

BILL ANALYSIS

Senate Research Center

H.J.R. 31
By: Patterson (Patterson, Harris)
State Affairs
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Engrossed

DIGEST

Texas is the last remaining state to have virtually no home equity lending. However, the ability to tap home equity in lending would allow Texas homeowners to access a great deal of their capital. At the same time, there is a public demand for consumer protections in this process. This session several bills have been offered on home equity lending. This bill would allow unlimited cause to access home equity lending, as well as some consumer protections, such as written consent of the homeowner and spouse; a 75 percent limit on fair market value of the homestead as the loan limit; no recourse for personal liability; judicial foreclosure; limits on extra interest, fees, and charges; a prohibition on open-ended accounts; prepayment without penalty; no securing against other property than the homestead; no agricultural liens; a procedure for reverse mortgages; limits on foreclosure process; prohibition on wage assignment; prohibition on tying the home equity loan against any other loan; release of lien procedure; and notice requirements.

PURPOSE

As proposed, H.J.R. 31 allows unlimited cause to access home equity lending, as well as some consumer protections, such as written consent of the homeowner and spouse; a 75 percent limit on fair market value of the homestead as the loan limit; no recourse for personal liability; judicial foreclosure; limits on extra interest, fees, and charges; a prohibition on open-ended accounts; prepayment without penalty; no securing against other property than the homestead; no agricultural liens; a procedure for reverse mortgages; limits on foreclosure process; prohibition on wage assignment; prohibition on tying the home equity loan against any other loan; release of lien procedure; and notice requirements.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 50, Article XVI, Texas Constitution, as follows:

Sec. 50. (a) Requires the homestead of a family, or of a single adult person, to be, and is hereby protected from forced sale, for the payment of all debts except under certain conditions, including for an encumbrance against homestead property of a certain extension of credit. Sets forth the requirements of such an extension of credit. Makes conforming changes.

(b) Prohibits an owner or claimant of the property claimed as homestead from selling or abandoning the homestead without the consent of each owner and the spouse of each owner, given in such manner as may be prescribed by law. Makes conforming changes.

(c) Prohibits a mortgage, trust deed, other lien on the homestead from ever being valid unless it secures a debt described by this section, rather than except for a debt described by this section, whether such mortgage, trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. Makes conforming and nonsubstantive changes.

(d) Makes a conforming change.

(e) Prohibits a refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1)-(a)(5) that includes the advance of additional funds from being secured by a valid lien against the homestead except under certain conditions.

(f) Prohibits a refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, from being secured by a valid lien against the homestead unless the refinance of the debt is an extension of credit described by Subsection (a)(6) of this section.

(g) Authorizes an extension of credit described by Subsection (a)(6) of this section to be secured by a valid lien against homestead property if the extension of credit is not closed before the 12th day after the lender provides the owner with a certain written notice on a separate instrument. Sets forth the contents of the written notice. Requires the lender before closing, if the discussions with the borrower are conducted primarily in a language other than English, to provide an additional copy of the notice translated into the written language in which the discussions were conducted.

(h) Provides that Subsection (a)(6) and Subsections (e)-(g) of this section are not severable, and none of those provisions would have been enacted without the others. Provides that if any of those provisions are held to be preempted by the laws of the United States, all of those provisions are invalid. Prohibits this subsection from applying to any lien or extension of credit made after January 1, 1998, and before the date any provision under Subsection (a)(6) or Subsections (e)-(g) is held to be preempted.

(i) Requires the advances made on a reverse mortgage loan under which more than one advance is made to be made at regular intervals according to a plan established by the original loan agreement.

SECTION 2. Amends the Texas Constitution, by adding the following temporary provision, as follows:

TEMPORARY PROVISION. (a) Provides that this temporary provision applies to the constitutional amendment proposed by the 75th Legislature, Regular Session, 1997, authorizing a voluntary consensual encumbrance on homestead property.

(b) Effective date of the constitutional amendment: January 1, 1998.

(c) Provides that this temporary provision takes effect on the adoption of the amendment by the voters and expires January 2, 1998.

SECTION 3. Requires this proposed constitutional amendment to be submitted to the voters at an election to be held November 4, 1997. Sets forth the required ballot proposition.