

By: Zaffirini

S.B. No. 42

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to residential mortgage loans, including the financing of  
3 residential real estate purchases by means of a wrap mortgage loan;  
4 providing licensing requirements; authorizing an administrative  
5 penalty.

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

7 SECTION 1. Section 156.202, Finance Code, is amended by  
8 amending Subsection (a-1) and adding Subsection (b) to read as  
9 follows:

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

11 (1) a nonprofit organization:

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

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

21 (2) a mortgage banker registered under Chapter 157;

22 (3) subject to Subsection (b), any owner of  
23 residential real estate who in any 12-consecutive-month period  
24 makes no more than five residential mortgage loans to purchasers of

1 the property for all or part of the purchase price of the  
2 residential real estate against which the mortgage is secured; and

3 (4) an entity that is:

4 (A) a depository institution;

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

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

9 (ii) regulated by a federal banking agency;

10 or

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

13 (b) In determining eligibility for an exemption under  
14 Subsection (a-1)(3), two or more owners of residential real estate  
15 are considered a single owner for the purpose of computing the  
16 number of mortgage loans made within the period specified by that  
17 subdivision if any of the owners are affiliates, as defined by  
18 Section 1.002(1), Business Organizations Code, or if any of the  
19 owners have substantially common ownership, as determined by the  
20 commissioner.

21 SECTION 2. Section 157.0121, Finance Code, is amended by  
22 amending Subsection (c) and adding Subsection (f) to read as  
23 follows:

24 (c) Employees of the following entities, when acting for the  
25 benefit of those entities, are exempt from the licensing and other  
26 requirements of this chapter applicable to residential mortgage  
27 loan originators:

1           (1) a nonprofit organization:

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

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

11           (2) subject to Subsection (f), any owner of  
12 residential real estate who in any 12-consecutive-month period  
13 makes no more than five residential mortgage loans to purchasers of  
14 the property for all or part of the purchase price of the  
15 residential real estate against which the mortgage is secured; and

16           (3) an entity that is:

17                   (A) a depository institution;

18                   (B) a subsidiary of a depository institution that  
19 is:

20                           (i) owned and controlled by the depository  
21 institution; and

22                           (ii) regulated by a federal banking agency;

23 or

24                   (C) an institution regulated by the Farm Credit  
25 Administration.

26           (f) In determining eligibility for an exemption under  
27 Subsection (c)(2), two or more owners of residential real estate

1 are considered a single owner for the purpose of computing the  
2 number of mortgage loans made within the period specified by that  
3 subdivision if any of the owners are affiliates, as defined by  
4 Section 1.002(1), Business Organizations Code, or if any of the  
5 owners have substantially common ownership, as determined by the  
6 commissioner.

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

9 CHAPTER 159. WRAP MORTGAGE LOAN FINANCING

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 159.001. DEFINITIONS. In this chapter:

12 (1) "Commissioner" means the savings and mortgage  
13 lending commissioner.

14 (2) "Finance commission" means the Finance Commission  
15 of Texas.

16 (3) "Residential mortgage loan" has the meaning  
17 assigned by Section 180.002.

18 (4) "Residential real estate" has the meaning assigned  
19 by Section 180.002.

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

22 (6) "Wrap lender" means:

23 (A) a person who makes a wrap mortgage loan; or

24 (B) an owner of residential real estate who  
25 contracts with another person to make a wrap mortgage loan to a wrap  
26 borrower on the owner's behalf to finance the purchase of the  
27 owner's residential real estate.

1           (7) "Wrap mortgage loan" means a residential mortgage  
2 loan:

3           (A) made to finance the purchase of residential  
4 real estate that will continue to be subject to an unreleased lien  
5 that:

6                   (i) attached to the residential real estate  
7 before the loan was made; and

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

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

13                   (i) the outstanding balance of the debt  
14 described by Paragraph (A)(ii); and

15                   (ii) any remaining amount of the purchase  
16 price financed by the wrap lender.

17           Sec. 159.002. INAPPLICABILITY OF CHAPTER. (a) In this  
18 section, "unimproved residential real estate" means residential  
19 real estate on which a dwelling has not been constructed.

20           (b) Notwithstanding any other provision of this chapter,  
21 this chapter does not apply to a wrap mortgage loan made by or on  
22 behalf of an owner of unimproved residential real estate to a  
23 purchaser of that residential real estate if:

24                   (1) the residential real estate purchased will not  
25 continue to be subject to any unreleased lien described by Section  
26 159.001(7)(A) that secures a debt that is subject to a due-on-sale  
27 clause in connection with which the lienholder may foreclose the

1 lien; or

2 (2) the residential real estate purchased will  
3 continue to be subject to an unreleased lien described by  
4 Subdivision (1) and the holder of that unreleased lien has  
5 consented to the sale of the residential real estate.

6 Sec. 159.003. EXEMPTIONS. (a) The following persons are  
7 exempt from this chapter:

8 (1) a federally insured bank, savings bank, savings  
9 and loan association, Farm Credit System Institution, or credit  
10 union;

11 (2) a subsidiary of a federally insured bank, savings  
12 bank, savings and loan association, Farm Credit System Institution,  
13 or credit union;

14 (3) an authorized lender licensed under Chapter 342;

15 (4) the state or a governmental agency, political  
16 subdivision, or other instrumentality of the state, or an employee  
17 of the state or a governmental agency, political subdivision, or  
18 instrumentality of the state who is acting within the scope of the  
19 person's employment; or

20 (5) subject to Subsection (b), an owner of residential  
21 real estate if the owner does not in any 12-consecutive-month  
22 period make, or contract with another person to make, more than five  
23 wrap mortgage loans to purchasers of the property for all or part of  
24 the purchase price of the residential real estate against which the  
25 mortgage is secured.

26 (b) In determining eligibility for an exemption under  
27 Subsection (a)(5), two or more owners of residential real estate

1 are considered a single owner for the purpose of computing the  
2 number of wrap mortgage loans made within the period specified by  
3 that subdivision if any of the owners are affiliates, as defined by  
4 Section 1.002(1), Business Organizations Code, or if any of the  
5 owners have substantially common ownership, as determined by the  
6 commissioner.

7 SUBCHAPTER B. LICENSING

8 Sec. 159.051. LICENSE REQUIRED. (a) A person may not  
9 originate or make a wrap mortgage loan unless the person is licensed  
10 to originate or make residential mortgage loans under Chapter 156  
11 or 157 or is exempt from licensing as provided under an applicable  
12 provision of those chapters.

13 (b) The requirement to hold a license under Subsection (a)  
14 applies to a person originating or making a wrap mortgage loan  
15 regardless of whether the person engages in a specific activity for  
16 which a license is required under Chapter 156 or 157 in connection  
17 with the originating or making of the loan.

18 SUBCHAPTER C. TRANSACTION REQUIREMENTS; REMEDIES

19 Sec. 159.101. DISCLOSURE STATEMENT. (a) A wrap lender not  
20 otherwise required to provide a written disclosure statement to the  
21 wrap borrower under Section 5.016, Property Code, must, on or  
22 before the seventh day before the wrap mortgage loan agreement is  
23 entered into, provide to the wrap borrower a separate written  
24 disclosure statement in at least 12-point type that contains the  
25 information required for a written disclosure statement under  
26 Section 5.016, Property Code.

27 (b) Regardless of whether the wrap lender provides a written

1 disclosure statement under Subsection (a) or under Section 5.016,  
2 Property Code, the wrap lender's disclosure statement to the wrap  
3 borrower must include a statement in a form substantially similar  
4 to the following:

5 NOTICE REGARDING PROPERTY INSURANCE: ANY INSURANCE MAINTAINED BY A  
6 SELLER, LENDER, OR OTHER PERSON WHO IS NOT THE BUYER OF THIS  
7 PROPERTY MAY NOT PROVIDE COVERAGE TO THE BUYER IF THE BUYER SUFFERS  
8 A LOSS OR INCURS LIABILITY IN CONNECTION WITH THE PROPERTY. TO  
9 ENSURE THE BUYER'S INTERESTS ARE PROTECTED, THE BUYER SHOULD  
10 PURCHASE THE BUYER'S OWN PROPERTY INSURANCE. BEFORE PURCHASING  
11 THIS PROPERTY, YOU MAY WISH TO CONSULT AN INSURANCE AGENT REGARDING  
12 THE INSURANCE COVERAGE AVAILABLE TO YOU AS A BUYER OF THE PROPERTY.

13 Sec. 159.102. FOREIGN LANGUAGE REQUIREMENT. Regardless of  
14 whether the wrap lender provides a written disclosure statement  
15 under Section 159.101 or under Section 5.016, Property Code, if the  
16 negotiations that precede the execution of the wrap mortgage loan  
17 agreement are conducted primarily in a language other than English,  
18 the wrap lender shall provide a copy of the required disclosure  
19 statement in that language to the wrap borrower.

20 Sec. 159.103. FAILURE TO PROVIDE DISCLOSURE: TOLLING OF  
21 LIMITATIONS. If a wrap lender fails to provide the disclosure  
22 statement as required by Section 159.101 or fails to provide the  
23 disclosure statement in the language required by Section 159.102,  
24 the limitations period applicable to any cause of action of the wrap  
25 borrower against the wrap lender arising out of the wrap lender's  
26 violation of a law of this state in connection with the wrap  
27 mortgage loan transaction is tolled until the 120th day after the



1 date the required disclosure statement is provided.

2 Sec. 159.104. ENFORCEABILITY OF WRAP LIEN. A lien securing  
3 a wrap mortgage loan is void unless:

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

9 (2) the wrap mortgage loan and the conveyance of the  
10 residential real estate securing the loan are closed by an attorney  
11 or a title company and an affidavit of a person knowledgeable of the  
12 facts regarding the closing location that confirms the closing  
13 location is attached to the recorded instrument conveying the  
14 residential real estate.

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

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

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

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

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

26 Sec. 159.106. WAIVER OR AVOIDANCE PROHIBITED. (a) Any  
27 purported waiver of a right of a wrap borrower under this subchapter

1 or purported exemption of a person from liability for a violation of  
2 this subchapter is void.

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

8 Sec. 159.107. RULEMAKING AUTHORITY. The finance commission  
9 may adopt and enforce rules necessary for the intent of or to ensure  
10 compliance with this subchapter.

11 SUBCHAPTER D. DUTIES OWED TO WRAP BORROWER

12 Sec. 159.151. MONEY HELD IN TRUST. A person who collects or  
13 receives a payment from a wrap borrower under the terms of a wrap  
14 mortgage loan holds the money in trust for the benefit of the  
15 borrower.

16 Sec. 159.152. FIDUCIARY DUTY. A person who collects or  
17 receives a payment from a wrap borrower under the terms of or in  
18 connection with a wrap mortgage loan owes a fiduciary duty to the  
19 wrap borrower to use the payment to satisfy the wrap lender's  
20 obligations under each debt described by Section 159.001(7)(A)(ii)  
21 and any other obligation affecting the residential real estate for  
22 which the wrap lender is responsible.

23 SUBCHAPTER E. WRAP BORROWER'S RIGHTS

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

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

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

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

13            (2) any other amount for which the wrap lender is  
14 liable to the wrap borrower under the terms of the wrap mortgage  
15 loan.

16        SUBCHAPTER F. ENFORCEMENT OF CERTAIN REGISTRATION REQUIREMENTS

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

20        Sec. 159.252. INSPECTION; INVESTIGATION. (a) The  
21 commissioner may conduct an inspection of a wrap lender registered  
22 under Chapter 158 as the commissioner determines necessary to  
23 determine whether the wrap lender is complying with that chapter  
24 and applicable rules. The inspection may include an inspection of  
25 the books, records, documents, operations, and facilities of the  
26 wrap lender. The commissioner may share evidence of criminal  
27 activity gathered during an inspection or investigation with any

1 state or federal law enforcement agency.

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

6 (c) The commissioner may conduct an undercover or covert  
7 investigation only if the commissioner, after due consideration of  
8 the circumstances, determines that the investigation is necessary  
9 to prevent immediate harm and to carry out the purposes of Chapter  
10 158.

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

14 (1) determine the information and records of the wrap  
15 lender to which the commissioner may demand access during an  
16 inspection or investigation; and

17 (2) establish what constitutes reasonable cause for an  
18 investigation.

19 (e) Information obtained by the commissioner during an  
20 inspection or investigation under this section is confidential  
21 unless disclosure of the information is permitted or required by  
22 other law.

23 (f) The commissioner may share information gathered during  
24 an investigation under this section with a state or federal agency.  
25 The commissioner may share information gathered during an  
26 inspection with a state or federal agency only if the commissioner  
27 determines there is a valid reason for the sharing.

1       (g) The commissioner may require reimbursement of expenses  
2 for each examiner for an on-site examination or inspection of a  
3 registered wrap lender under this section if records are located  
4 out of state and are not made available for examination or  
5 inspection by the examiner in this state. The finance commission by  
6 rule shall set the maximum amount for the reimbursement of expenses  
7 authorized under this subsection.

8       Sec. 159.253. ISSUANCE AND ENFORCEMENT OF SUBPOENA.

9       (a) During an investigation conducted under this subchapter, the  
10 commissioner may issue a subpoena that is addressed to a peace  
11 officer of this state or other person authorized by law to serve  
12 citation or perfect service. The subpoena may require a person to  
13 give a deposition, produce documents, or both.

14       (b) If a person disobeys a subpoena or if a person appearing  
15 in a deposition in connection with the investigation refuses to  
16 testify, the commissioner may petition a district court in Travis  
17 County to issue an order requiring the person to obey the subpoena,  
18 testify, or produce documents relating to the matter. The court  
19 shall promptly set an application to enforce a subpoena issued  
20 under Subsection (a) for hearing and shall cause notice of the  
21 application and the hearing to be served on the person to whom the  
22 subpoena is directed.

23               SUBCHAPTER G. ENFORCEMENT OF CHAPTER

24       Sec. 159.301. CEASE AND DESIST ORDER. (a) The  
25 commissioner, if the commissioner has reasonable cause to believe  
26 that a wrap lender or wrap mortgage loan originator to whom this  
27 chapter applies has violated or is about to violate this chapter,

1 may issue without notice and hearing an order to cease and desist  
2 from continuing a particular action or an order to take affirmative  
3 action, or both, to enforce compliance with this chapter.

4 (b) An order issued under Subsection (a) must contain a  
5 reasonably detailed statement of the facts on which the order is  
6 made. If a person against whom the order is made requests a  
7 hearing, the commissioner shall set and give notice of a hearing  
8 before the commissioner or a hearings officer. The hearing shall be  
9 governed by Chapter 2001, Government Code. Based on the findings of  
10 fact, conclusions of law, and recommendations of the hearings  
11 officer, the commissioner by order may find a violation has  
12 occurred or not occurred.

13 (c) If a hearing is not requested under Subsection (b) not  
14 later than the 30th day after the date on which an order is made, the  
15 order is considered final and not appealable.

16 (d) The commissioner, after giving notice and an  
17 opportunity for hearing, may impose against a person who violates a  
18 cease and desist order an administrative penalty in an amount not to  
19 exceed \$1,000 for each day of the violation. In addition to any  
20 other remedy provided by law, the commissioner may institute in  
21 district court a suit for injunctive relief and to collect the  
22 administrative penalty. A bond is not required of the commissioner  
23 with respect to injunctive relief granted under this subsection.

24 SECTION 4. Section 180.003, Finance Code, is amended by  
25 amending Subsection (a) and adding Subsection (d) to read as  
26 follows:

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

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

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

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

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

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

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

18           (5) subject to Subsection (d), an owner of residential  
19 real estate who in any 12-consecutive-month period makes no more  
20 than five residential mortgage loans to purchasers of the property  
21 for all or part of the purchase price of the residential real estate  
22 against which the mortgage is secured; and

23           (6) subject to Subsection (d), an owner of a dwelling  
24 who in any 12-consecutive-month period makes no more than five  
25 residential mortgage loans to purchasers of the property for all or  
26 part of the purchase price of the dwelling against which the  
27 mortgage or security interest is secured.

1        (d) In determining eligibility for an exemption under  
2 Subsection (a)(5) or (6), two or more owners of residential real  
3 estate or a dwelling, as applicable, are considered a single owner  
4 for the purpose of computing the number of mortgage loans made  
5 within the period specified by those subdivisions if any of the  
6 owners are affiliates, as defined by Section 1.002(1), Business  
7 Organizations Code, or if any of the owners have substantially  
8 common ownership, as determined by the savings and mortgage lending  
9 commissioner.

10        SECTION 5. This Act takes effect September 1, 2019.