

BILL ANALYSIS

Senate Research Center

H.B. 1188
By: Danburg (Patterson, Harris)
State Affairs
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Engrossed

DIGEST

Currently, state law permits a homeowner to use a home as collateral for only five types of loans: a mortgage to purchase property; a home improvement loan; a loan to pay property taxes owed against a home; a loan to pay off an Internal Revenue Service tax lien; and an order of partition imposed against a home by a court order. State law does not allow home equity loans. An equity loan is a loan in which the borrower uses the value of the equity in the home as collateral. This bill will provide regulations regarding home equity loans, the regulation of certain institutions and occupations with home equity loans, and the consideration of home equity in certain financial assistance programs; and provide an administrative penalty.

PURPOSE

As proposed, H.B. 1188 provides regulations regarding home equity loans, the regulation of certain institutions and occupations with home equity loans, and the consideration of home equity in certain financial assistance programs; and provides an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Finance Commission of Texas in SECTION 6 (Section 5, Article 352, V.T.C.S.) and to the consumer credit commissioner in SECTION 10 (Sections 13(a)-(c), Article 9001, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 41.001(b), Property Code, to authorize encumbrances to be properly fixed on homestead property for an extension of credit defined by Section 50(a)(6), Article XVI, Texas Constitution.

SECTION 2. Amends Article 5069-1.01 et seq., Article XVI, V.T.C.S., by adding Chapter 5A, as follows:

CHAPTER 5A. EQUITY LOANS

Art. 5A.01. DEFINITIONS. Defines "application," "business day," "close," "closing," "equity loan," and "reverse mortgage."

Art. 5A.02. CONSTRUCTION OF CHAPTER. Sets forth regulations regarding the construction of this chapter.

Art. 5A.03. APPLICABILITY OF CHAPTER. Requires a lender making an equity loan to comply with certain regulations.

Art. 5A.04. PERCENT OF VALUE LIMIT. Sets forth regulations regarding a percent of value limit.

Art. 5A.05. RESCISSION. Sets forth regulations regarding rescission of an equity loan.

Art. 5A.06. INTEREST. Sets forth regulations regarding interest on an equity loan.

Art. 5A.07. INSURANCE. Sets forth regulations regarding insurance in relation to an equity loan.

Art. 5A.08. REPORT BY LENDERS. Sets forth regulations regarding a report on a lender's home equity loan activity to be filed by the lender.

Art. 5A.09. EQUITY LOAN RECOVERY FUND. Sets forth regulations regarding the equity loan recovery fund.

Art. 5A.10. GENERAL PROVISIONS RELATING TO REVERSE MORTGAGES. Sets forth general provisions relating to reverse mortgages.

Art. 5A.11. RELATIONSHIP OF OTHER STATUTES TO REVERSE MORTGAGE. Sets forth regulations regarding the relationship of other statutes to a reverse mortgage.

Art. 5A.12. STATUS OF REVERSE MORTGAGE LOAN UNDER PUBLIC ASSISTANCE PROGRAM. Sets forth regulations regarding the status of a reverse mortgage loan under a public assistance program.

Art. 5A.13. REVERSE MORTGAGE LOAN INFORMATION AND COUNSELING. Sets forth regulations regarding reverse mortgage loan information and counseling.

Art. 5A.14. SUBSEQUENT HOLDER OF EQUITY LOAN. Sets forth regulations regarding a subsequent holder of an equity loan.

Art. 5A.15. RESTRICTIONS ON EQUITY LOANS. Prohibits a lender from making an equity loan that is solicited in person by the lender or the lender's representative at the homestead or other residence of a borrower.

SECTION 3. Amends Article 5069-2.01 et seq., V.T.C.S., by adding Article 2.02E, as follows:

Art. 2.02E. DIVISION OF ACCESS TO FINANCIAL SERVICES. Sets forth regulations regarding the creation of the division of access to financial services in the Office of Consumer Credit Commissioner.

SECTION 4. Amends Article 5069-2.01 et seq., V.T.C.S., by adding Article 2.02F, as follows:

Sec. 2.02F. STUDY AND REPORT; EQUITY LOANS. Sets forth regulations regarding a study and report on equity loans.

SECTION 5. Amends Chapter 56A, Education Code, by adding Section 56.004, as follows:

Sec. 56.004. CONSIDERATION OF HOME EQUITY. Sets forth regulations regarding the consideration of home equity in connection with an application for financial assistance. Defines "financial assistance."

SECTION 6. Amends Title 16, V.T.C.S., by adding Article 352, as follows:

ART. 352. REPORT BY FINANCIAL INSTITUTIONS

Sec. 1. DEFINITIONS. Defines "financial institution" and "branch office."

Sec. 2. APPLICATION. Sets forth the application of this article.

Sec. 3. REPORT REQUIRED. Sets forth regulations regarding reports to be filed by a financial institution or a holding company.

Sec. 4. INFORMATION REQUIRED. Sets forth information required to be included in the

report.

Sec. 5. FORM OF REPORT; FINANCE COMMISSION DUTIES. Requires a report under this article to be submitted on a uniform form prescribed by the Finance Commission of Texas (commission). Authorizes the commission to adopt rules to define terms not defined by this article and to provide for the administration of this article.

Sec. 6. DUE DATE OF REPORT; RECORDKEEPING; PUBLIC NOTICE AND AVAILABILITY. Sets forth regulations regarding the due date of the report, recordkeeping, public notice, and availability of the report.

Sec. 7. PENALTY. Sets forth an administrative penalty for a violation of this article or a rule adopted under this article.

Sec. 8. PROHIBITION ON CERTAIN LOANS SECURED BY HOMESTEAD. Sets forth prohibitions on certain loans secured by a homestead.

Sec. 9. FORM OF REPORT; CREDIT UNION COMMISSION DUTIES. Sets forth regulations regarding the form of the report and the duties of the Credit Union Commission.

SECTION 7. Amends Title 16, V.T.C.S., by adding Article 361, as follows:

ART. 361. AUTOMATED TELLER MACHINE FEES

Sec. 1. DEFINITION. Defines "financial institution."

Sec. 2. APPLICATION; FEES EXCLUSIVE. Provides that this article applies only to certain financial institutions. Prohibits a financial institution to which this article applies from charging a fee for use of an automated teller machine except as provided by this article.

Sec. 3. TRANSACTION FEE; FINANCIAL INSTITUTION CUSTOMER. Sets forth regulations regarding a transaction fee charged to a customer of the financial institution.

Sec. 4. PROHIBITION ON MAKING CERTAIN LOANS SECURED BY HOMESTEAD. Sets forth prohibitions on making certain loans secured by a homestead.

SECTION 8. Amends Section 9.02, Insurance Code, by adding Subsection (r), to define "equity loan mortgagee policy."

SECTION 9. Amends Section 9.07, Insurance Code, by adding Subsection (g), to set forth regulations regarding an endorsement to be attached to an equity loan mortgagee policy.

SECTION 10. Amends Chapter 20, Title 132, V.T.C.S., by adding Article 9001, as follows:

ART. 9001. MORTGAGE BROKER REGISTRATION

Sec. 1. DEFINITIONS. Defines "commissioner," "mortgage," "mortgage applicant," "mortgage broker," and "registrant."

Sec. 2. CERTIFICATE OF REGISTRATION REQUIREMENT. Sets forth requirements regarding a certificate of registration.

Sec. 3. APPLICATION FOR CERTIFICATE OF REGISTRATION. Sets forth regulations regarding an application for a certificate of registration.

Sec. 4. QUALIFICATIONS. Sets forth qualifications for a certificate of registration.

Sec. 5. MINIMUM NET ASSETS. Sets forth regulations regarding minimum net assets. Defines "net assets."

Sec. 6. CRIMINAL HISTORY RECORD INFORMATION. Sets forth regulations regarding criminal history record information.

Sec. 7. ISSUANCE OF CERTIFICATE OF REGISTRATION. Sets forth regulations regarding the issuance of a certificate of registration.

Sec. 8. INVESTIGATION AND INSPECTION OF RECORDS. Sets forth regulations regarding the investigation and inspection of records.

Sec. 9. PROHIBITIONS. Sets forth prohibited actions for a registrant or applicant for a certificate of registration.

Sec. 10. FEE ASSESSMENT AND DISCLOSURE. Sets forth regulations regarding fee assessment and disclosure.

Sec. 11. SUSPENSION, REVOCATION, OR REFUSAL OF LICENSE; INVESTIGATIONS; CEASE AND DESIST ORDERS. Sets forth regulations regarding suspension, revocation, or refusal of a license, investigations, and cease and desist orders.

Sec. 12. CIVIL ACTIONS; INJUNCTIVE RELIEF; CRIMINAL PROSECUTIONS. Sets forth regulations regarding civil actions, injunctive relief, and criminal prosecutions for a violation of this article.

Sec. 13. RULEMAKING POWERS. Authorizes the consumer credit commissioner to adopt rules consistent with and necessary to accomplish the purposes of this article, including certain rules. Authorizes the consumer credit commissioner to adopt rules to prohibit false, misleading, or deceptive practices by registrants but may not adopt any other rules restricting competitive bidding or advertising by registrants. Prohibits the consumer credit commissioner from restricting certain actions in adopting rules to prohibit false, misleading, or deceptive practices by registrants. Requires the consumer credit commissioner, by rule, to provide for proportionate recovery from registrants of the cost of applications, renewals, and investigation. Prohibits the consumer credit commissioner from adopting rules that impose additional qualifications or requirements for the issuance or renewal of a certificate of registration.

Sec. 14. ACCOUNT. Requires the consumer credit commissioner to deliver all money received under this article to the comptroller for deposit in a special account in the general revenue fund. Authorizes money in the account to be used only to administer this article.

Sec. 15. EFFECT ON TEXAS CREDIT SERVICES ORGANIZATIONS ACT. Provides that a registrant is exempt from the requirements of Chapter 18, Business & Commerce Code, to the extent that the registrant does not charge a fee for any service regulated under that chapter.

Sec. 16. SECONDARY MARKET TRANSACTIONS. Provides that this article does not prohibit a mortgage broker from receiving compensation from a party other than the mortgage applicant for the sale, transfer, assignment, or release of rights on the closing of a mortgage transaction, provided that the compensation is disclosed in writing to the mortgage applicant.

SECTION 11. Provides that a person is not required to be registered under Article 9001, V.T.C.S., as added by this Act, before January 1, 1998.

SECTION 12. Requires the first report of financial institutions required by Article 352, V.T.C.S., as added by this Act, to cover the first calendar quarter of 1998 and to be filed during the second calendar quarter of that year.

SECTION 13. Effective date: January 1, 1998, provided that the constitutional amendment

proposed by H.J.R. No. 31, Acts of the 75th Legislature, Regular Session, 1997, is approved by the voters. Provides that, if that amendment is not approved by the voters, this Act has no effect.

SECTION 14. Emergency clause.