

BILL ANALYSIS

Senate Research Center

C.S.S.B. 214
By: Nixon
State Affairs
3-14-97
Committee Report (Substituted)

DIGEST

Currently, the homestead exemption created in the Texas Constitution protects a property owner from foreclosure on the individual's homestead. The definition of a homestead in Texas statute allows an individual up to one acre of land that is used for the purposes of an urban home or a business. It is this property that is exempt from creditors' claims. This protection prohibits the property owner from borrowing against the equity the owner has in the property with the exception of several instances. An individual may borrow against the equity in the homestead for purchase money, taxes on property, work and material use in capital improvements, an owelty of partition, and the refinance of a federal tax lien. The goal of S.B. 214 is to separate the residential homestead from the business homestead and allow an individual to borrow up to 90 percent of the equity built up in the person's business homestead.

PURPOSE

As proposed, C.S.S.B. 214 outlines provisions regarding a voluntary, consensual encumbrance on a business homestead for the purpose of an equity loan.

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 41.001(b), Property Code, to authorize encumbrances to be properly fixed on homestead property for an equity loan on a business homestead as provided by Section 41.008. Prohibits an equity loan from being secured by any homestead property that is designated for agricultural use as provided by Chapter 23C, Tax Code.

SECTION 2. Amends Chapter 41A, Property Code, by adding Section 41.008, as follows:

Sec. 41.008. EQUITY LOAN ON BUSINESS HOMESTEAD. Sets forth provisions for the acquisition and payment of an equity loan on a business homestead. Prohibits the principal amount of an equity loan plus any other outstanding balances, secured by valid encumbrances of record against the business homestead, from exceeding 90 percent of the fair market value of the homestead on the date the equity loan is made. Defines "business homestead," and "equity loan."

SECTION 3. Effective date: May 1, 1998, pending voter approval.

SECTION 4. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Amends SECTION 1, Section 41.001(b), Property Code, regarding the fixation of encumbrances on homestead property.

Amends SECTION 2, Chapter 41A, Property Code, by deleting exceptions regarding equity loans on business homesteads, the definition of "reverse mortgage", and redefining "business homestead."