

By: Carona

S.J.R. No. 42

1 SENATE JOINT RESOLUTION

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

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

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

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

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

14 (2) the taxes due thereon;

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

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

24 (5) work and material used in constructing new

1 improvements thereon, if contracted for in writing, or work and
2 material used to repair or renovate existing improvements thereon
3 if:

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

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

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

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

1 (6) an extension of credit that:

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

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

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

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

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

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

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

27 (H) is not secured by any additional real or

1 personal property other than the homestead;

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

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

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

14 (L) is scheduled to be repaid:

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

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

24 (M) is closed not before:

25 (i) the 12th day after the later of the date
26 that the owner of the homestead submits an application to the lender
27 for the extension of credit or the date that the lender provides the

1 owner a copy of the notice prescribed by Subsection (g) of this
2 section; and

3 (ii) the first anniversary of the closing
4 date of any other extension of credit described by Subsection
5 (a)(6) of this section secured by the same homestead property,
6 except a refinance described by Paragraph (Q)(x)(f) of this
7 subdivision;

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

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

12 (P) is made by one of the following that has not
13 been found by a federal regulatory agency to have engaged in the
14 practice of refusing to make loans because the applicants for the
15 loans reside or the property proposed to secure the loans is located
16 in a certain area:

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

20 (ii) a federally chartered lending
21 instrumentality or a person approved as a mortgagee by the United
22 States government to make federally insured loans;

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

25 (iv) a person who sold the homestead
26 property to the current owner and who provided all or part of the
27 financing for the purchase; [~~or~~]

1 (v) a person who is related to the homestead
2 property owner within the second degree of affinity or
3 consanguinity; or

4 (vi) a person regulated by this state as a
5 mortgage broker; and

6 (Q) is made on the condition that:

7 (i) the owner of the homestead is not
8 required to apply the proceeds of the extension of credit to repay
9 another debt except debt secured by the homestead or debt to another
10 lender;

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

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

15 (iv) the owner of the homestead not sign a
16 confession of judgment or power of attorney to the lender or to a
17 third person to confess judgment or to appear for the owner in a
18 judicial proceeding;

19 (v) the lender, at the time the extension of
20 credit is made, provide the owner of the homestead a copy of all
21 documents signed by the owner related to the extension of credit;

22 (vi) the security instruments securing the
23 extension of credit contain a disclosure that the extension of
24 credit is the type of credit defined by Section 50(a)(6), Article
25 XVI, Texas Constitution;

26 (vii) within a reasonable time after
27 termination and full payment of the extension of credit, the lender

1 cancel and return the promissory note to the owner of the homestead
2 and give the owner, in recordable form, a release of the lien
3 securing the extension of credit or a copy of an endorsement and
4 assignment of the lien to a lender that is refinancing the extension
5 of credit;

6 (viii) the owner of the homestead and any
7 spouse of the owner may, within three days after the extension of
8 credit is made, rescind the extension of credit without penalty or
9 charge;

10 (ix) the owner of the homestead and the
11 lender sign a written acknowledgment as to the fair market value of
12 the homestead property on the date the extension of credit is made;
13 [~~and~~]

14 (x) except as provided by Subparagraph (ix)
15 of this paragraph, the lender or any holder of the note for the
16 extension of credit shall forfeit all principal and interest of the
17 extension of credit if the lender or holder fails to comply with the
18 lender's or holder's obligations under the extension of credit and
19 fails to correct the failure to comply not later than the 60th day
20 after the date [~~within a reasonable time after~~] the lender or holder
21 is notified by the borrower of the lender's failure to comply by:

22 (a) paying to the owner an amount
23 equal to any overcharge paid by the owner under or related to the
24 extension of credit if the owner has paid an amount that exceeds an
25 amount stated in the applicable Paragraph (E), (G), or (O) of this
26 subdivision;

27 (b) sending the owner a written

1 acknowledgement that the lien is valid only in the amount that the
2 extension of credit does not exceed the percentage described by
3 Paragraph (B) of this subdivision, if applicable, or is not secured
4 by property described under Paragraph (H) or (I) of this
5 subdivision, if applicable;

6 (c) sending the owner a written notice
7 modifying any other amount, percentage, term, or other provision
8 prohibited by this section to a permitted amount, percentage, term,
9 or other provision and adjusting the account of the borrower to
10 ensure that the borrower is not required to pay more than an amount
11 permitted by this section and is not subject to any other term or
12 provision prohibited by this section;

13 (d) delivering the required documents
14 to the borrower if the lender fails to comply with Subparagraph (v)
15 of this paragraph or obtaining the appropriate signatures if the
16 lender fails to comply with Subparagraph (ix) of this paragraph;

17 (e) sending the owner a written
18 acknowledgement, if the failure to comply is prohibited by
19 Paragraph (K) of this subdivision, that the accrual of interest and
20 all of the owner's obligations under the extension of credit are
21 abated while any prior lien prohibited under Paragraph (K) remains
22 secured by the homestead; or

23 (f) if the failure to comply cannot be
24 cured under Subparagraphs (x)(a)-(e) of this paragraph, curing the
25 failure to comply by a refund or credit to the owner of \$1,000 and
26 offering the owner the right to refinance the extension of credit
27 with the lender or holder for the remaining term of the loan at no

1 cost to the owner on the same terms, including interest, as the
2 original extension of credit with any modifications necessary to
3 comply with this section or on terms on which the owner and the
4 lender or holder otherwise agree that comply with this section; and

5 (xi) the lender or any holder of the note
6 for the extension of credit shall forfeit all principal and
7 interest of the extension of credit if the extension of credit is
8 made by a person other than a person described under Paragraph (P)
9 of this subdivision or if the lien was not created under a written
10 agreement with the consent of each owner and each owner's spouse,
11 unless each owner and each owner's spouse who did not initially
12 consent subsequently consents;

13 (7) a reverse mortgage; or

14 (8) the conversion and refinance of a personal
15 property lien secured by a manufactured home to a lien on real
16 property, including the refinance of the purchase price of the
17 manufactured home, the cost of installing the manufactured home on
18 the real property, and the refinance of the purchase price of the
19 real property.

20 SECTION 2. Subsection (f), Section 50, Article XVI, Texas
21 Constitution, is amended to read as follows:

22 (f) A refinance of debt secured by the homestead, any
23 portion of which is an extension of credit described by Subsection
24 (a)(6) of this section, may not be secured by a valid lien against
25 the homestead unless the refinance of the debt is an extension of
26 credit described by Subsection (a)(6) or (a)(7) of this section.

27 SECTION 3. Subsection (g), Section 50, Article XVI, Texas

1 Constitution, is amended to read as follows:

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

7 "NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION
8 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

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

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

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

20 "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL
21 LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE
22 OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

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

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

27 "(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE

1 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM
2 TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

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

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

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

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

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

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

18 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A
19 WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
20 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS
21 SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN
22 SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS
23 PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

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

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

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

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

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

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

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

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

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

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

20 "(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE
21 LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF
22 THE LIEN, WHICHEVER IS APPROPRIATE;

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

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

27 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL

1 PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE
2 LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY
3 AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS
4 CONSTITUTION; AND

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

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

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

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

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

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

20 "(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT
21 AT ANY TIME EXCEEDS 50 PERCENT OF THE FAIR MARKET VALUE OF YOUR
22 HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED,
23 YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT
24 UNTIL THE BALANCE IS LESS THAN 50 PERCENT OF THE FAIR MARKET VALUE;
25 AND

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

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

4 If the discussions with the borrower are conducted primarily
5 in a language other than English, the lender shall, before closing,
6 provide an additional copy of the notice translated into the
7 written language in which the discussions were conducted.

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

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

13 (1) the owner requests advances, repays money, and
14 reborrows money;

15 (2) any single debit or advance is not less than
16 \$4,000;

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

20 (4) any fees described by Subsection (a)(6)(E) of this
21 section are charged and collected only at the time the extension of
22 credit is established and no fee is charged or collected in
23 connection with any debit or advance;

24 (5) the maximum principal amount that may be extended
25 under the account, when added to the aggregate total of the
26 outstanding principal balances of all indebtedness secured by the
27 homestead on the date the extension of credit is established, does

1 not exceed an amount described under Subsection (a)(6)(B) of this
2 section;

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

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

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

13 (A) during the period during which the owner may
14 request advances, each installment equals or exceeds the amount of
15 accrued interest; and

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

18 (u) The legislature may by statute delegate one or more
19 state agencies the power to interpret Subsections (a)(5)-(a)(7),
20 (e)-(p), and (t), of this section. An act or omission does not
21 violate a provision included in those subsections if the act or
22 omission conforms to an interpretation of the provision that is:

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

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

27 SECTION 5. This proposed constitutional amendment shall be

1 submitted to the voters at an election to be held November 4, 2003.
2 The ballot shall be printed to permit voting for or against the
3 proposition: "The constitutional amendment authorizing a home
4 equity line of credit, providing for administrative interpretation
5 of home equity lending law, and otherwise relating to the making,
6 refinancing, repayment, and enforcement of home equity loans."