

BILL ANALYSIS

Senate Research Center

C.S.S.J.R. 14
By: Nixon
State Affairs
3-17-97
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 place to exercise a calling of 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.J.R. 14 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 individual's business homestead.

PURPOSE

As proposed, C.S.S.J.R. 14 requires the submission to the voters of a constitutional amendment to authorize 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 50, Article XVI, Texas Constitution, as follows:

Sec. 50. (a) Provides that a homestead of a family or a single adult is required to be protected from forced sale, for the payment of all debts, with exceptions, including an exception for an equity loan on a business homestead.

(b) Makes conforming changes.

SECTION 2. Amends Article XVI, Texas Constitution, by adding Section 50a, as follows:

Sec. 50a. (a) Prohibits an equity loan from being secured by a homestead other than a business homestead. Prohibits a lender from requiring or accepting a borrower's homestead as collateral on a debt.

(b) Prohibits a lender from accelerating or demanding full payment of an equity loan because of a decrease in the market value of the business homestead securing the equity loan, and provides exceptions. Provides that a lender is not prohibited from refusing to make additional advances under an equity loan.

(c) Prohibits a lender from accelerating or demanding payment of an equity loan because of the borrower's default under any other indebtedness not secured by a prior valid encumbrance on the business homestead. Provides that a lender is not prohibited from refusing to make additional advances under an equity loan if the borrower has defaulted in the performance or payment of another indebtedness owed to the lender or another

creditor.

(d) Prohibits the principal amount of an equity loan plus the aggregate total of any other debt 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.

(e) Defines "business homestead" and "equity loan."

SECTION 3. Adds a temporary provision to the Texas Constitution, as follows:

TEMPORARY PROVISION. (a) Provides that this temporary provision applies to the constitutional amendment proposed by the 75th Legislature, Regular Session, 1997, authorizing a voluntary, consensual encumbrance on a business homestead.

(b) Provides that the constitutional amendment takes effect May 1, 1998.

(c) Provides that this temporary provision takes effect on the adoption of the amendment by the voters and expires May 2, 1998.

SECTION 3. Requires this proposed constitutional amendment to be submitted to the voters at an election to be held November 4, 1997. Sets forth the required language for the ballot.

SUMMARY OF COMMITTEE CHANGES

Amends SECTION 1, Section 50, Article XVI, Texas Constitution, by making a nonsubstantive deletion.

Amends SECTION 2, Section 50a, Article XVI, Texas Constitution, by deleting exceptions regarding equity loans on business homesteads, redefining "business homestead," and deleting the definition of "reverse mortgage."