

## **BILL ANALYSIS**

Senate Research Center  
77R15055 PAM-D

S.B. 1835  
By: Lindsay  
Intergovernmental Relations  
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### **DIGEST AND PURPOSE**

Current law exempts homesteads from seizure for the claims of creditors except for encumbrances that are properly fixed on homestead property for purchase money, taxes on property, work and material used in construction improvements, owelty of partition against the property, and the refinance of a lien against a homestead, including federal tax liens. While it is not legal to place a lien on a homestead for assessment fees, some homeowners associations are circumventing the law by acquiring the right to place a lien on a homestead for assessment fees by having a contract for lien included in the deed restriction. S.B. 1835 provides for an encumbrance to be properly fixed on homestead property for property owners' association fees and that the encumbrance may be collected at the time the property is transferred.

### **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 Sections 41.001(a) and (b), Property Code, to provide that a homestead and one or more lots used for a place of burial of dead are exempt from seizure for the claims of creditors except for encumbrances described by this section, rather than properly fixed on homestead property. Provides that a homestead is not exempt from seizure as provided by this section for encumbrances that are, rather than authorizes encumbrances to be, properly fixed on homestead property under certain circumstances.

SECTION 2. Amends Chapter 41A, Property Code, by adding Section 41.0011, as follows:

Sec. 41.0011. CERTAIN ENCUMBRANCES FIXED ON HOMESTEAD EXEMPT FROM SEIZURE. Defines "property owners' association." Provides that an obligation to pay property owners' association fees for maintenance and ownership of common facilities and services is a debt for which an encumbrance may be properly fixed on homestead property. Provides that homestead property is exempt from seizure for the claims of creditors for an encumbrance described by this section. Authorizes a property owners' association to collect on an encumbrance described by this section properly fixed on homestead property at the time the homestead property is transferred. Provides that Section 41.001(c) does not apply to a claim of a property owners' association under this section.

SECTION 3. Effective date: January 1, 2002, but only if the constitutional amendment proposed by the 77th Legislature, Regular Session, 2001, permitting an encumbrance to be fixed on homestead property for an obligation to pay certain property owners' association fees without permitting the forced sale of the homestead, takes effect. Provides that if that amendment is not approved by the voters, this Act has no effect.