

**SUBJECT:** Extending homestead status to a home owned by a family-owned business

**COMMITTEE:** Financial Institutions — committee substitute recommended

**VOTE:** 6 ayes — Averitt, Solomons, Denny, Grusendorf, Hopson, Pitts  
0 nays  
3 absent — Marchant, Menendez, Wise

**WITNESSES:** For — John Rothermal, Stewart Title  
Against — None

**BACKGROUND:** The Texas Constitution, Art. 8, sec. 1 provides for taxation of real property and improvements on that property. Sec. 1(i) allows the Legislature to limit the maximum average annual increase in the appraised value of residence homesteads for ad valorem tax purposes to 10 percent, or a greater percentage, for each year since the most recent tax appraisal.

Art. 8, section 1-b exempts \$3,000 of the assessed taxable value of a residence homestead from all state taxation; exempts \$15,000 of a residence homestead's market value from school district taxes; allows counties, cities, school districts, and other political subdivisions to exempt additional portions of the homestead's value from ad valorem taxes, including for homeowners age 65 or older; freezes the amount of school district taxes imposed on the homestead of a person receiving the 65-and-over exemption at the amount imposed during the year the homeowner first qualified for the exemption; and extends the 65-and-over exemption to a surviving spouse who was age 55 or older at the time of the owner's death.

Art. 16, sec. 51 defines the size and uses of a homestead, including an urban home also used as place of business. Art. 16, sec. 50 protects homesteads from forced sale to satisfy certain debts.

**DIGEST:** CSHJR 67 would propose amending the Constitution by adding Art. 8, sec. 1-b(h), which would define a person's residence that is owned by a family-

owned business in which the person owns an interest as that person's residence homestead for purposes of a tax exemption under sec. 1-b, a tax limitation under sec. 1-b(d), or a limitation on appraisal increases under sec. 1(i), if the person otherwise qualified for the exemption. Eligibility of the person or the person's spouse for an exemption or limitation would not be affected by conveying the residence to a family-owned business in which the taxpayer owned an interest.

The proposed amendment also would extend homestead status to a home owned by a family-owned business for purposes of Art. 16, secs. 50 and 51. It would add a clause to Art. 16, sec. 51, providing that if an owner conveyed his or her homestead to the owner's family-owned business, the owner could continue to claim homestead rights in the property, subject to the interests of the creditors of the family-owned business. Those homestead rights could not prevent the family-owned business from transferring, mortgaging, or encumbering the residence owned by it.

Under a proposed temporary provision, the amendment would take effect January 1, 2002.

The proposed amendment would be presented to the voters at an election on November 6, 2001. The ballot proposal would read: "The constitutional amendment to extend residence homestead ad valorem tax exemptions and protection from forced sale to a homestead owned by a family-owned business."

**SUPPORTERS  
SAY:**

CSHJR 67, if approved by voters, would allow people to hold their homes in limited family partnerships or trusts that were set up for purposes of estate tax planning without losing their property-tax exemptions and limitations. Currently, if a person wishes to transfer his or her home along with other assets into a limited family partnership, for instance, he or she might lose the homestead exemption for property tax purposes. That would reduce the usefulness of this estate planning tool. CSHJR 67 would eliminate that problem.

At the same time, CSHJR 67 would preserve the occupant's ability to claim the property taxes paid on the home as a federal income-tax deduction. In fact, by making the occupant and the family-owned business jointly liable for

the taxes, the resolution would allow either the occupant or the business to claim the deduction, depending on whom it might benefit the most.

Though the person's home would become subject to the debts of the family-owned business, this would be consistent with the Legislature's shift in recent years to allow homeowners to encumber or otherwise use their homesteads as they see fit, such as through home equity loans, but to leave in place protections from creditors whom the homeowners did not anticipate or intend to have recourse to their homesteads.

OPPONENTS  
SAY:

CSHJR 67 unwisely would encourage people to place their homes in family-owned businesses, making the home subject to the business's creditors, because it would eliminate the immediate drawback to placing the home in a family-owned business — the loss of the property-tax exemption for the homestead.

The proposed amendment and its enabling legislation, HB 2306, are unnecessary because there are other ways to protect a home from estate taxes without losing homestead protections. For instance, the homeowner could establish a qualified personal residence trust and transfer the home into it to avoid estate taxes without subjecting the home to creditors' claims.

NOTES:

The committee substitute added the language that would make the residence subject to the claims of the creditors of the family-owned business.

CSHB 2306 by Chisum, which would implement in statute the changes that would be authorized by this proposed constitutional amendment, is on the House General State Calendar today.