

BILL ANALYSIS

Senate Research Center

S.J.R. 60
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Legislature first passed home equity financing in 1997 and it became effective in January 1998. Since then, there were just a few necessary revisions in the law (such as including reverse mortgages) that needed to be made to the Texas Constitution to ensure that home equity lending in Texas was the best in the United States. Our current home equity law has been the envy of many states, especially when the U.S. economy was not doing well and foreclosures were extremely high.

Since its inception, Texas home equity lending has always been about primarily preserving home equity in Texas and ensuring that consumers were not taken advantage of in the process, and secondarily that lenders could and would make such loans for borrowing consumers. The home equity protections in the Texas Constitution are, and remain with this legislation, important safeguards for both homeowners and lenders and meant to be taken seriously.

Home equity borrowing has become a stable lending product in Texas and there is plenty of competition for consumers to choose from. However, after almost 20 years of being available, stakeholder groups felt like some changes were necessary to ensure that home equity financing was available for both large loans and smaller home equity loans under \$100,000.

S.J.R. 60 redefines what is and is not included in the calculation of the cap on fees associated with a home equity loan. The cap was lowered one percent because a few higher fees and costs were excluded which was making it difficult for lenders to make the smaller loans.

S.J.R. 60 allows for an alternative and option in refinancing of a seasoned home equity loan with a purchase money loan into one loan with one rate and term.

S.J.R. 60 maintains the \$4,000 draw requirements on home equity lines of credit but increases the 50 percent equity provision to an 80 percent requirement to be the same as all home equity loans.

S.J.R. 60 allows farm and ranch property owners to acquire home-equity loans, while maintaining the agricultural valuation of their properties. Previously, only dairymen had the ability to take out a home equity loan based on an agreement when the Texas Legislature first passed home equity in 1997.

S.J.R. 60 makes technical changes in the Texas Constitution to ensure that out-of-date terminology is updated.

S.J.R. 60 proposes a constitutional amendment establishing a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads.

RULEMAKING AUTHORITY

This bill does not expressly 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, by amending Subsections (a), (f), (g), and (t) and adding Subsection (f-1), as follows:

(a) Requires the homestead of a family, or of a single adult person, to be protected from forced sale for the payment of all debts except for:

(1) to (5) makes no changes to these subdivisions;

(6) an extension of credit that:

(A) to (D) makes no changes to these paragraphs;

(E) does not require the owner or the owner's spouse to pay, in addition to any interest or any bona fide discount points used to buy down the interest rate, any fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, two, rather than three, percent of the original principal amount of the extension of credit, excluding certain fees;

(F) to (H) makes no changes to these paragraphs;

(I) (repealed). Deletes existing text relating to homestead property designated for agricultural use securing an extension of credit;

(J) to (O) makes no changes to these paragraphs;

(P) is made by one of the following that has not been found by a federal regulatory agency to have engaged in certain practices:

(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States, including a bank's, savings and loan association's, savings bank's, or credit union's subsidiaries;

(ii) to (v) makes no changes to these subparagraphs; or

(vi) a person regulated by this state as a mortgage banker or mortgage company, rather than a mortgage broker; and

(Q) is made on the condition that, among certain other conditions, the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Subsection (a)(6) of this section, rather than Section 50(a)(6) (relating to requiring a certain homestead to be protected from forced sale for payment of all debts except for certain extensions of credit), Article XVI (General Provisions), Texas Constitution. Makes a conforming change;

(7) and (8) makes no changes to these subdivisions.

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

(1) creates this subdivision from existing text and makes no further changes to this subdivision; or

(2) all of the following conditions are met:

(A) the refinance is not closed before the first anniversary of a certain date;

(B) the refinanced extension of credit does not include the advance of any additional funds other than certain funds or actual costs and reserves required by the lender to refinance the debt;

(C) the refinance of the extension of credit is of a certain principal amount on the date the refinance of the extension of credit is made; and

(D) the lender provides the owner a certain written notice on a separate document not later than a certain date and at least 12 days before a certain other date. Sets forth the text of the required notice.

(f-1) Provides that a lien securing a refinance of debt under Subsection (f)(2) is deemed to be a lien described by Subsection (a)(4) (relating to an exception to the provision that a certain homestead is protected from forced sale for the payment of all debts) and an affidavit executed by the owner or the owner's spouse acknowledging that the requirements of Subsection (f)(2) have been met conclusively establishes that the requirements of Subsection (a)(4) have been met.

(g) Authorizes an extension of credit described by Subsection (a)(6) 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 text of the required notice.

(t) Deletes existing text providing that a home equity line of credit is a form of a certain account, under which credit may be extended from time to time and under which no additional debits or advances are made if the total principal amount outstanding exceeds a certain amount as determined on the date the account is established.

SECTION 2. Provides that the following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) Provides that this temporary provision applies to the constitutional amendment proposed by the 85th Legislature, Regular Session, 2017, to establish a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads.

(b) Provides that the constitutional amendment takes effect January 1, 2018.

(c) Makes application of this constitutional amendment prospective.

(d) Provides that this temporary provision takes effect on the adoption of the constitutional amendment by the voters and expires January 1, 2019.

SECTION 3. Requires that the proposed constitutional amendment be submitted to the voters at an election to be held November 7, 2011. Sets forth the required language of the ballot.