

BILL ANALYSIS

Senate Research Center

H.B. 2138
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Jurisprudence
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Committee Report (Amended)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, no statute specifically addresses licensing or regulation of property tax lenders and there is ambiguity over whether property tax lenders should be licensed and if so, under whose authority.

H.B. 2138 requires that the Office of Consumer Credit Commissioner license property tax lenders, regulate their issuance of property tax loans in accordance with the Tax Code, and levy fines and penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 (Section 351.007, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 4, Finance Code, by adding Chapter 351, as follows:

CHAPTER 351. PROPERTY TAX LENDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 351.001. SHORT TITLE. Authorizes this chapter to be cited as the Property Tax Lender License Act.

Sec. 351.002. DEFINITIONS. Defines "property tax lender" and "property tax loan."

Sec. 351.003. SECONDARY MARKET TRANSACTIONS. Provides that this chapter does not prohibit a property tax lender from receiving compensation from a party other than a 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. Prohibits this chapter from being 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. Provides that this chapter does not affect the application of Section 32.06 (Transfer of Tax Lien) or Section 32.065 (Contract for Foreclosure of Tax Lien), Tax Code.

Sec. 351.006. ENFORCEMENT. Provides that, in addition to any other applicable enforcement provisions, Subchapters E (Investigation and Enforcement), F (Administrative Penalty; Restitution Order; Assurance of Voluntary Compliance), and G (Judicial Review), 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. Authorizes the Finance Commission of Texas to adopt rules to ensure compliance with this chapter and Sections 32.06 and 32.065, Tax Code.

[Reserves Sections 351.008-351.050 for expansion.]

SUBCHAPTER B. AUTHORIZED ACTIVITIES; LICENSE

Sec. 351.051. LICENSE REQUIRED. (a) Requires a person to hold a license issued under this chapter for certain purposes.

(b) Prohibits a person from using any device, subterfuge, or pretense to evade the application of this section.

(c) Provides that this chapter does not apply to certain individuals, entities, or employees of such entities if the employee is acting for the benefit of the employer.

(d) Provides that a property tax lender licensed under this chapter is not required to be licensed under Chapter 156 (Mortgage Brokers) or any other provision of this code.

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

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

(c) Provides that a license is not required under this chapter for certain places of business.

Sec. 351.053. AREA OF BUSINESS; PROPERTY TAX LOANS BY MAIL. (a) Provides that 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) Authorizes a property tax lender to make, negotiate, arrange, and collect property tax loans by mail from a licensed office.

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

(b) Requires the transferee, if the transferee is licensed under this chapter, to include with the filing the licensee's license number assigned by the commissioner.

(c) Requires the transferee, if the transferee is exempt from this chapter under Section 351.051(c)(1) to 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) Requires the transferee, if the transferee is exempt from this chapter under Section 351.051(c)(2), to include a certificate issued by the commissioner indicating the entity's exemption. Requires the commissioner to establish procedures for issuance of a certificate under this subsection, application requirements, and requirements regarding information that is required to be submitted with an application.

[Reserves Sections 351.055-351.100 for expansion.]

SUBCHAPTER C. APPLICATION FOR AND ISSUANCE OF LICENSE

Sec. 351.101. APPLICATION REQUIREMENTS. (a) Requires the application for a license under this chapter to be under oath and provide certain information.

(b) Requires the applicant, on the filing of one or more license applications, to pay to the commissioner an investigation fee not to exceed \$200.

(c) Requires the applicant, on the filing of each license application, to 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) Requires an applicant for a license under this chapter, if the commissioner requires, to file with the application a certain bond.

(b) Requires the bond to 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) Requires the bond to be conditioned on the license holder's faithful performance under this chapter and rules adopted under this chapter and 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) Prohibits the aggregate liability of a surety to all persons damaged by the license holder's violation of this chapter from exceeding the amount of the bond.

Sec. 351.103. INVESTIGATION OF APPLICATION. Requires the commissioner, on the filing of an application and, if required, a bond, and on payment of the required fees, to conduct an investigation to determine whether to issue the license.

Sec. 351.104. APPROVAL OR DENIAL OF APPLICATION. (a) Requires the commissioner to approve the application and issue to the applicant a license to make property tax loans under this chapter if the commissioner makes certain findings.

(b) Requires the commissioner to notify the applicant if the commissioner does not find that the eligibility requirements of Subsection (a) are met.

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

(d) Requires the commissioner to 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. Authorizes the commissioner and the applicant to agree to a later date in writing.

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

[Reserves Sections 351.106-351.150 for expansion.]

SUBCHAPTER D. LICENSE

Sec. 351.151. NAME AND PLACE ON LICENSE. (a) Requires a license to state certain information.

(b) Prohibits a license holder from conducting 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. Requires a license holder to display a license at a place of business provided on the license.

Sec. 351.153. MINIMUM ASSETS FOR LICENSE. Requires a license holder to 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. Requires a license holder to 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 (Fees) and not later than December 1.

Sec. 351.155. EXPIRATION OF LICENSE ON FAILURE TO PAY ANNUAL FEE. Provides that if the annual fee 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 that day or December 31 of the last year for which an annual fee was paid.

Sec. 351.156. LICENSE SUSPENSION OR REVOCATION. Authorizes the commissioner, after notice and a hearing, to suspend or revoke a license if the commissioner makes certain findings.

Sec. 351.157. CORPORATE CHARTER FORFEITURE. (a) Provides that 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) Requires the attorney general, when the attorney general is notified of a violation of this chapter, to 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. Requires the decision of the commissioner on the suspension or revocation of a license and the evidence considered by the commissioner in making the decision to be filed in the public records of the commissioner.

Sec. 351.159. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE OF NEW LICENSE AFTER REVOCATION. Authorizes the commissioner to 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. Authorizes a license holder to surrender a license under this chapter by delivering to the commissioner the license and a written notice of the license's surrender.

Sec. 351.161. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR SURRENDER. (a) Provides that 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) Provides that the surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Sec. 351.162. MOVING AN OFFICE. (a) Requires a license holder to 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) Requires the commissioner to amend a license holder's license accordingly.

Sec. 351.163. TRANSFER OF ASSIGNMENT OF LICENSE. Authorizes a license to be transferred or assigned only with the approval of the commissioner.

SECTION 2. Amends Sections 349.502(a) and (c), Finance Code, as follows:

(a) Provides that a person commits an offense if the person engages in a business that is subject to Chapter 351 without holding the license or other authorization required under that chapter. Makes a nonsubstantive change.

(c) Provides that each loan made without the authority required by Chapter 351 is a separate offense. Makes a nonsubstantive change.

SECTION 3. Amends Section 32.06(a-1), Tax Code, to authorize a person to 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 the information required by Section 351.054, Finance Code. Makes nonsubstantive changes.

SECTION 4. Amends Section 32.065(d), Tax Code, to delete existing text providing that the transferee of a tax lien under this section is not required to obtain a license under Title 4 (Regulation of Interest, Loans, and Financed Transactions), Finance Code. Provides that Chapter 343 (Home Loans), Finance Code, does not apply to a transaction covered by this section.

SECTION 5. Provides that 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.

SECTION 6. Effective date: September 1, 2007.

SUMMARY OF COMMITTEE CHANGES

Amends SECTION 1 of the bill by adding a new Section 351.164, as follows:

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

(b) Requires the report under this section to be under oath and in the form prescribed by the commissioner.

(c) Provides that a report under this section is confidential.

(d) Requires the commissioner to annually prepare and publish a consolidated analysis and recapitulation of reports filed under this section.