

BILL ANALYSIS

Senate Research Center

S.J.R. 42
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Business & Commerce
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Enrolled

DIGEST AND PURPOSE

Currently, Texas homeowners are unable to obtain home equity lines of credit, schedule sub-monthly payment, or refinance a home equity loan with a reverse mortgage loan. There also is no statutory language regarding a lender's ability to correct or cure certain violations of the home equity lien provisions, and lending institutions do not have access to adequate guidelines to properly assess current home equity law. S.J.R. 42 proposes to amend the Texas Constitution to authorize home equity lines of credit, flexible payments, and the ability to refinance a home equity loan with a reverse mortgage loan. This resolution also establishes provisions for a lender to cure an error in home equity lending. S.J.R. 42 authorizes the legislature to delegate interpretive authority to one or more state agencies.

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 Article XVI, Section 50(a), Texas Constitution, to include in the list of exceptions to the requirement that the homestead of a family, or of a single adult person be, and hereby is, protected from forced sale for the payment of all debts, an extension of credit that is not a form of open-end account that may be debited, or under which credit may be extended, from time to time unless the open-end account is a home equity line of credit;

an extension of credit that is the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsection (a)(8), as well as Subsections (a)(1)-(a)(5), of this section; an extension of credit that is scheduled to be repaid in substantially equal successive periodic, rather than monthly installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment, or if the extension of credit is a home equity line of credit, in periodic payments described under Subsection (t)(8) of this section;

an extension of credit that is closed not before one business day after the date that the owner of the homestead receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing and the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property, except a refinance described by Paragraph (Q)(x)(f) of this subdivision;

an extension of credit that is made by a person regulated by this state as a mortgage broker that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside, or the property proposed to secure the loans is located, in a certain area;

an extension of credit that is made on the condition that, except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit is required to

forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date, rather than within a reasonable time, the lender or holder is notified by the borrower of the lender's failure to comply by certain actions and requires the lender or any holder of the note for the extension of credit to forfeit all principal and interest of the extension of credit if the extension of credit is made by a person other than a person described under Paragraph (P) of this subdivision or if the lien was not created under a written agreement with the consent of each owner and each owner's spouse, unless each owner and each owner's spouse who did not initially consent subsequently consents.

SECTION 2. Amends Article XVI, Section 50(f), Texas Constitution, to prohibit a refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, from being secured by a valid lien against the homestead unless the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of this section.

SECTION 3. Amends Article XVI, Section 50(g), Texas Constitution, to include in the written notice required as a precondition to securing an extension of credit described by Subsection (a)(6) of this section by a valid lien against homestead property, prohibiting the loan from being an open-end account that may be debited, or under which credit may be extended, from time to time unless it is a home equity line of credit;

the requirement that loans described by Article XVI, Section 50(a)(6), Texas Constitution, to not require a consumer to apply the proceeds to another debt except a debt that is, rather than is not, secured by the consumer's home or owed to another lender, rather than owed to another debt to the same lender, and to provide that the lender will forfeit all principal and interest if the lender fails to comply with the lender's obligations unless the lender cures the failure to comply as provided by Article XVI, Section 50(a)(6)(Q)(x), Texas Constitution;

if a loan is a home equity line of credit, certain conditions apply;

and the provision that the notice is only a summary of the consumer's rights under the Texas Constitution, that the consumer's rights are governed by Article XVI, Section 50, Texas Constitution, and not by the notice.

SECTION 4. Amends Article XVI, Section 50, Texas Constitution, by adding Subsections (t) and (u), as follows:

(t) Provides that a home equity line of credit is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which certain conditions apply.

(u) Authorizes the legislature, by statute, to delegate to one or more state agencies the power to interpret Subsections (a)(5)-(a)(7), (e)-(p), and (t) of this section. Provides that an act or omission does not violate a provision included in those subsections if the act or omission conforms to certain interpretations of the provision.

SECTION 5. Requires that this proposed constitutional amendment be submitted to the voters at an election on September 13, 2003. Sets forth the required content of the ballot.