

By: Solomons

H.B. No. 1841

A BILL TO BE ENTITLED

AN ACT

relating to home equity loans and the interpretation of certain constitutional provisions by certain state agencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 302, Finance Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. PROVISIONS RELATING TO HOME EQUITY LOANS

Sec. 302.201. HOME EQUITY LINES OF CREDIT. (a) An open-end account described by Section 50(a)(6)(F), Article XVI, Texas Constitution, may be debited only to make payments to:

(1) an institution of higher education;

(2) a private elementary or secondary educational institution;

(3) A licensed health care provider in this state including:

(A) a hospital licensed under Chapter 241, Health & Safety Code;

(B) a nursing home or other facility licensed under Chapter 242, Health & Safety Code;

(C) a continuing care facility operating under a certificate of authority issued under Chapter 246, Health & Safety Code;

(D) an assisted living facility licensed under Chapter 247, Health & Safety Code;

1 (E) a special care facility licensed under
2 Chapter 248, Health & Safety Code; or

3 (F) an end stage renal disease facility licensed
4 under Chapter 251, Health & Safety Code; or

5 (4) a licensed health care provider in another state.

6 (b) Any debit from an open-end account home equity loan
7 shall be issued by the lender or holder of the loan to an
8 institution described in Subsection (a) as directed by the
9 borrower. A debit may not be issued to the borrower.

10 Sec. 302.202. REQUIRED DISCLOSURE FOR CERTAIN REFINANCES OF
11 HOME EQUITY LOANS. (a) Any refinance of a debt secured by a
12 homestead under the provisions of Section 50(f)(2), Article XVI,
13 Texas Constitution, shall contain the following written notice on a
14 separate instrument:

15 "NOTICE OF WAIVER OF CONSTITUTIONAL RIGHTS:

16 "1. I AM AWARE OF THE FACT THAT MY PRESENT HOME EQUITY LOAN
17 MAY NOT BE FORECLOSED UPON WITHOUT A COURT ORDER. THIS MEANS THAT I
18 CANNOT LOSE MY HOME WITHOUT A COURT ORDER WITH MY CURRENT LOAN.

19 "2. I AM AWARE OF THE FACT THAT, IF I REFINANCE MY HOME
20 EQUITY LOAN UNDER THE TERMS AND CONDITIONS REQUIRING THIS NOTICE,
21 THIS NEW LOAN MAY BE FORECLOSED UPON WITHOUT A COURT ORDER. THIS
22 MEANS THAT I MAY LOSE MY HOME WITHOUT A COURT ORDER.

23 "3. I AM AWARE OF THE FACT THAT MY PRESENT HOME EQUITY LOAN
24 IS WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST ME. THIS MEANS
25 THAT I WOULD NOT BE REQUIRED TO PAY THE LENDER ADDITIONAL AMOUNTS OF
26 MONEY SHOULD MY HOME BE FORECLOSED UPON.

27 "4. I AM AWARE OF THE FACT THAT, IF I REFINANCE MY HOME

1 EQUITY LOAN UNDER THE TERMS AND CONDITIONS REQUIRING THIS NOTICE, I
2 AM PERSONALLY LIABLE FOR THIS DEBT. THIS MEANS I MAY BE REQUIRED TO
3 PAY THE LENDER MONEY OVER AND ABOVE THE VALUE OF MY HOUSE IF THE
4 LENDER FORECLOSURES UPON THIS LOAN.

5 "5. I AM AWARE OF THE FACT THAT THE LENDER CANNOT REQUIRE ME
6 TO ACCEPT A REFINANCING OF MY EXISTING HOME EQUITY LOAN THAT CAUSES
7 ME TO LOSE MY CONSTITUTIONAL RIGHTS OUTLINED ABOVE. THIS MEANS THAT
8 THE LENDER MUST OFFER ME A REFINANCING OF MY EXISTING HOME EQUITY
9 LOAN THAT DOES NOT REQUIRE ME TO WAIVE MY CONSTITUTIONAL RIGHTS.

10 "6. I AM AWARE OF THE FACT THAT I MUST SIGN THIS NOTICE AT
11 THE TIME OF APPLICATION AND AT CLOSING IN ORDER TO REFINANCE MY HOME
12 EQUITY LOAN UNDER THE TERMS AND CONDITIONS REQUIRING THIS NOTICE.

13 "7. I AM AWARE OF THE FACT THAT I AM WAIVING THESE VALUABLE
14 CONSTITUTIONAL RIGHTS THAT ARE PART OF MY CURRENT LOAN."

15 (b) A borrower seeking to refinance an existing home equity
16 loan under Section 50(f)(2), Article XVI, Texas Constitution, must
17 execute the notice in Subsection (a) of this section:

18 (1) at the time the borrower submits an application
19 for the refinance of debt; and

20 (2) at the time of closing.

21 (c) The notice in subsection (a) fulfills the lender's
22 obligations under Section 50(f)(2)(D), Article XVI, Texas
23 Constitution.

24 Sec. 302.203. INTERPRETIVE AUTHORITY. (a) The Finance
25 Commission of Texas and the Texas Real Estate Commission may,
26 either on request of an interested person or upon their own motion,
27 issue interpretations of Subsections (a)(6-7), (e)-(p), and (t) of

1 Section 50, Article XVI, Texas Constitution.

2 (b) An interpretation under this section is subject to
3 Chapter 2001, Government Code.

4 (c) An interpretation issued by the Finance Commission of
5 Texas and the Texas Real Estate Commission is applicable to all
6 lenders authorized to make extensions of credit under Subsection
7 50(a)(6) and 50(f), Article XVI, Texas Constitution. A document or
8 other statement that is issued by only the Finance Commission of
9 Texas or the Texas Real Estate Commission is not an interpretation
10 under this section.

11 (d) The Credit Union Commission shall assist the Finance
12 Commission of Texas and the Texas Real Estate Commission in
13 developing interpretations that affect lenders regulated by the
14 Credit Union Commission.

15 SECTION 2. This Act takes effect on the date the
16 constitutional amendment expanding the permissible uses, types,
17 and refinancing options of home equity loans takes effect. If that
18 constitutional amendment is not approved by the voters, this Act
19 has no effect.