

SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.

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

SECTION 1. Subsection (a), Section 50, Article XVI, Texas Constitution, is amended to read as follows:

(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money thereof, or a part of such purchase money;

(2) the taxes due thereon;

(3) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(4) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(5) work and material used in constructing new improvements thereon, if contracted for in writing, or work and

1 material used to repair or renovate existing improvements thereon
2 if:

3 (A) the work and material are contracted for in
4 writing, with the consent of both spouses, in the case of a family
5 homestead, given in the same manner as is required in making a sale
6 and conveyance of the homestead;

7 (B) the contract for the work and material is not
8 executed by the owner or the owner's spouse before the fifth day
9 after the owner makes written application for any extension of
10 credit for the work and material, unless the work and material are
11 necessary to complete immediate repairs to conditions on the
12 homestead property that materially affect the health or safety of
13 the owner or person residing in the homestead and the owner of the
14 homestead acknowledges such in writing;

15 (C) the contract for the work and material
16 expressly provides that the owner may rescind the contract without
17 penalty or charge within three days after the execution of the
18 contract by all parties, unless the work and material are necessary
19 to complete immediate repairs to conditions on the homestead
20 property that materially affect the health or safety of the owner or
21 person residing in the homestead and the owner of the homestead
22 acknowledges such in writing; and

23 (D) the contract for the work and material is
24 executed by the owner and the owner's spouse only at the office of a
25 third-party lender making an extension of credit for the work and
26 material, an attorney at law, or a title company;

27 (6) an extension of credit that:

1 (A) is secured by a voluntary lien on the
2 homestead created under a written agreement with the consent of
3 each owner and each owner's spouse;

4 (B) is of a principal amount that when added to
5 the aggregate total of the outstanding principal balances of all
6 other indebtedness secured by valid encumbrances of record against
7 the homestead does not exceed 80 percent of the fair market value of
8 the homestead on the date the extension of credit is made;

9 (C) is without recourse for personal liability
10 against each owner and the spouse of each owner, unless the owner or
11 spouse obtained the extension of credit by actual fraud;

12 (D) is secured by a lien that may be foreclosed
13 upon only by a court order;

14 (E) does not require the owner or the owner's
15 spouse to pay, in addition to any interest, fees to any person that
16 are necessary to originate, evaluate, maintain, record, insure, or
17 service the extension of credit that exceed, in the aggregate,
18 three percent of the original principal amount of the extension of
19 credit;

20 (F) is not a form of open-end account that may be
21 debited from time to time or under which credit may be extended from
22 time to time unless the open-end account is a home equity line of
23 credit;

24 (G) is payable in advance without penalty or
25 other charge;

26 (H) is not secured by any additional real or
27 personal property other than the homestead;

1 (I) is not secured by homestead property
2 designated for agricultural use as provided by statutes governing
3 property tax, unless such homestead property is used primarily for
4 the production of milk;

5 (J) may not be accelerated because of a decrease
6 in the market value of the homestead or because of the owner's
7 default under other indebtedness not secured by a prior valid
8 encumbrance against the homestead;

9 (K) is the only debt secured by the homestead at
10 the time the extension of credit is made unless the other debt was
11 made for a purpose described by Subsections (a)(1)-(a)(5) or
12 Subsection (a)(8) of this section;

13 (L) is scheduled to be repaid:

14 (i) in substantially equal successive
15 periodic [~~monthly~~] installments, not more often than every 14 days
16 and not less often than monthly, beginning no later than two months
17 from the date the extension of credit is made, each of which equals
18 or exceeds the amount of accrued interest as of the date of the
19 scheduled installment; or

20 (ii) if the extension of credit is a home
21 equity line of credit, in periodic payments described under
22 Subsection (t)(8) of this section;

23 (M) is closed not before:

24 (i) the 12th day after the later of the date
25 that the owner of the homestead submits an application to the lender
26 for the extension of credit or the date that the lender provides the
27 owner a copy of the notice prescribed by Subsection (g) of this

1 section; [~~and~~]

2 (ii) one business day after the date that
3 the owner of the homestead receives a final itemized disclosure of
4 the actual fees, points, interest, costs, and charges that will be
5 charged at closing. If a bona fide emergency or another good cause
6 exists and the lender obtains the written consent of the owner, the
7 lender may provide the documentation to the owner or the lender may
8 modify previously provided documentation on the date of closing;
9 and

10 (iii) the first anniversary of the closing
11 date of any other extension of credit described by Subsection
12 (a)(6) of this section secured by the same homestead property,
13 except a refinance described by Paragraph (Q)(x)(f) of this
14 subdivision;

15 (N) is closed only at the office of the lender, an
16 attorney at law, or a title company;

17 (O) permits a lender to contract for and receive
18 any fixed or variable rate of interest authorized under statute;

19 (P) is made by one of the following that has not
20 been found by a federal regulatory agency to have engaged in the
21 practice of refusing to make loans because the applicants for the
22 loans reside or the property proposed to secure the loans is located
23 in a certain area:

24 (i) a bank, savings and loan association,
25 savings bank, or credit union doing business under the laws of this
26 state or the United States;

27 (ii) a federally chartered lending

1 instrumentality or a person approved as a mortgagee by the United
2 States government to make federally insured loans;

3 (iii) a person licensed to make regulated
4 loans, as provided by statute of this state;

5 (iv) a person who sold the homestead
6 property to the current owner and who provided all or part of the
7 financing for the purchase; ~~or~~

8 (v) a person who is related to the homestead
9 property owner within the second degree of affinity or
10 consanguinity; or

11 (vi) a person regulated by this state as a
12 mortgage broker; and

13 (Q) is made on the condition that:

14 (i) the owner of the homestead is not
15 required to apply the proceeds of the extension of credit to repay
16 another debt except debt secured by the homestead or debt to another
17 lender;

18 (ii) the owner of the homestead not assign
19 wages as security for the extension of credit;

20 (iii) the owner of the homestead not sign
21 any instrument in which blanks are left to be filled in;

22 (iv) the owner of the homestead not sign a
23 confession of judgment or power of attorney to the lender or to a
24 third person to confess judgment or to appear for the owner in a
25 judicial proceeding;

26 (v) the lender, at the time the extension of
27 credit is made, provide the owner of the homestead a copy of all

1 documents signed by the owner related to the extension of credit;

2 (vi) the security instruments securing the
3 extension of credit contain a disclosure that the extension of
4 credit is the type of credit defined by Section 50(a)(6), Article
5 XVI, Texas Constitution;

6 (vii) within a reasonable time after
7 termination and full payment of the extension of credit, the lender
8 cancel and return the promissory note to the owner of the homestead
9 and give the owner, in recordable form, a release of the lien
10 securing the extension of credit or a copy of an endorsement and
11 assignment of the lien to a lender that is refinancing the extension
12 of credit;

13 (viii) the owner of the homestead and any
14 spouse of the owner may, within three days after the extension of
15 credit is made, rescind the extension of credit without penalty or
16 charge;

17 (ix) the owner of the homestead and the
18 lender sign a written acknowledgment as to the fair market value of
19 the homestead property on the date the extension of credit is made;

20 [~~and~~]

21 (x) except as provided by Subparagraph (xi)
22 of this paragraph, the lender or any holder of the note for the
23 extension of credit shall forfeit all principal and interest of the
24 extension of credit if the lender or holder fails to comply with the
25 lender's or holder's obligations under the extension of credit and
26 fails to correct the failure to comply not later than the 60th day
27 after the date [~~within a reasonable time after~~] the lender or holder

1 is notified by the borrower of the lender's failure to comply by:

2 (a) paying to the owner an amount
3 equal to any overcharge paid by the owner under or related to the
4 extension of credit if the owner has paid an amount that exceeds an
5 amount stated in the applicable Paragraph (E), (G), or (O) of this
6 subdivision;

7 (b) sending the owner a written
8 acknowledgement that the lien is valid only in the amount that the
9 extension of credit does not exceed the percentage described by
10 Paragraph (B) of this subdivision, if applicable, or is not secured
11 by property described under Paragraph (H) or (I) of this
12 subdivision, if applicable;

13 (c) sending the owner a written notice
14 modifying any other amount, percentage, term, or other provision
15 prohibited by this section to a permitted amount, percentage, term,
16 or other provision and adjusting the account of the borrower to
17 ensure that the borrower is not required to pay more than an amount
18 permitted by this section and is not subject to any other term or
19 provision prohibited by this section;

20 (d) delivering the required documents
21 to the borrower if the lender fails to comply with Subparagraph (v)
22 of this paragraph or obtaining the appropriate signatures if the
23 lender fails to comply with Subparagraph (ix) of this paragraph;

24 (e) sending the owner a written
25 acknowledgement, if the failure to comply is prohibited by
26 Paragraph (K) of this subdivision, that the accrual of interest and
27 all of the owner's obligations under the extension of credit are

1 abated while any prior lien prohibited under Paragraph (K) remains
2 secured by the homestead; or

3 (f) if the failure to comply cannot be
4 cured under Subparagraphs (x)(a)-(e) of this paragraph, curing the
5 failure to comply by a refund or credit to the owner of \$1,000 and
6 offering the owner the right to refinance the extension of credit
7 with the lender or holder for the remaining term of the loan at no
8 cost to the owner on the same terms, including interest, as the
9 original extension of credit with any modifications necessary to
10 comply with this section or on terms on which the owner and the
11 lender or holder otherwise agree that comply with this section; and

12 (xi) the lender or any holder of the note
13 for the extension of credit shall forfeit all principal and
14 interest of the extension of credit if the extension of credit is
15 made by a person other than a person described under Paragraph (P)
16 of this subdivision or if the lien was not created under a written
17 agreement with the consent of each owner and each owner's spouse,
18 unless each owner and each owner's spouse who did not initially
19 consent subsequently consents;

20 (7) a reverse mortgage; or

21 (8) the conversion and refinance of a personal
22 property lien secured by a manufactured home to a lien on real
23 property, including the refinance of the purchase price of the
24 manufactured home, the cost of installing the manufactured home on
25 the real property, and the refinance of the purchase price of the
26 real property.

27 SECTION 2. Subsection (f), Section 50, Article XVI, Texas

1 Constitution, is amended to read as follows:

2 (f) A refinance of debt secured by the homestead, any
3 portion of which is an extension of credit described by Subsection
4 (a)(6) of this section, may not be secured by a valid lien against
5 the homestead unless the refinance of the debt is an extension of
6 credit described by Subsection (a)(6) or (a)(7) of this section.

7 SECTION 3. Subsection (g), Section 50, Article XVI, Texas
8 Constitution, is amended to read as follows:

9 (g) An extension of credit described by Subsection (a)(6) of
10 this section may be secured by a valid lien against homestead
11 property if the extension of credit is not closed before the 12th
12 day after the lender provides the owner with the following written
13 notice on a separate instrument:

14 "NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION
15 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

16 "SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION
17 ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME.
18 SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY
19 THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY
20 FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

21 "(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT
22 OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

23 "(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE
24 MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES
25 OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE
26 FAIR MARKET VALUE OF YOUR HOME;

27 "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL

1 LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE
2 OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

3 "(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY
4 WITH A COURT ORDER;

5 "(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3
6 PERCENT OF THE LOAN AMOUNT;

7 "(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE
8 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM
9 TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

10 "(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

11 "(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

12 "(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD
13 PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED
14 PRIMARILY FOR THE PRODUCTION OF MILK;

15 "(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN
16 AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES
17 OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR
18 HOME;

19 "(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE
20 XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY
21 GIVEN TIME;

22 "(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS
23 THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT
24 PERIOD;

25 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A
26 WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
27 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS

1 SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN
2 SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS
3 PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

4 "(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER,
5 TITLE COMPANY, OR AN ATTORNEY AT LAW;

6 "(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF
7 INTEREST AUTHORIZED BY STATUTE;

8 "(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS
9 DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS
10 CONSTITUTION; [~~AND~~]

11 "(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF
12 THE TEXAS CONSTITUTION MUST:

13 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER
14 DEBT EXCEPT A DEBT THAT IS [~~NOT~~] SECURED BY YOUR HOME OR OWED TO
15 ANOTHER [~~DEBT TO THE SAME~~] LENDER;

16 "(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

17 "(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH
18 HAVE BLANKS LEFT TO BE FILLED IN;

19 "(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF
20 JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT
21 OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

22 "(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS
23 YOU SIGN AT CLOSING;

24 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A
25 DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6),
26 ARTICLE XVI, OF THE TEXAS CONSTITUTION;

27 "(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE

1 LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF
2 THE LIEN, WHICHEVER IS APPROPRIATE;

3 "(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER
4 CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

5 "(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE
6 FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

7 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL
8 PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE
9 LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY
10 AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS
11 CONSTITUTION; AND

12 "(R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

13 "(1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND
14 REBORROW MONEY UNDER THE LINE OF CREDIT;

15 "(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN
16 AN AMOUNT OF AT LEAST \$4,000;

17 "(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD,
18 SOLICITATION CHECK, OR SIMILAR DEVICE TO OBTAIN ADVANCES UNDER THE
19 LINE OF CREDIT;

20 "(4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND
21 COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE
22 LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

23 "(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE
24 EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY
25 NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE
26 DATE THE LINE OF CREDIT IS ESTABLISHED;

27 "(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT

1 AT ANY TIME EXCEEDS 50 PERCENT OF THE FAIR MARKET VALUE OF YOUR
2 HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED,
3 YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT
4 UNTIL THE BALANCE IS LESS THAN 50 PERCENT OF THE FAIR MARKET VALUE;
5 AND

6 "(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS
7 OF THE LINE OF CREDIT.

8 "THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS
9 CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI,
10 OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE."

11 If the discussions with the borrower are conducted primarily
12 in a language other than English, the lender shall, before closing,
13 provide an additional copy of the notice translated into the
14 written language in which the discussions were conducted.

15 SECTION 4. Section 50, Article XVI, Texas Constitution, is
16 amended by adding Subsections (t) and (u) to read as follows:

17 (t) A home equity line of credit is a form of an open-end
18 account that may be debited from time to time, under which credit
19 may be extended from time to time and under which:

20 (1) the owner requests advances, repays money, and
21 reborrows money;

22 (2) any single debit or advance is not less than
23 \$4,000;

24 (3) the owner does not use a credit card, debit card,
25 preprinted solicitation check, or similar device to obtain an
26 advance;

27 (4) any fees described by Subsection (a)(6)(E) of this

1 section are charged and collected only at the time the extension of
2 credit is established and no fee is charged or collected in
3 connection with any debit or advance;

4 (5) the maximum principal amount that may be extended
5 under the account, when added to the aggregate total of the
6 outstanding principal balances of all indebtedness secured by the
7 homestead on the date the extension of credit is established, does
8 not exceed an amount described under Subsection (a)(6)(B) of this
9 section;

10 (6) no additional debits or advances are made if the
11 total principal amount outstanding exceeds an amount equal to 50
12 percent of the fair market value of the homestead as determined on
13 the date the account is established;

14 (7) the lender or holder may not unilaterally amend
15 the extension of credit; and

16 (8) repayment is to be made in regular periodic
17 installments, not more often than every 14 days and not less often
18 than monthly, beginning not later than two months from the date the
19 extension of credit is established, and:

20 (A) during the period during which the owner may
21 request advances, each installment equals or exceeds the amount of
22 accrued interest; and

23 (B) after the period during which the owner may
24 request advances, installments are substantially equal.

25 (u) The legislature may by statute delegate one or more
26 state agencies the power to interpret Subsections (a)(5)-(a)(7),
27 (e)-(p), and (t), of this section. An act or omission does not

1 violate a provision included in those subsections if the act or
2 omission conforms to an interpretation of the provision that is:

3 (1) in effect at the time of the act or omission; and

4 (2) made by a state agency to which the power of
5 interpretation is delegated as provided by this subsection or by an
6 appellate court of this state or the United States.

7 SECTION 5. This proposed constitutional amendment shall be
8 submitted to the voters at an election to be held September 13,
9 2003. The ballot shall be printed to permit voting for or against
10 the proposition: "The constitutional amendment authorizing a home
11 equity line of credit, providing for administrative interpretation
12 of home equity lending law, and otherwise relating to the making,
13 refinancing, repayment, and enforcement of home equity loans."

President of the Senate

Speaker of the House

I hereby certify that S.J.R. No. 42 was adopted by the Senate on May 14, 2003, by the following vote: Yeas 26, Nays 5; and that the Senate concurred in House amendments on May 29, 2003, by the following vote: Yeas 28, Nays 3.

Secretary of the Senate

I hereby certify that S.J.R. No. 42 was adopted by the House, with amendments, on May 24, 2003, by the following vote: Yeas 115, Nays 0, one present not voting.

Chief Clerk of the House