who collects or  
25 receives a payment from a wrap borrower under the terms of or in  
26 connection with a wrap mortgage loan owes a fiduciary duty to the  
27 wrap borrower to use the payment to satisfy the wrap lender's

1 obligations under each debt described by Section 159.001(7)(A)(ii)  
2 and any other obligation affecting the residential real estate for  
3 which the wrap lender is responsible.

4 Sec. 159.153. DECEPTIVE TRADE PRACTICE. In addition to any  
5 other penalties or remedies provided by law, a breach of a duty  
6 created by this subchapter is a deceptive trade practice under  
7 Subchapter E, Chapter 17, Business & Commerce Code, and is  
8 actionable under that subchapter.

9 SUBCHAPTER E. WRAP BORROWER'S RIGHTS

10 Sec. 159.201. APPLICABILITY OF SUBCHAPTER. (a) Subject to  
11 Subsection (b), this subchapter applies only to a wrap mortgage  
12 loan for a purchase of residential real estate to be used as the  
13 wrap borrower's residence.

14 (b) This subchapter does not apply to a wrap mortgage loan  
15 for a sale of residential real estate that is the wrap lender's  
16 homestead.

17 Sec. 159.202. WRAP BORROWER'S RIGHT TO DEDUCT. The wrap  
18 borrower, without taking judicial action, may deduct from any  
19 amount owed to the wrap lender under the terms of the wrap mortgage  
20 loan:

21 (1) the amount of any payment made by the wrap borrower  
22 to an obligee of a debt described by Section 159.001(7)(A)(ii) to  
23 cure a default by the wrap lender caused by the lender's failure to  
24 make payments for which the lender is responsible under the terms of  
25 the wrap mortgage loan; or

26 (2) any other amount for which the wrap lender is  
27 liable to the wrap borrower under the terms of the wrap mortgage

1 loan.

2 SUBCHAPTER F. ENFORCEMENT OF CERTAIN REGISTRATION REQUIREMENTS

3 Sec. 159.251. APPLICABILITY OF SUBCHAPTER. This subchapter  
4 applies only to a wrap lender who is required to register as a  
5 residential mortgage loan servicer under Chapter 158.

6 Sec. 159.252. INSPECTION; INVESTIGATION. (a) The  
7 commissioner may conduct an inspection of a wrap lender registered  
8 under Chapter 158 as the commissioner determines necessary to  
9 determine whether the wrap lender is complying with that chapter  
10 and applicable rules. The inspection may include an inspection of  
11 the books, records, documents, operations, and facilities of the  
12 wrap lender. The commissioner may share evidence of criminal  
13 activity gathered during an inspection or investigation with any  
14 state or federal law enforcement agency.

15 (b) For reasonable cause, the commissioner at any time may  
16 investigate a wrap lender registered under Chapter 158 to determine  
17 whether the lender is complying with that chapter and applicable  
18 rules.

19 (c) The commissioner may conduct an undercover or covert  
20 investigation only if the commissioner, after due consideration of  
21 the circumstances, determines that the investigation is necessary  
22 to prevent immediate harm and to carry out the purposes of Chapter  
23 158.

24 (d) The finance commission by rule shall provide guidelines  
25 to govern an inspection or investigation under this section,  
26 including rules to:

27 (1) determine the information and records of the wrap

1 lender to which the commissioner may demand access during an  
2 inspection or investigation; and

3 (2) establish what constitutes reasonable cause for an  
4 investigation.

5 (e) Information obtained by the commissioner during an  
6 inspection or investigation under this section is confidential  
7 unless disclosure of the information is permitted or required by  
8 other law.

9 (f) The commissioner may share information gathered during  
10 an investigation under this section with a state or federal agency.  
11 The commissioner may share information gathered during an  
12 inspection with a state or federal agency only if the commissioner  
13 determines there is a valid reason for the sharing.

14 (g) The commissioner may require reimbursement of expenses  
15 for each examiner for an on-site examination or inspection of a  
16 registered wrap lender under this section if records are located  
17 out of state and are not made available for examination or  
18 inspection by the examiner in this state. The finance commission by  
19 rule shall set the maximum amount for the reimbursement of expenses  
20 authorized under this subsection.

21 Sec. 159.253. ISSUANCE AND ENFORCEMENT OF SUBPOENA. (a)  
22 During an investigation conducted under this subchapter, the  
23 commissioner may issue a subpoena that is addressed to a peace  
24 officer of this state or other person authorized by law to serve  
25 citation or perfect service. The subpoena may require a person to  
26 give a deposition, produce documents, or both.

27 (b) If a person disobeys a subpoena or if a person appearing

1 in a deposition in connection with the investigation refuses to  
2 testify, the commissioner may petition a district court in Travis  
3 County to issue an order requiring the person to obey the subpoena,  
4 testify, or produce documents relating to the matter. The court  
5 shall promptly set an application to enforce a subpoena issued  
6 under Subsection (a) for hearing and shall cause notice of the  
7 application and the hearing to be served on the person to whom the  
8 subpoena is directed.

9 SECTION 8. Section 180.002, Finance Code, is amended by  
10 adding Subdivision (24) to read as follows:

11 (24) "Wrap mortgage loan" has the meaning assigned by  
12 Section 159.001.

13 SECTION 9. Section 180.003(a), Finance Code, is amended to  
14 read as follows:

15 (a) The following persons are exempt from this chapter:

16 (1) a registered mortgage loan originator when acting  
17 for an entity described by Section 180.002(16)(A)(i), (ii), or  
18 (iii);

19 (2) an individual who offers or negotiates terms of a  
20 residential mortgage loan with or on behalf of an immediate family  
21 member of the individual;

22 (3) a licensed attorney who negotiates the terms of a  
23 residential mortgage loan on behalf of a client as an ancillary  
24 matter to the attorney's representation of the client, unless the  
25 attorney:

26 (A) takes a residential mortgage loan  
27 application; and

1                   (B) offers or negotiates the terms of a  
2 residential mortgage loan;

3                   (4) an individual who offers or negotiates terms of a  
4 residential mortgage loan secured by a dwelling that serves as the  
5 individual's residence;

6                   (5) an owner of residential real estate who in any  
7 12-consecutive-month period makes no more than five residential  
8 mortgage loans, none of which is a wrap mortgage loan, to purchasers  
9 of the property for all or part of the purchase price of the  
10 residential real estate against which the mortgage is secured; and

11                   (6) an owner of a dwelling who in any  
12 12-consecutive-month period makes no more than five residential  
13 mortgage loans, none of which is a wrap mortgage loan, to purchasers  
14 of the property for all or part of the purchase price of the  
15 dwelling against which the mortgage or security interest is  
16 secured.

17                   SECTION 10. This Act takes effect September 1, 2017.