

SUBJECT: Specifying that certain loan providers are subject to the franchise tax

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 11 ayes — D. Bonnen, Y. Davis, Bohac, Darby, E. Johnson, Murphy, Murr, Raymond, Shine, Springer, Stephenson

0 nays

WITNESSES: For — None

Against — Bradford Shields, Security Finance Inc.; (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings)

On — (*Registered, but did not testify*: Karey Barton, Comptroller of Public Accounts)

BACKGROUND: Tax Code, ch. 171 authorizes and imposes the franchise tax, also known as the margins tax. Sec. 171.0002 defines a taxable entity to exclude passive entities. Passive entities are defined by sec. 171.0003 as partnerships that derive more than 90 percent of various types of income from investments and mineral interests and do not gain more than 10 percent of gross income from conducting an active trade or business.

Some observers suggest that the exclusions from the franchise tax created by sec. 171.0003 have unintentionally allowed some providers of loans, such as title loan companies, to change their corporate structure to avoid being subject to the tax.

DIGEST: HB 3345 would specify that interest income earned by making loans to the general public is not considered income that would count towards the 90 percent requirement to be a passive entity. The bill would specify that it is a clarification of existing law and would not imply that existing law could be construed as inconsistent with the bill.

The bill would take effect September 1, 2017.