

1-1 By: Goolsby (Senate Sponsor - Zaffirini) H.B. No. 637  
1-2 (In the Senate - Received from the House May 16, 2005;  
1-3 May 17, 2005, read first time and referred to Committee on Business  
1-4 and Commerce; May 20, 2005, reported favorably by the following  
1-5 vote: Yeas 7, Nays 0; May 20, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to authorizing an extension of credit secured by a  
1-9 residence homestead in which a minor or ward has an ownership  
1-10 interest.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 781, Texas Probate Code, is amended by  
1-13 adding Subsections (a-1) and (a-2) and amending Subsection (b) to  
1-14 read as follows:

1-15 (a-1) The guardian of the estate may also receive an  
1-16 extension of credit on the ward's behalf that is secured, wholly or  
1-17 partly, by a lien on real property that is the homestead of the  
1-18 ward, under court order, when necessary to:

1-19 (1) make improvements or repairs to the homestead; or

1-20 (2) pay for education or medical expenses of the ward.

1-21 (a-2) Proceeds of a home equity loan described by Subsection  
1-22 (a-1) of this section may be used only for the purposes authorized  
1-23 under Subsection (a-1) of this section and to pay the outstanding  
1-24 balance of the loan.

1-25 (b) When it is necessary to borrow money for any of the  
1-26 purposes authorized under Subsection (a) or (a-1) of this section,  
1-27 or to create or extend a lien on property of the estate as security,  
1-28 a sworn application for the authority to borrow money shall be filed  
1-29 with the court, stating fully and in detail the circumstances that  
1-30 the guardian of the estate believes make necessary the granting of  
1-31 the authority. On the filing of an application under this  
1-32 subsection, the clerk shall issue and cause to be posted a citation  
1-33 to all interested persons, stating the nature of the application  
1-34 and requiring the interested persons to appear and show cause why  
1-35 the application should not be granted.

1-36 SECTION 2. Subpart F, Part 5, Chapter XIII, Texas Probate  
1-37 Code, is amended by adding Sections 889A and 890A to read as  
1-38 follows:

1-39 Sec. 889A. MORTGAGE OF RESIDENTIAL HOMESTEAD INTEREST OF A  
1-40 MINOR WITHOUT GUARDIANSHIP. (a) In this section:

1-41 (1) "Home equity loan" means a loan made under Section  
1-42 50(a)(6), Article XVI, Texas Constitution.

1-43 (2) "Residence homestead" has the meaning assigned by  
1-44 Section 11.13, Tax Code.

1-45 (b) When a minor has an interest in a residence homestead  
1-46 and the net value of the interest does not exceed \$100,000, a  
1-47 natural or adoptive parent, subject to Subsection (j) of this  
1-48 section, or the managing conservator, of a minor who is not a ward  
1-49 may apply to the court for an order authorizing the parent or  
1-50 managing conservator to receive, without being appointed guardian,  
1-51 an extension of credit on the minor's behalf that is secured, wholly  
1-52 or partly, by a lien on the homestead. Proceeds of the home equity  
1-53 loan attributable to the minor's interest may be used only to:

1-54 (1) make improvements to the homestead;

1-55 (2) pay for education or medical expenses of the  
1-56 minor; or

1-57 (3) pay the outstanding balance of the loan.

1-58 (c) The parent or managing conservator shall apply to the  
1-59 court under oath for the authority to encumber the residence  
1-60 homestead as provided by this section. Venue for the application is  
1-61 the same as venue for an application for the appointment of a  
1-62 guardian for a minor. The application must contain:

1-63 (1) the name and address of the minor;

1-64 (2) a legal description of the property constituting

2-1 the homestead;

2-2 (3) a description of the minor's ownership interest in  
2-3 the property constituting the homestead;

2-4 (4) the name of the minor and the fair market value of  
2-5 the property constituting the homestead;

2-6 (5) the amount of the home equity loan;

2-7 (6) the purpose or purposes for which the home equity  
2-8 loan is being sought;

2-9 (7) a detailed description of the proposed expenditure  
2-10 of the loan proceeds to be received by the parent or managing  
2-11 conservator on the minor's behalf; and

2-12 (8) a statement that all loan proceeds received by the  
2-13 parent or managing conservator on the minor's behalf through a home  
2-14 equity loan authorized under this section shall be used in a manner  
2-15 that is for the minor's benefit.

2-16 (d) On receipt of the application, the court shall set the  
2-17 application for hearing at a date not earlier than the fifth day  
2-18 after the date the application is filed. If the court considers it  
2-19 necessary, the court may cause citation to be issued.

2-20 (e) Before the hearing, the parent or managing conservator  
2-21 shall file with the county clerk a surety bond in an amount at least  
2-22 equal to two times the amount of the proposed home equity loan. The  
2-23 bond must be:

2-24 (1) payable to and approved by the court; and

2-25 (2) conditioned on the parent or managing conservator:  
2-26 (A) using the proceeds of the home equity loan  
2-27 attributable to the minor's interest solely for the purposes  
2-28 authorized by this section; and

2-29 (B) making payments on the minor's behalf toward  
2-30 the outstanding balance of the home equity loan.

2-31 (f) At the time of the hearing of the application filed  
2-32 under this section, the court, on approval of the bond required by  
2-33 Subsection (e) of this section, shall authorize the parent or  
2-34 managing conservator to receive the extension of credit sought in  
2-35 the application if the court is satisfied from a preponderance of  
2-36 the evidence that the encumbrance is for a purpose described by  
2-37 Subsection (b)(1) or (2) of this section and is in the minor's best  
2-38 interests.

2-39 (g) A parent or managing conservator executing a home equity  
2-40 loan on a minor's behalf under this section shall file an annual  
2-41 report with the court regarding the transaction. When the parent or  
2-42 managing conservator has expended the proceeds of a home equity  
2-43 loan authorized under this section, the parent or managing  
2-44 conservator, in addition, shall file with the county clerk a sworn  
2-45 report accounting for the proceeds.

2-46 (h) The court may not discharge the person's sureties from  
2-47 all further liability under the bond until the court:

2-48 (1) has approved the filing of the parent's or managing  
2-49 conservator's reports required under Subsection (g) of this  
2-50 section;

2-51 (2) finds that the parent or managing conservator used  
2-52 loan proceeds resulting from the minor's interest solely for the  
2-53 purposes authorized by this section; and

2-54 (3) has been presented with satisfactory evidence that  
2-55 the home equity loan has been repaid and is no longer considered an  
2-56 outstanding obligation.

2-57 (i) After the first anniversary of the date a parent or  
2-58 managing conservator executes a home equity loan authorized under  
2-59 this section, the court may, on motion of the borrower, reduce the  
2-60 amount of the surety bond required under this section to an amount  
2-61 that is not less than the outstanding balance of the loan.

2-62 (j) A parent of a minor may file an application under this  
2-63 section only if the parent has a homestead interest in the property  
2-64 that is the subject of the application.

2-65 (k) A minor may not disaffirm a home equity loan authorized  
2-66 by the court under this section.

2-67 Sec. 890A. MORTGAGE OF RESIDENTIAL HOMESTEAD INTEREST OF A  
2-68 MINOR WARD. (a) In this section:

2-69 (1) "Home equity loan" means a loan made under Section

3-1 50(a)(6), Article XVI, Texas Constitution.

3-2 (2) "Residence homestead" has the meaning assigned by  
3-3 Section 11.13, Tax Code.

3-4 (b) This section applies only to a minor ward who has a  
3-5 guardian of the person but does not have a guardian of the estate.

3-6 (c) When a minor ward has an interest in a residence  
3-7 homestead and the net value of the interest does not exceed  
3-8 \$100,000, the guardian of the person of the ward may apply to the  
3-9 court for an order authorizing the guardian to receive an extension  
3-10 of credit on the ward's behalf that is secured, wholly or partly, by  
3-11 a lien on the homestead. Proceeds of the home equity loan  
3-12 attributable to the minor's interest may be used only to:

3-13 (1) make improvements to the homestead;

3-14 (2) pay for the education or maintenance expenses of  
3-15 the ward; or

3-16 (3) pay the outstanding balance of the loan.

3-17 (d) Venue for the application is the same as venue for an  
3-18 application for the appointment of a guardian for a ward. The  
3-19 application must contain the same information required by Section  
3-20 889A of this code.

3-21 (e) On receipt of the application, the court shall set the  
3-22 application for hearing at a date not earlier than the fifth day  
3-23 after the date the application is filed. If the court considers it  
3-24 necessary, the court may cause citation to be issued.

3-25 (f) The guardian of the person, before the hearing, shall  
3-26 file a surety bond with the county clerk to the same extent and in  
3-27 the same manner as a parent or managing conservator of a minor is  
3-28 required to provide a surety bond under Section 889A of this code.

3-29 (g) The procedures and evidentiary requirements for a  
3-30 hearing of an application filed under this section are the same as  
3-31 the procedures and evidentiary requirements for a hearing of an  
3-32 application filed under Section 889A of this code.

3-33 (h) At the time of the hearing of the application filed  
3-34 under this section, the court, on approval of a bond required by  
3-35 Subsection (f) of this section, shall authorize the guardian to  
3-36 receive the extension of credit sought in the application if the  
3-37 court is satisfied from a preponderance of the evidence that the  
3-38 encumbrance is for a purpose described by Subsection (c)(1) or (2)  
3-39 of this section and is in the ward's best interests.

3-40 (i) A guardian of the person executing a home equity loan on  
3-41 a ward's behalf must account for the transaction, including the  
3-42 expenditure of the loan proceeds, in the annual accounting required  
3-43 by Section 741 of this code.

3-44 (j) The court may not discharge a guardian's sureties from  
3-45 all further liability under a bond required by this section or  
3-46 another provision of this code until the court:

3-47 (1) finds that the guardian used loan proceeds  
3-48 resulting from the ward's interest solely for the purposes  
3-49 authorized by this section; and

3-50 (2) has been presented with satisfactory evidence that  
3-51 the home equity loan has been repaid and is no longer considered an  
3-52 outstanding obligation.

3-53 (k) A minor ward may not disaffirm a home equity loan  
3-54 authorized by the court under this section.

3-55 SECTION 3. This Act takes effect September 1, 2005.

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