

BILL ANALYSIS

Senate Research Center
83R22753 SMH-F

H.B. 1597
By: Gonzalez, Naomi et al. (Hinojosa)
Intergovernmental Relations
5/14/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Property tax lending is the practice of soliciting property owners who are delinquent in their tax payments to take out a loan to cover the tax payments. In return, the lender receives a lien on the property, allowing the lender to foreclose on the property if a sufficient number of payments are missed. As of late 2012, there were 76 registered property tax lenders and in 2011, 12,682 loans were made. These loans have become like "pay-day loans" but for a house.

The problem with these loans is the fees and interest. The Office of the Consumer Credit Commissioner estimates that an owner taking out an \$8,000 property tax loan will end up needing between \$13,000-\$17,000 to pay off the loan. But the problem is that the property tax lender has the priority right of foreclosure—even before the mortgage lender or any other lienholder. Because non-judicial foreclosure is permitted under Texas law, this foreclosure process can be completed with limited notice in as little as three or four weeks.

Although Texas has greatly increased regulation of these lenders over the last few years, property tax lenders are finding ways to evade this regulation, like originating property tax loans, but then selling the loans to investment groups that are not licensed as property tax lenders.

Texas property owners need a reasonable means to rectify tax delinquency. Property owners who take out these tax loans need adequate safeguards against unfair business practices, so they do not lose their homes to foreclosure. The mortgage/banking industry is regularly having to intervene and pay off these property tax loans in order to keep their mortgage holders from being foreclosed upon. The mortgage/banking industry wants increased regulation of property tax lenders.

H.B. 1597 does not target the property tax loans directly. It removes the demand for property tax loans by requiring reasonable installment plans from the taxing entities and prohibiting mortgage lenders from declaring a default if an individual is current on a property tax installment plan.

H.B. 1597 amends current law relating to installment payments of ad valorem taxes.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 31.031, Tax Code, as follows:

Sec. 31.031. INSTALLMENT PAYMENTS OF CERTAIN HOMESTEAD TAXES.

(a) Provides that this section applies only to:

(1) an individual who is:

(A) disabled or at least 65 years of age; and

(B) qualified for an exemption under Section 11.13(c) (relating to entitling an adult who is disabled or is 65 or older to an exemption from taxation by a school district of \$10,000 of the appraised value of their homestead); or

(2) an individual who is qualified for an exemption under Section 11.22 (Disabled Veterans), rather than the unmarried surviving spouse of a disabled veteran, and qualified for an exemption under Section 11.22.

(a-1) Authorizes an individual to whom this section applies to pay a taxing unit's taxes imposed on property that the person owns and occupies as a residence homestead in four equal installments without penalty or interest if the first installment is paid before the delinquency date and is accompanied by notice to the taxing unit that the person will pay the remaining taxes in three equal installments. Requires that the second installment be paid before April 1, the third installment before June 1, and the fourth installment before August 1.

Deletes existing text authorizing a person to pay the remaining taxes without penalty or interest in three equal installments if, before the delinquency date, an individual to whom this section applies pays at least one-fourth of a taxing unit's taxes imposed on property that the person owns and occupies as a residence homestead, accompanied by notice to the taxing unit that the person will pay the remaining taxes in installments. Deletes existing text requiring that the first installment be paid before April 1, the second installment before June 1, and the third installment before August 1.

(a-2) Authorizes an individual to whom this section applies, notwithstanding the deadline prescribed by Subsection (a-1) for payment of the first installment, to pay the taxes in four equal installments as provided by Subsection (a-1) if the first installment is paid and the required notice is provided before March 1.

(b) Provides that if the individual fails to make a payment, including the first payment, before the applicable date provided by Subsection (a-1), rather than Subsection (a), the unpaid amount is delinquent and incurs a penalty of six percent and interest as provided by Section 33.01(c) (relating to providing that a delinquent tax accrues interest at a rate of one percent for each month or portion of a month the tax remains unpaid, compensating the taxing unit for revenue lost because of the delinquency, and delinquent tax continues to accrue interest under this subsection as long as the tax remains unpaid, regardless of whether a judgment for the delinquent tax has been rendered). Provides that the penalty provided by Section 33.01(a) (relating to providing that a delinquent tax incurs a penalty of six percent of the amount of the tax for the first calendar month it is delinquent plus one percent for each additional month or portion of a month the tax remains unpaid prior to July 1 of the year in which it becomes delinquent, incurs a total penalty of twelve percent of the amount of the delinquent tax without regard to the number of months the tax has been delinquent as of July 1, and continues to incur the penalty provided by this subsection as long as the tax remains unpaid) does not apply to the unpaid amount.

(c) Authorizes an individual to pay more than the amount due for each installment and the amount in excess of the amount due is required to be credited to the next installment. Prohibits an individual from paying less than the total amount due for each installment unless the collector provides for the acceptance of partial payments under this section. Provides that if the collector accepts a partial payment, penalties and interest are incurred only by the amount of each installment that remains unpaid on the applicable date provided by Subsection (a-1), rather than Subsection (a).

(d) Requires the collector to extend each installment deadline provided by Subsection (a-1), rather than Subsection (a), by the number of months that the

delinquency date was postponed, if the delinquency date for taxes to which this section applies is postponed to May 1 or a later date.

SECTION 2. Amends Section 33.02, Tax Code, by amending Subsections (a) and (b) and adding Subsection (b-1), as follows:

(a) Authorizes the collector for a taxing unit to enter into an agreement with a person delinquent in the payment of the tax for payment of the tax, penalties, and interest in installments. Requires the collector for a taxing unit to, on request by a person delinquent in the payment of the tax on a residence homestead, enter into an agreement with the person for payment of the tax, penalties, and interest in installments if the person has not entered into an installment agreement with the collector for the taxing unit under this section in the preceding 24 months. Provides that an installment, rather than the agreement, under this section:

- (1) is required to be in writing;
- (2) is required to provide for payments to be made in equal monthly installments;
- (3) is required to extend for a period of at least 12 months; and
- (4) is prohibited from extending for a period of more than 36 months.

(b) Provides that interest and a penalty accrue as provided by Sections 33.01(a) and (c) on the unpaid balance during the period of the agreement except as provided by Subsection (b-1). Makes nonsubstantive changes.

(b-1) Provides that a penalty does not accrue as provided by Section 33.01(a) on the unpaid balance during the period of the agreement, except as otherwise provided by this subsection, if the property that is the subject of the agreement is a residence homestead. Provides that a penalty accrues as provided by Section 33.01(a) on the unpaid balance as if the owner had not entered into the agreement if the property owner fails to make a payment as required by the agreement.

SECTION 3. Amends Section 33.04, Tax Code, as follows:

Sec. 33.04. NOTICE OF DELINQUENCY. (a) Creates this subsection from existing text and makes no further change.

(b) Requires that a notice of delinquency contain a certain statement in a certain form.

(c) Requires the collector for a taxing unit to deliver a notice of delinquency to a person who is in breach of an installment agreement under Section 33.02 (Installment Payment of Delinquent Taxes) and to any other owner of an interest in the property subject to the agreement whose name appears on the delinquent tax roll before the collector is authorized to seize and sell the property or file a suit to collect a delinquent tax subject to the agreement.

SECTION 4. Amends Chapter 51, Property Code, by adding Section 51.0011, as follows:

Sec. 51.0011. DEFAULT ARISING FROM DELINQUENT AD VALOREM TAXES: INSTALLMENT AGREEMENTS. (a) Provides that, notwithstanding any agreement to the contrary, a debtor is not in default under a deed of trust or other contract lien on real property used as the debtor's residence for the delinquent payment of ad valorem taxes if:

- (1) the debtor gave notice to the mortgage servicer of the intent to enter into an installment agreement with the taxing unit under Section 33.02, Tax Code, for the payment of the taxes at least 10 days before the date the debtor entered into the agreement; and

(2) the property is protected from seizure and sale and a suit may not be filed to collect a delinquent tax on the property as provided by Section 33.02(d) (relating to prohibiting property from being seized and sold and from a suit being filed to collect a delinquent tax subject to an installment agreement unless the property owner fails to make a payment as required by the agreement, fails to pay other property taxes collected by the unit when due as required by the collector, or breaches any other condition of the agreement), Tax Code.

(b) Authorizes a mortgage servicer who receives a notice described by Subsection (a)(1) to pay the taxes subject to the installment agreement at any time.

(c) Requires a mortgage servicer who receives a notice described by Subsection (a)(1) and gives the debtor notice that the mortgage servicer intends to accelerate the note securing the deed of trust or other contract lien as a result of the delinquency of the taxes that are subject to the installment agreement to rescind the notice if the debtor enters into the agreement not later than the 30th day after the date the debtor delivers the notice.

SECTION 5. (a) Provides that the change in law made by this Act to Section 31.031, Tax Code, applies only to ad valorem taxes imposed for a tax year beginning on or after the effective date of this Act.

(b) Provides that the change in law made by this Act to Section 33.02, Tax Code, applies only to an installment agreement for the payment of delinquent ad valorem taxes entered into on or after the effective date of this Act. Provides that an installment agreement for the payment of delinquent ad valorem taxes entered into before the effective date of this Act is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

(c) Provides that the change in law made by this Act to Section 33.04, Tax Code, applies only to a notice of delinquency delivered on or after the effective date of this Act. Provides that a notice of delinquency delivered before the effective date of this Act is governed by the law in effect on the date the notice was delivered, and the former law is continued in effect for that purpose.

SECTION 6. Effective date: September 1, 2013.