

BILL ANALYSIS

Senate Research Center
79R11933 CLG-D

H.B. 637
By: Goolsby (Zaffirini)
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, a natural or adoptive parent, managing conservator, or guardian of the estate of a ward may, on behalf of a minor or ward, sell real or personal property in which the minor or ward has an interest, not to exceed \$100,000. The proceeds of the sale belonging to the minor are placed into the court registry.

The Texas Constitution states that a home equity loan be "secured by voluntary lien created under a written agreement with the consent of each owner and each owner's spouse." However, Texas law does not authorize a natural or adoptive parent to receive a home equity loan on behalf of a minor or ward. For example, if a deceased parent leaves the surviving spouse and minor child a home that requires major repairs, the surviving spouse is unable to obtain a home equity loan in order to make the necessary repairs.

H.B. 637 authorizes an extension of credit secured by a residence homestead in which a minor or ward has an ownership interest.

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 781, Texas Probate Code, by adding Subsections (a-1) and (a-2) and amending Subsection (b), as follows:

(a-1) Authorizes the guardian of the estate to also receive an extension of credit on the ward's behalf that is secured, wholly or partly, by a lien on real property that is the homestead of the ward, under court order, when necessary to make improvements or repairs to the homestead or pay for education or medical expenses of the ward.

(a-2) Authorizes proceeds of a home equity loan described by Subsection (a-1) of this section to be used only for the purposes authorized under Subsection (a-1) of this section and to pay the outstanding balance of the loan.

(b) Makes a conforming change.

SECTION 2. Amends Subpart F, Part 5, Chapter XIII, Texas Probate Code, by adding Sections 889A and 890A, as follows:

Sec. 889A. MORTGAGE OF RESIDENTIAL HOMESTEAD INTEREST OF A MINOR WITHOUT GUARDIANSHIP. (a) Defines "home equity loan" and "residence homestead."

(b) Authorizes a natural or adoptive parent, subject to Subsection (j) of this section, or the managing conservator, of a minor who is not a ward, when a minor has an interest in a residence homestead and the net value of the interest does not exceed \$100,000, to apply to the court for an order authorizing the parent or managing conservator to receive, without being appointed guardian, an extension of credit on the minor's behalf that is secured, wholly or partly, by a lien on the

homestead. Authorizes the proceeds of the home equity loan attributable to the minor's interest be used only to pay for certain costs.

(c) Requires the parent or managing conservator to apply to the court under oath for the authority to encumber the residence homestead as provided by this section. Provides that venue for the application is the same as venue for an application for the appointment of a guardian for a minor. Requires the application to contain certain information.

(d) Requires the court, on receipt of the application, to set the application for hearing at a date not earlier than the fifth day after the date the application is filed. Authorizes the court to cause citation to be issued if the court considers it necessary.

(e) Requires the parent or managing conservator to file with the county clerk a surety bond in an amount at least equal to two times the amount of the proposed home equity loan before the hearing. Requires the bond to be payable to and approved by the court and conditioned on the parent or managing conservator acting in a certain manner.

(f) Requires the court, at the time of the hearing of the application filed under this section, on approval of the bond required by Subsection (e) of this section, to authorize the parent or managing conservator to receive the extension of credit sought in the application if the court is satisfied from a preponderance of the evidence that the encumbrance is for a purpose described by Subsection (b)(1) or (2) of this section and is in the minor's best interests.

(g) Requires a parent or managing conservator executing a home equity loan on a minor's behalf under this section to file an annual report with the court regarding the transaction. Requires a parent or managing conservator, when the parent or managing conservator has expended the proceeds of a home equity loan authorized under this section, in addition, to file with the county clerk a sworn report accounting for the proceeds.

(h) Prohibits the court from discharging the person's sureties from all further liability under the bond until the court has taken certain actions relating to the parent or managing conservator.

(i) Authorizes the court, after the first anniversary of the date a parent or managing conservator executes a home equity loan authorized under this section, on motion of the borrower, to reduce the amount of the surety bond required under this section to an amount that is not less than the outstanding balance of the loan.

(j) Authorizes a parent of a minor to file an application under this section only if the parent has a homestead interest in the property that is the subject of the application.

(k) Prohibits a minor from disaffirming a home equity loan authorized by the court under this section.

Sec. 890A. MORTGAGE OF RESIDENTIAL HOMESTEAD INTEREST OF A MINOR WARD. (a) Defines "home equity loan" and "residence homestead."

(b) Provides that this section applies only to a minor ward who has a guardian of the person but does not have a guardian of the estate.

(c) Authorizes the guardian of the person of the ward, when a minor ward has an interest in a residence homestead and the net value of the interest does not exceed \$100,000, to apply to the court for an order authorizing the guardian to receive an extension of credit on the ward's behalf that is secured, wholly or partly, by a lien

on the homestead. Authorizes proceeds of the home equity loan attributable to the minor's interest to be used only to pay for certain costs.

(d) Provides that venue for the application is the same as venue for an application for the appointment of a guardian for a ward. Requires the application to contain the same information required by Section 889A of this code.

(e) Requires the court, on receipt of the application, to set the application for hearing at a date not earlier than the fifth day after the date the application is filed. Authorizes the court to cause citation to be issued if the court considers it necessary.

(f) Requires the guardian of the person, before the hearing, to file a surety bond with the county clerk to the same extent and in the same manner as a parent or managing conservator of a minor is required to provide a surety bond under Section 889A of this code.

(g) Provides that the procedures and evidentiary requirements for a hearing of an application filed under this section are the same as the procedures and evidentiary requirements for a hearing of an application filed under Section 889A of this code.

(h) Requires the court, at the time of the hearing of the application filed under this section, on approval of a bond required by Subsection (f) of this section, to authorize the guardian to receive the extension of credit sought in the application if the court is satisfied from a preponderance of the evidence that the encumbrance is for a purpose described by Subsection (c)(1) or (2) of this section and is in the ward's best interests.

(i) Requires a guardian of the person executing a home equity loan on a ward's behalf must account for the transaction, including the expenditure of the loan proceeds, in the annual accounting required by Section 741 (Annual Accounts Required) of this code.

(j) Prohibits the court from discharging a guardian's sureties from all further liability under a bond required by this section or another provision of this code until the court finds that the guardian used loan proceeds resulting from the ward's interest solely for the purposes authorized by this section and has been presented with satisfactory evidence that the home equity loan has been repaid and is no longer considered an outstanding obligation.

(k) Prohibits a minor ward from disaffirming a home equity loan authorized by the court under this section.

SECTION 3. Effective date: September 1, 2005.