

## **BILL ANALYSIS**

C.S.H.B. 637  
By: Goolsby  
Financial Institutions  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, a natural or adoptive parent, a managing conservator, or guardian of the estate of a ward may, on behalf of a minor or ward, sell real or personal property in which the minor or ward has an interest, not to exceed \$100,000. The proceeds of the sale belonging to the minor are placed into the court registry.

Article XVI, Section 50(a)(6)(A) of the Texas Constitution states that a home equity loan be "secured by voluntary lien created under a written agreement with the consent of each owner and each owner's spouse." However, Texas law does not authorize a natural or adoptive parent to receive a home equity loan on behalf of a minor or ward. For example, if a parent passes away leaving the surviving spouse and minor child in a home that requires major repairs, the surviving spouse is unable to obtain a home equity loan in order make the necessary repairs.

C.S.H.B. 637 authorizes an extension of credit secured by a residence homestead in which a minor or ward has an ownership interest.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 637 amends Texas Probate Code as follows:

The substitute provides that the guardian of the estate may also receive an extension of credit on the ward's behalf a lien on homestead property to when necessary to make improvements or repairs to the homestead or pay for education or medical expenses of the ward. Proceeds of the home equity loan are to be applied only to those purposes and to pay the outstanding loan balance.

The substitute provides that a natural or adoptive parent or the managing conservator of a minor may apply to the court for an order authorizing the parent or managing conservator to receive, without being appointed guardian, a home equity loan if the minor has an interest in a residence homestead and the net value of the interest does not exceed \$100,000. The proceeds of the home equity loan may only be used to: make improvements to the homestead, pay for education and medical expenses of the minor, or pay the outstanding balance of the loan.

The substitute requires that the parent or managing conservator apply to court under oath and the venue for the application is the same venue for an application for the appointment of a guardian for a minor. The substitute also specifies the application requirements.

The substitute requires that on receipt of the application, the court shall set the application for hearing at a date not earlier than the fifth day after the application is filed. The applicant must also file a surety bond with the county clerk in an amount that is at least equal to two times the amount of the proposed home equity loan. The approval of the extension of credit will be based on the preponderance of evidence that the encumbrance is for proscribed purposes and in best interest of the child.

C.S.H.B. 637 79(R)

The substitute requires that the parent or managing conservator receiving a home equity loan on the minor's behalf file an annual report with the court regarding the transaction. When the parent or managing conservator has expended the proceeds of a home equity loan, (s)he shall also file a sworn report accounting for the proceeds with county clerk.

The substitute provides that the court may not discharge the person's sureties from all further liability under the bond until the court has approved the reports, proceeds were used in accordance with the section, the home equity loan has been repaid and is not considered outstanding. After one year, on the motion of the borrower, the amount of the surety may be reduced to an amount that is not less than the outstanding balance of the loan.

The substitute requires that a parent of a minor must have a homestead interest in the property that is subject of the application.

The substitute prohibits a minor from disaffirming a home equity loan authorized by the court.

The substitute provides the same aforementioned procedures and requirements (venue, application requirements, surety bond, procedures and evidentiary requirements for a hearing of an application) for obtaining a home equity loan on behalf of a minor ward who has a guardian of the person but does not have a guardian of the estate. The minor ward must have an interest in a residence homestead and the net value of the interest must not exceed \$100,000. The proceeds of the home equity loan may only be used to: make improvements to the homestead, pay for education and medical expenses of the minor, or pay the outstanding balance of the loan.

The substitute provides that the guardian of the person must account for transaction, including expenditures of the loan proceeds, in the required annual accounting.

The substitute provides that a minor ward may not disaffirm a home equity loan authorized by the court under this section.

#### **EFFECTIVE DATE**

September 1, 2005

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 637 modifies the original by adding language to Section 781, Texas Probate Code, that allows the guardian of the estate to receive an extension of credit on the ward's behalf when necessary to make improvements or repairs to the homestead or pay for education or medical expenses of the ward and to pay the outstanding balance of the loan.

The substitute modifies the original by adding language that the mortgage of residential homestead interest of a minor ward applies only to a minor ward who has a guardian of the person but does not have a guardian of the estate.

The substitute modifies the original by deleting an exception regarding the guardian of the estate furnishing a bond under Section 703, Texas Probate Code.