

By: West

S.J.R. No. 52

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SENATE JOINT RESOLUTION

proposing a constitutional amendment limiting fees charged to home equity loan borrowers and prohibiting certain predatory practices.

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

SECTION 1. Section 50(a), 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 material used to repair or renovate existing improvements thereon

1 if:

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

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

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

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

26 (6) an extension of credit that:

27 (A) is secured by a voluntary lien on the

1 homestead created under a written agreement with the consent of
2 each owner and each owner's spouse;

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

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

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

13 (E) does not require the owner or the owner's
14 spouse to pay, in addition to the contract rate of [any] interest on
15 the original principal amount of the extension of credit, fees,
16 points, or other charges to any person that are necessary to
17 originate, evaluate, maintain, record, insure, or service the
18 extension of credit that exceed, in the aggregate, five and a half
19 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;

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) of this
12 section;

13 (L) is scheduled to be repaid in substantially
14 equal successive monthly installments beginning no later than two
15 months from the date the extension of credit is made, each of which
16 equals or exceeds the amount of accrued interest as of the date of
17 the scheduled installment;

18 (M) is closed not before:

19 (i) the 12th day after the later of the date
20 that the owner of the homestead submits an application to the lender
21 for the extension of credit or the date that the lender provides the
22 owner a copy of:

23 (a) the notice prescribed by
24 Subsection (g) of this section; ~~and~~

25 (b) a separate good faith estimate of
26 all fees, points, interest, costs, and charges that are necessary
27 to originate, evaluate, maintain, record, insure, or service the

1 extension of credit;

2 (c) a separate statement identifying
3 whether the new loan payments include amounts that will be
4 deposited into an escrow account to be used to pay hazard insurance
5 and property taxes on the property, and a good faith estimate of the
6 additional funds the borrower will need to set aside if the loan
7 payments do not include insurance and taxes; and

8 (d) if the extension of credit pays
9 off a prior home loan with interest at a lower annual percentage
10 rate, computed according to 15 U.S.C. Section 1606, the regulations
11 adopted under that section by the Board of Governors of the Federal
12 Reserve System, and the Official Staff Commentary on Regulation Z
13 published by the Board of Governors of the Federal Reserve System,
14 as amended, a separate good faith estimate of the additional
15 interest the borrower will be charged on the remaining principal
16 balance;

17 (ii) the third day after the date that the
18 owner of the homestead receives a final itemized disclosure of the
19 actual fees, points, interest, costs, and charges that will be
20 charged at closing; and

21 (iii) [~~(ii)~~] the first anniversary of the
22 closing date of any other extension of credit described by
23 Subsection (a)(6) of this section secured by the same homestead
24 property;

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

27 (O) permits a lender to contract for and receive

1 any fixed or variable rate of interest authorized under statute;

2 (P) is made by one of the following that has not
3 been found by a federal regulatory agency to have engaged in the
4 practice of refusing to make loans because the applicants for the
5 loans reside or the property proposed to secure the loans is located
6 in a certain area:

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

10 (ii) a federally chartered lending
11 instrumentality or a person approved as a mortgagee by the United
12 States government to make federally insured loans;

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

15 (iv) a person who sold the homestead
16 property to the current owner and who provided all or part of the
17 financing for the purchase; or

18 (v) a person who is related to the homestead
19 property owner within the second degree of affinity or
20 consanguinity; ~~and~~

21 (Q) is made on the condition that:

22 (i) the owner of the homestead is not
23 required to apply the proceeds of the extension of credit to repay
24 another debt except debt secured by the homestead or debt to another
25 lender;

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

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

3 (iv) the owner of the homestead not sign a
4 confession of judgment or power of attorney to the lender or to a
5 third person to confess judgment or to appear for the owner in a
6 judicial proceeding;

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

10 (vi) the security instruments securing the
11 extension of credit contain a disclosure that the extension of
12 credit is the type of credit defined by Section 50(a)(6), Article
13 XVI, Texas Constitution;

14 (vii) within a reasonable time after
15 termination and full payment of the extension of credit, the lender
16 cancel and return the promissory note to the owner of the homestead
17 and give the owner, in recordable form, a release of the lien
18 securing the extension of credit or a copy of an endorsement and
19 assignment of the lien to a lender that is refinancing the extension
20 of credit;

21 (viii) the owner of the homestead and any
22 spouse of the owner may, within three days after the extension of
23 credit is made, rescind the extension of credit without penalty or
24 charge;

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

1 and

2 (x) the lender or any holder of the note for
3 the extension of credit shall forfeit all principal and interest of
4 the extension of credit if the lender or holder fails to comply with
5 the lender's or holder's obligations under the extension of credit
6 within a reasonable time after the lender or holder is notified by
7 the borrower of the lender's failure to comply;

8 (R) does not finance, directly or indirectly, any
9 premiums for credit life, credit disability, credit unemployment,
10 or credit property insurance, or any other life or health
11 insurance, or any payments for any debt cancellation or suspension
12 agreement or contract, except that insurance premiums or debt
13 cancellation or suspension payments computed and paid on a monthly
14 basis are not considered financed;

15 (S) does not assess a late charge greater than
16 four percent of the amount of the payment past due;

17 (T) is designed to produce a reasonable, tangible
18 net benefit to the borrower considering all the circumstances,
19 including the terms and cost of the loan, the terms of any
20 refinanced loan, and the borrower's circumstances; and

21 (U) is, if the loan has an annual percentage
22 rate, computed according to 15 U.S.C. Section 1606, the regulations
23 adopted under that section by the Board of Governors of the Federal
24 Reserve System, and the Official Staff Commentary on Regulation Z
25 published by the Board of Governors of the Federal Reserve System,
26 as amended, that exceeds six percentage points over the weekly
27 average yield on five-year United States Treasury securities made

1 with regard to the owner's ability to repay, based on a
2 consideration of the owner's current and expected income, current
3 obligations, employment status, and other financial resources,
4 other than the owner's equity in the collateral that secures
5 repayment of the loan;

6 (7) a reverse mortgage; or

7 (8) the conversion and refinance of a personal
8 property lien secured by a manufactured home to a lien on real
9 property, including the refinance of the purchase price of the
10 manufactured home, the cost of installing the manufactured home on
11 the real property, and the refinance of the purchase price of the
12 real property.

13 SECTION 2. Section 50(g), Article XVI, Texas Constitution,
14 is amended to read as follows:

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

20 "NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION
21 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

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

27 "(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH

1 THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE ;

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

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

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

11 "(E) FEES AND CHARGES TO MAKE THE LOAN, INCLUDING
12 POINTS, MAY NOT EXCEED 5.5 PERCENT OF THE LOAN AMOUNT ;

13 "(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT
14 MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE
15 EXTENDED FROM TIME TO TIME ;

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

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

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

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

27 "(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6),

1 ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME
2 AT ANY GIVEN TIME;

3 "(L) THE LOAN MUST BE SCHEDULED TO BE REPAID IN
4 PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR
5 EACH PAYMENT PERIOD;

6 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER
7 YOU SUBMIT A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS
8 AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; THE LOAN MAY
9 NOT CLOSE UNTIL YOU HAVE RECEIVED A FINAL STATEMENT OF THE FEES,
10 POINTS, INTEREST, COSTS, AND CHARGES YOU WILL ACTUALLY BE CHARGED
11 AT CLOSING; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN
12 WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY
13 NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE
14 OTHER LOAN;

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

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

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

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

24 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS
25 TO ANOTHER DEBT THAT IS NOT SECURED BY YOUR HOME OR TO ANOTHER DEBT
26 TO THE SAME LENDER;

27 "(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS

1 SECURITY;

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

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

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

9 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS
10 CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION
11 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

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

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

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

20 "(10) PROVIDE THAT THE LENDER WILL FORFEIT
21 ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE
22 LENDER'S OBLIGATIONS;

23 "(R) THE LOAN MAY NOT FINANCE CREDIT INSURANCE OR
24 DEBT CANCELLATION AGREEMENTS;

25 "(S) YOUR LATE FEE CANNOT EXCEED 4 PERCENT OF THE
26 AMOUNT OF THE PAYMENT PAST DUE."

27 If the discussions with the borrower are conducted primarily

1 in a language other than English, the lender shall, before closing,
2 provide an additional copy of the notice translated into the
3 written language in which the discussions were conducted.

4 SECTION 3. This proposed constitutional amendment shall be
5 submitted to the voters at an election to be held November 4, 2003.
6 The ballot shall be printed to permit voting for or against the
7 proposition: "The constitutional amendment limiting fees charged
8 to home equity loan borrowers and prohibiting certain predatory
9 practices."