

SUBJECT: Shortening waiting period for home improvement lien on homestead

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Brimer, Corte, Davis J., Elkins, George, Solomons, Woolley
0 nays
2 absent — Dukes, Giddings

WITNESSES: For — Robert Bass, Lumbermen’s Association of Texas; Lynn Motheral, Texas Association of Builders
Against — None

BACKGROUND: Art. 16, sec. 50 of the Texas Constitution prescribes when a lien can attach to a homestead for the work and material used in improving the homestead. A contract for the work must be in writing, signed by the owner and the owner’s spouse, and must be executed at the office of an attorney, a title company, or a third-party lender who makes the loan for the work. The contract cannot be executed until 12 days after the homeowner applies for credit. An exception to the 12-day waiting period allows immediate repairs to conditions that materially would affect the health and safety of a resident of the homestead. After the work contract is executed, the homeowner has an additional three days to rescind the contract.

DIGEST: HJR 5 would amend Art. 16, sec. 50 of the Constitution by reducing from 12 days to five days the period that must elapse before a homeowner or the homeowner’s spouse may sign a contract for work on the homestead for a lien on the homestead to attach.

The proposal would be presented to Texas voters at an election on November 6, 2001. The ballot proposal would read: “The constitutional amendment prescribing requirements for imposing a lien for work and material used in the construction, repair, or renovation of improvements on residential homestead property.” If approved by the voters, the amendment would take effect January 1, 2002.

SUPPORTERS
SAY:

HJR 5 is needed because 12 days is too long for a homeowner to have to wait before beginning needed home renovations or repairs, especially considering the three-day right of rescission. The shorter waiting period would be a sufficient “cooling off” period to protect homeowners without unduly inconveniencing them.

The proposed amendment would not remove other consumer protections designed to protect homeowners from high-pressure sales tactics. For example, it would not change requirements such as those separating the lending process from the process of contracting for repairs or renovations, nor those requiring that the contract for the work be signed at a neutral third party’s office instead of at the home. It also would leave intact the three-day right to rescind.

OPPONENTS
SAY:

Voters approved the 12-day waiting period in the Constitution in 1997 to protect homeowners, and this protection should not be diluted by shortening the period. Without the waiting period, unscrupulous solicitors offering repair services could pressure unsuspecting homeowners into signing contracts committing them to the purchase of expensive repairs. This “cooling off” period is needed to prevent homeowners from being rushed into using their most valuable asset — their home — as collateral for improvement contracts. Since those signing these contracts forfeit any protection against foreclosure should they default on the payments, any inconvenience caused by the longer waiting period is more than justified.

OTHER
OPPONENTS
SAY:

HJR 5 would continue other restrictions on home improvement contracts that, while intended as protections, often are highly inconvenient and costly for homeowners. It would continue to require homeowners to travel to a third party’s offices to execute contracts for repairs or renovation. If the third party lender is located out of town or the company that proposes to do the repairs or renovations is also the lender, the homeowner must employ an attorney or title company. This increases the cost of the loan and the construction.

NOTES:

The companion proposal, SJR 29 by Shapleigh, has been referred to the Senate Business and Commerce Committee.

During the 76th Legislature in 1999, the House by 136-3 adopted HJR 73 by Solomons, which would have eliminated the 12-day waiting period altogether and repealed other restrictions on home improvement contracts involving a homestead lien and instead would have allowed any contract rescission conditions to be established by law rather than in the Constitution. HJR 73 died in the Senate Economic Development Committee.