

*engaging in the transaction within 90 days after the date of receipt of the insurer's notice, the insurer may engage in the transaction described in the notice.*

*(b) An insurer with a statutory net capital and surplus less than the minimum amount of capital and surplus required for a new charter and certificate of authority for the same type of insurer may not engage in the transactions authorized under this article.*

*(c) For purposes of this section, net capital and surplus are determined by the most recent financial statement of the insurer required to be filed with the department.*

SECTION 4. Article 2.10-3, Insurance Code, is repealed.

SECTION 5. This Act takes effect September 1, 1999.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 7, 1999, by a non-record vote; passed by the Senate on May 20, 1999: Yeas 30, Nays 0.

Approved June 18, 1999.

Effective September 1, 1999.

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## CHAPTER 1041

### H.B. No. 3059

#### AN ACT

relating to the operation of the Texas State Affordable Housing Corporation.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 2306.553, Government Code, is amended to read as follows:

Sec. 2306.553. PURPOSES. (a) The public purpose of the corporation is to perform activities and services that the corporation's board of directors determines will promote the public health, safety, and welfare through the provision of adequate, safe, and sanitary housing *primarily* for individuals and families of low, ~~and~~ very low, ~~income~~ and *extremely low* ~~[families of moderate]~~ income. The activities and services shall include engaging in mortgage banking activities and lending transactions and acquiring, holding, selling, or leasing real or personal property.

(b) The corporation's primary public purpose is to facilitate the provision of housing and the making of affordable loans to individuals and families of low, ~~and~~ very low, ~~income~~ and *extremely low* ~~[families of moderate]~~ income. The corporation may make *first lien, single family purchase money mortgage* loans for single family homes only to individuals and families of low, ~~and~~ very low, ~~income~~ and *extremely low* ~~[families of moderate]~~ income *if the individual's or family's household income is not more than the greater of 60 percent of the median income for the state, as defined by the United States Department of Housing and Urban Development, or 60 percent of the area median family income, adjusted for family size, as defined by that department.* The corporation may make loans for multifamily developments if:

(1) at least 40 percent of the units in a multifamily development are affordable to individuals and families with incomes at or below 60 percent of the median family income, adjusted for family size; or

(2) at least 20 percent of the units in a multifamily development are affordable to individuals and families with incomes at or below 50 percent of the median family income, adjusted for family size.

(c) To the extent reasonably practicable, the corporation shall use the services of banks, community banks, savings banks, thrifts, savings and loan associations, private mortgage companies, nonprofit organizations, and other lenders for the origination of all loans contain-

plated by this subchapter and assist the lenders in providing credit *primarily* to individuals and families of low, [and] very low, [income] and *extremely low* [families of moderate] income.

SECTION 2. Section 2306.554, Government Code, is amended to read as follows:

Sec. 2306.554. BOARD OF DIRECTORS AND OFFICERS. (a) The board of directors of the corporation consists of *five* [six] members [as follows:

~~(1) the presiding officer of the board of directors of the department;~~

~~(2) the presiding officer of the programs committee of the board of directors of the department; and~~

~~(3) four members of the board of directors of the corporation shall be] appointed by the governor who [and shall] represent any of the following areas:~~

(1) ~~[(A)]~~ state or federal savings banks or savings and loan associations;

(2) ~~[(B)]~~ community banks with assets of \$200 million or less;

(3) ~~[(C)]~~ large metropolitan banks with assets of more than \$1 billion;

(4) ~~[(D)]~~ asset management companies;

(5) ~~[(E)]~~ mortgage servicing companies;

(6) ~~[(F)]~~ builders;

(7) ~~[(G)]~~ real estate developers;

(8) ~~[(H)]~~ real estate brokers;

(9) ~~[(I)]~~ community or economic development organizations;

(10) ~~[(J)]~~ private mortgage companies;

(11) ~~[(K)]~~ nonprofit housing development companies;

(12) ~~[(L)]~~ attorneys;

(13) ~~[(M)]~~ investment bankers;

(14) ~~[(N)]~~ underwriters;

(15) ~~[(O)]~~ private mortgage insurance companies;

(16) ~~[(P)]~~ appraisers;

(17) ~~[(Q)]~~ property management companies;

(18) ~~[(R)]~~ financial advisors;

(19) ~~[(S)]~~ nonprofit foundations;

(20) ~~[(T)]~~ financial advisors; or

(21) ~~[(U)]~~ any other area of expertise that the governor finds necessary for the successful operation of the corporation.

(b) The governor shall *designate the* [appoint a] presiding officer of the corporation's board of directors from the members [who are not also serving as members of the board of directors of the department].

(c) A member of the corporation's board of directors is not entitled to compensation, [except for the members who are also members of the department's board of directors,] but is entitled to reimbursement of travel expenses incurred by the member while conducting the business of the board, as provided by the General Appropriations Act.

(d) *The corporation shall employ, for compensation to be determined by the corporation's board of directors, a qualified individual to serve as president of the corporation* [The director of the department shall serve ex officio as president of the corporation. The president is not entitled to compensation, unless the president is not also the executive director of the department, but is entitled to reimbursement from the corporation of travel expenses incurred by the member while conducting the business of the board, as provided by the General Appropriations Act. The director of the department shall serve as president of the corporation only if the director has experience in the field of mortgage banking or residential lending as demonstrated by:

~~(1) employment in one or more middle or upper level management positions for at least two years with a mortgage bank, commercial bank, thrift, savings and loan association, private mortgage company, mortgage servicing entity, or other financial institution; or~~

~~(2) employment in a position of providing legal or consulting services related to mortgage banking or residential lending to any one of the type of entities listed in Subsection (d)(1) for at least five years].~~

~~(e) [If the director does not satisfy the requirements of Subsection (d)(1) or (2), the corporation shall employ, for compensation to be determined by the corporation's board of directors, an individual that satisfies the requirements of Subsection (d)(1) or (2) to serve as president of the corporation.~~

~~(4)~~ The corporation may purchase, with corporation funds, liability insurance for each of the members of the corporation's board of directors, officers, and other employees of the corporation in an amount that the corporation's board of directors considers reasonably necessary to:

- (1) insure against foreseeable liabilities; and
- (2) provide for all costs of defending against those liabilities, including, without limitation, court costs and attorney's fees.

SECTION 3. Sections 2306.555(b), (c), and (d), Government Code, are amended to read as follows:

(b) In addition to the powers granted by Subsection (a), the corporation has all rights and powers necessary to accomplish its public purpose, including the powers to:

- (1) purchase, service, sell, lend on the security of, or otherwise transact in:
  - (A) mortgages, including federal mortgages and federally insured mortgages;
  - (B) mortgage loans;
  - (C) deeds of trust; and
  - (D) loans or other advances of credit secured by liens against manufactured housing;
- (2) guarantee or insure timely payment of mortgage loans and loans or other advances of credit secured by liens against manufactured housing, provided that the corporation's liability on that guaranty or insurance is limited to the assets of a guaranty fund or self-insurance fund established and maintained by the corporation;
- (3) make mortgage loans and loans or other advances of credit secured by liens against manufactured housing to individuals and families of low ~~(to moderate)~~ income;
- (4) make mortgage loans to provide temporary or permanent financing or refinancing for housing or land developments, including refunding outstanding obligations, mortgages, or advances issued for those purposes;
- (5) borrow, give security, pay interest or other return, or issue bonds or other obligations, including notes, debentures, or mortgage-backed securities, provided that each bond or other obligation issued by the corporation must contain a statement that the state is not obligated to pay the principal of or any premium or interest on the bond or other obligation and that the full faith and credit and the taxing power of the state are not pledged, given, or loaned to the payment;
- (6) acquire, hold, invest, use, pledge, reserve, and dispose of its assets, revenues, income, receipts, funds, and money from every source and to select one or more depositories, inside or outside the state, subject to the terms of any resolution, indenture, or other contract under which any bonds or other obligations are issued or any guaranty or insurance is provided;
- (7) establish, charge, and collect fees, charges, and penalties in connection with the programs, services, and activities of the corporation;
- (8) procure insurance and pay premiums on insurance of any type, in amounts, and from insurers as the corporation's board of directors considers necessary and advisable to further the corporation's public purpose, including, subject to Section 2306.554(e) ~~[2306.554(f)]~~, liability insurance for the members of the corporation's board of directors and the officers and other employees of the corporation;

(9) make, enter into, and enforce contracts, agreements, leases, indentures, mortgages, deeds, deeds of trust, security agreements, pledge agreements, credit agreements, and other instruments with any person, including a mortgage lender, servicer, housing sponsor, the federal government, or any public agency, on terms the corporation determines may be acceptable;

(10) own, rent, lease, or otherwise acquire, accept, or hold real, personal, or mixed property, or any interest in property, by purchase, exchange, gift, assignment, transfer, foreclosure, mortgage, sale, lease, or otherwise and hold, manage, operate, or improve real, personal, or mixed property, regardless of location;

(11) sell, lease, encumber, mortgage, exchange, donate, convey, or otherwise dispose of any or all of its properties or any interest in its properties, deeds of trust, or mortgage lien interest owned by it or under its control or custody, or in its possession, and release or relinquish any right, title, claim, lien, interest, easement, or demand, however acquired, including any equity or right of redemption in property foreclosed by it, by public or private sale, with or without public bidding;

(12) lease or rent any improvements, lands, or facilities from any person;

(13) request, accept, and use gifts, loans, donations, aid, guaranties, allocations, subsidies, grants, or contributions of any item of value to further its public purpose; and

(14) exercise the rights and powers of a nonprofit corporation incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

(c) In exercising the foregoing powers granted to it under this chapter, the corporation shall not *actively* compete with private lenders and shall not originate or make a [any] loan that ~~can or~~ would be made *under* [at] the same *circumstances* [time] by a private lender on substantially the same or better terms within the submarket in which the loan is proposed to be made, and, to the extent practical, the corporation shall rely on private mortgage companies, banks, savings banks, thrifts, savings and loan associations, or other similar loan originating entities to originate loans. ~~The corporation may act as co-origimator in a loan where the funding resources emanate from the corporation.~~

(d) All of the mortgage banking operations shall be dedicated to the furtherance of facilitating affordable housing finance *primarily* for the [ultimate] benefit of individuals and families of low, [and] very low, [income] and *extremely low* [families of moderate] income who, generally, are not afforded housing finance options through conventional lending channels.

SECTION 4. Section 2306.557, Government Code, is amended to read as follows:

Sec. 2306.557. DISTRIBUTION OF EARNINGS. Any part of earnings remaining after payment of expenses and any establishment of reserves by the corporation's board of directors may not inure to any person except that the corporation shall *use* [deposit] these excess earnings *to further the corporation's new or existing affordable housing initiatives* [with the department to the credit of the housing trust fund established by Section 2306.201] if the corporation's board of directors determines that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the corporation and for any establishment of reserves by the corporation's board of directors.

SECTION 5. (a) This Act takes effect September 1, 1999.

(b) As soon as possible after the effective date of this Act, the governor shall appoint a person to serve on the board of directors of the Texas State Affordable Housing Corporation, as required by Section 2306.554(a), Government Code, as amended by this Act. The presiding officer of the board of directors of the Texas Department of Housing and Community Affairs and the presiding officer of the programs committee of the department's board who are serving on the corporation's board immediately before the effective date of this Act shall continue to serve on the corporation's board until the date on which the person appointed by the governor assumes membership duties on the corporation's board.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 6, 1999, by a non-record vote; passed by the Senate on May 26, 1999, by a viva-voce vote.

Approved June 18, 1999.

Effective September 1, 1999.

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CHAPTER 1042

H.B. No. 3072

AN ACT

relating to certain payments by a retail seller in a retail installment transaction involving a motor vehicle.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 348.404, Finance Code, is amended to read as follows:

Sec. 348.404. **SELLER'S ACTION FOR INCENTIVE PROGRAM OR TO PAY FOR BUYER'S MOTOR VEHICLE [TRADE-IN].** (a) A retail seller may pay, promise to pay, or tender cash or another thing of value to the manufacturer, distributor, or retail buyer of the product if the payment, promise, or tender is made in order to participate in a financial incentive program offered by the manufacturer or distributor of the vehicle to the buyer.

(b) A retail seller, *in connection with a retail installment transaction*, may:

(1) advance money to retire an amount owed against a motor vehicle used as a trade-in or a motor vehicle owned by the buyer that has been declared a total loss by the buyer's insurer; and

(2) finance repayment of that money in a retail installment contract.

(c) *A retail seller may pay in cash to the retail buyer any portion of the net cash value of a motor vehicle owned by the buyer and used as a trade-in in a transaction involving the sale of another motor vehicle. In this subsection, "net cash value" means the cash value of a motor vehicle after payment of all amounts secured by the motor vehicle.*

SECTION 2. Section 152.002(b), Tax Code, is amended to read as follows:

(b) "Total consideration" does not include:

(1) a cash discount;

(2) a full cash or credit refund to a customer of the sales price of a motor vehicle returned to the seller;

(3) the amount charged for labor or service rendered in installing, applying, remodeling, or repairing the motor vehicle sold;

(4) a financing, carrying, or service charge or interest on credit extended on a motor vehicle sold under a conditional sale or other deferred payment contract;

(5) the value of a motor vehicle taken by a seller as all or a part of the consideration for sale of another motor vehicle, *including any cash payment to the buyer under Section 348.404, Finance Code;*

(6) a charge for transportation of the motor vehicle after a sale; or

(7) motor vehicle inventory tax.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 6, 1999, by a non-record vote; passed by the Senate on May 26, 1999: Yeas 30, Nays 0.

Approved June 18, 1999.

Effective August 30, 1999, 90 days after date of adjournment.