

## **BILL ANALYSIS**

Senate Research Center  
78R7205 DWS-F

S.J.R. 42  
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Business & Commerce  
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### **DIGEST AND PURPOSE**

Currently, Texas homeowners are unable to obtain home equity lines of credit, schedule sub-monthly payment, or refinance an existing home equity loan and a mortgage into a new non-home equity loan. There also is no statutory language regarding a lender's ability to correct or cure certain violations of the home equity lien provisions, and lending institutions do not have access to adequate guidelines to properly assess current home equity law. As proposed, S.J.R. 42 authorizes home equity lines of credit, flexible payments, and the ability to refinance a home equity loan into a conventional loan. This resolution also establishes provisions for a lender to cure an error in home equity lending. S.J.R. 42 authorizes the legislature to delegate interpretive authority to one or more state agencies.

### **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 Article XVI, Section 50(a), Texas Constitution, to include in the list of exceptions to the requirement that the homestead of a family, or of a single adult person be, and hereby is, protected from forced sale for the payment of all debts, an extension of credit that may be, rather than is not, a form of open-end account that may be debited, or under which credit may be extended, from time to time;

an extension of credit that is the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsection (a)(8), as well as Subsections (a)(1)-(a)(5), of this section; an extension of credit that is scheduled to be repaid in substantially equal successive periodic, rather than monthly installments, not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment;

an extension of credit that is made by a person regulated by this state as a mortgage broker that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside, or the property proposed to secure the loans is located, in a certain area;

or an extension of credit that is made on the condition requiring the lender or any holder of the note for the extension of credit to forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit unless within a reasonable time after the lender or holder is notified by the borrower of the lender's failure to comply, the lender cures the failure to comply by changing any prohibited amount, percentage, term, or other provision to one that is permitted, and adjust the account of the borrower to ensure that the borrower is not required to pay more than an amount permitted by this section and is not subject to any other term or provision prohibited by the section, or if the failure to comply cannot be cured by a modification and adjustment described by Subparagraph (x)(a), cures the failure to comply by a refund or credit to the borrower of all fees and charges, other than interest, paid to any person by the borrower in connection with the extension of credit.

SECTION 2. Amends Article XVI, Section 50(f), Texas Constitution, to prohibit a refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) or 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)(7), in addition to (a)(6), or the new loan resulting from the refinance of the debt meets certain conditions.

SECTION 3. Amends Article XVI, Section 50(g), Texas Constitution, to include in the written notice required as a precondition to securing an extension of credit described by Subsection (a)(6) of this section by a valid lien against homestead property, authorization for, rather than prohibition from, the loan to be an open-end account that may be debited, or under which credit may be extended, from time to time;

the requirement that loans described by Article XVI, Section 50(a)(6), Texas Constitution, to not require a consumer to apply the proceeds to another debt except a debt that is, rather than is not, secured by the consumer's home or owed to another lender, rather than owed to another debt to the same lender, and to provide that the lender will forfeit all principal and interest if the lender fails to comply with the lender's obligations unless the lender cures the failure to comply as provided by Article XVI, Section 50(a)(6)(Q)(x), Texas Constitution;

and the provision that the notice is only a summary of the consumer's rights under the Texas Constitution, that the consumer's rights are governed by Article XVI, Section 50, Texas Constitution, and not by the notice.

SECTION 4. Amends Article XVI, Section 50 of the Texas Constitution, by adding Subsections (t)-(v), as follows:

(t) Provides that an extension of credit under Subsection (a)(6) that permits an owner to request advances, repay, and reborrow subject to a limit on total principal amount outstanding at one time, is a home equity line of credit and the period during which the owner may request advances is the advance period. Provides that, for purposes of Subsection (a)(6), the principal amount under a home equity line of credit is the maximum principal amount that may be outstanding at one time and the extension of credit is considered made on the date the credit agreement is executed. Provides that a home equity line of credit complies with Subsection (a)(6)(L) if all required periodic payments equal or exceed the amount of accrued interest and required periodic payments after the advance period ends are substantially equal. Prohibits a lender from unilaterally amending a home equity line of credit.

(u) Provides that a refinance of debt under Subsection (f)(2) of this section is considered to be a refinance of a lien against a homestead under Subsection (a)(4) of this section and is not governed by the law specifically applicable to a debt described by Subsection (a)(6) of this section.

(v) Authorizes the legislature, by statute, to delegate to one or more state agencies the power to interpret Subsections (a)(5)-(a)(7), (e)-(p), (t), and (u) of this section. Provides that an act or omission does not violate a provision included in those subsections if the act or omission conforms to certain interpretations of the provision.

SECTION 5. Requires that this proposed constitutional amendment be submitted to the voters at an election on November 4, 2003. Sets forth the required content of the ballot.