

1-1 By: West S.B. No. 109
1-2 (In the Senate - Filed November 9, 2020; March 3, 2021, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 15, 2021, reported favorably by the following vote: Yeas 5,
1-5 Nays 0; April 15, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	<u>Whitmire</u>	X		
1-9	<u>Huffman</u>	X		
1-10	<u>Bettencourt</u>	X		
1-11	<u>Birdwell</u>	X		
1-12	<u>Hinojosa</u>	X		
1-13	<u>Miles</u>		X	
1-14	<u>Nichols</u>		X	

1-15 A BILL TO BE ENTITLED
1-16 AN ACT

1-17 relating to the criminal offense of fraudulent securing of document
1-18 execution.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. The heading to Section 32.46, Penal Code, is
1-21 amended to read as follows:

1-22 Sec. 32.46. FRAUDULENT SECURING OF DOCUMENT EXECUTION [~~OF~~
1-23 ~~DOCUMENT BY DECEPTION~~].

1-24 SECTION 2. Section 32.46(a), Penal Code, is amended to read
1-25 as follows:

1-26 (a) A person commits an offense if the person, with the
1-27 intent to defraud or harm any person~~[, he, by deception]~~:

1-28 (1) causes another person, without that person's
1-29 effective consent, to sign or execute any document affecting
1-30 property or service or the pecuniary interest of any person; or

1-31 (2) causes [~~or induces~~] a public servant, without the
1-32 public servant's effective consent, to file or record any purported
1-33 judgment or other document purporting to memorialize or evidence an
1-34 act, an order, a directive, or process of:

1-35 (A) a purported court that is not expressly
1-36 created or established under the constitution or the laws of this
1-37 state or of the United States;

1-38 (B) a purported judicial entity that is not
1-39 expressly created or established under the constitution or laws of
1-40 this state or of the United States; or

1-41 (C) a purported judicial officer of a purported
1-42 court or purported judicial entity described by Paragraph (A) or
1-43 (B).

1-44 SECTION 3. Section 32.46(d), Penal Code, is amended by
1-45 adding Subdivision (3) to read as follows:

1-46 (3) "Effective consent" includes consent by a person
1-47 legally authorized to act for the owner. Consent is not effective
1-48 if:

1-49 (A) induced by deception or coercion;

1-50 (B) given by a person who by reason of youth,
1-51 mental disease or defect, or intoxication is known by the actor to
1-52 be unable to make reasonable property dispositions; or

1-53 (C) given by a person who by reason of advanced
1-54 age is known by the actor to have a diminished capacity to make
1-55 informed and rational decisions about the reasonable disposition of
1-56 property.

1-57 SECTION 4. Section 33.013(b), Civil Practice and Remedies
1-58 Code, is amended to read as follows:

1-59 (b) Notwithstanding Subsection (a), each liable defendant
1-60 is, in addition to the defendant's [~~his~~] liability under Subsection
1-61 (a), jointly and severally liable for the damages recoverable by

2-1 the claimant under Section 33.012 with respect to a cause of action
 2-2 if:

2-3 (1) the percentage of responsibility attributed to the
 2-4 defendant with respect to a cause of action is greater than 50
 2-5 percent; or

2-6 (2) the defendant, with the specific intent to do harm
 2-7 to others, acted in concert with another person to engage in the
 2-8 conduct described in the following provisions of the Penal Code and
 2-9 in so doing proximately caused the damages legally recoverable by
 2-10 the claimant:

2-11 (A) Section 19.02 (murder);
 2-12 (B) Section 19.03 (capital murder);
 2-13 (C) Section 20.04 (aggravated kidnapping);
 2-14 (D) Section 22.02 (aggravated assault);
 2-15 (E) Section 22.011 (sexual assault);
 2-16 (F) Section 22.021 (aggravated sexual assault);
 2-17 (G) Section 22.04 (injury to a child, elderly
 2-18 individual, or disabled individual);
 2-19 (H) Section 32.21 (forgery);
 2-20 (I) Section 32.43 (commercial bribery);
 2-21 (J) Section 32.45 (misapplication of fiduciary
 2-22 property or property of financial institution);
 2-23 (K) Section 32.46 (fraudulent securing of
 2-24 document execution [of document by deception]);
 2-25 (L) Section 32.47 (fraudulent destruction,
 2-26 removal, or concealment of writing);
 2-27 (M) conduct described in Chapter 31 the
 2-28 punishment level for which is a felony of the third degree or
 2-29 higher; or

2-30 (N) Section 21.02 (continuous sexual abuse of
 2-31 young child or children).

2-32 SECTION 5. Section 41.008(c), Civil Practice and Remedies
 2-33 Code, is amended to read as follows:

2-34 (c) This section does not apply to a cause of action against
 2-35 a defendant from whom a plaintiff seeks recovery of exemplary
 2-36 damages based on conduct described as a felony in the following
 2-37 sections of the Penal Code if, except for Sections 49.07 and 49.08,
 2-38 the conduct was committed knowingly or intentionally:

2-39 (1) Section 19.02 (murder);
 2-40 (2) Section 19.03 (capital murder);
 2-41 (3) Section 20.04 (aggravated kidnapping);
 2-42 (4) Section 22.02 (aggravated assault);
 2-43 (5) Section 22.011 (sexual assault);
 2-44 (6) Section 22.021 (aggravated sexual assault);
 2-45 (7) Section 22.04 (injury to a child, elderly
 2-46 individual, or disabled individual, but not if the conduct occurred
 2-47 while providing health care as defined by Section 74.001 of this
 2-48 code);

2-49 (8) Section 32.21 (forgery);
 2-50 (9) Section 32.43 (commercial bribery);
 2-51 (10) Section 32.45 (misapplication of fiduciary
 2-52 property or property of financial institution);
 2-53 (11) Section 32.46 (fraudulent securing of document
 2-54 execution [of document by deception]);
 2-55 (12) Section 32.47 (fraudulent destruction, removal,
 2-56 or concealment of writing);
 2-57 (13) Chapter 31 (theft) the punishment level for which
 2-58 is a felony of the third degree or higher;
 2-59 (14) Section 49.07 (intoxication assault);
 2-60 (15) Section 49.08 (intoxication manslaughter);
 2-61 (16) Section 21.02 (continuous sexual abuse of young
 2-62 child or children); or

2-63 (17) Chapter 20A (trafficking of persons).

2-64 SECTION 6. Article 12.01, Code of Criminal Procedure, is
 2-65 amended to read as follows:

2-66 Art. 12.01. FELONIES. Except as provided in Article 12.03,
 2-67 felony indictments may be presented within these limits, and not
 2-68 afterward:

2-69 (1) no limitation:

3-1 (A) murder and manslaughter;
 3-2 (B) sexual assault under Section 22.011(a)(2),
 3-3 Penal Code, or aggravated sexual assault under Section
 3-4 22.021(a)(1)(B), Penal Code;
 3-5 (C) sexual assault, if:
 3-6 (i) during the investigation of the offense
 3-7 biological matter is collected and the matter:
 3-8 (a) has not yet been subjected to
 3-9 forensic DNA testing; or
 3-10 (b) has been subjected to forensic DNA
 3-11 testing and the testing results show that the matter does not match
 3-12 the victim or any other person whose identity is readily
 3-13 ascertained; or
 3-14 (ii) probable cause exists to believe that
 3-15 the defendant has committed the same or a similar sex offense
 3-16 against five or more victims;
 3-17 (D) continuous sexual abuse of young child or
 3-18 children under Section 21.02, Penal Code;
 3-19 (E) indecency with a child under Section 21.11,
 3-20 Penal Code;
 3-21 (F) an offense involving leaving the scene of an
 3-22 accident under Section 550.021, Transportation Code, if the
 3-23 accident resulted in the death of a person;
 3-24 (G) trafficking of persons under Section
 3-25 20A.02(a)(7) or (8), Penal Code;
 3-26 (H) continuous trafficking of persons under
 3-27 Section 20A.03, Penal Code; or
 3-28 (I) compelling prostitution under Section
 3-29 43.05(a)(2), Penal Code;
 3-30 (2) ten years from the date of the commission of the
 3-31 offense:
 3-32 (A) theft of any estate, real, personal or mixed,
 3-33 by an executor, administrator, guardian or trustee, with intent to
 3-34 defraud any creditor, heir, legatee, ward, distributee,
 3-35 beneficiary or settlor of a trust interested in such estate;
 3-36 (B) theft by a public servant of government
 3-37 property over which the public servant exercises control in the
 3-38 public servant's official capacity;
 3-39 (C) forgery or the uttering, using or passing of
 3-40 forged instruments;
 3-41 (D) injury to an elderly or disabled individual
 3-42 punishable as a felony of the first degree under Section 22.04,
 3-43 Penal Code;
 3-44 (E) sexual assault, except as provided by
 3-45 Subdivision (1) or (7);
 3-46 (F) arson;
 3-47 (G) trafficking of persons under Section
 3-48 20A.02(a)(1), (2), (3), or (4), Penal Code; or
 3-49 (H) compelling prostitution under Section
 3-50 43.05(a)(1), Penal Code;
 3-51 (3) seven years from the date of the commission of the
 3-52 offense:
 3-53 (A) misapplication of fiduciary property or
 3-54 property of a financial institution;
 3-55 (B) fraudulent securing of document execution
 3-56 [~~of document by deception~~];
 3-57 (C) a felony violation under Chapter 162, Tax
 3-58 Code;
 3-59 (D) false statement to obtain property or credit
 3-60 under Section 32.32, Penal Code;
 3-61 (E) money laundering;
 3-62 (F) credit card or debit card abuse under Section
 3-63 32.31, Penal Code;
 3-64 (G) fraudulent use or possession of identifying
 3-65 information under Section 32.51, Penal Code;
 3-66 (H) exploitation of a child, elderly individual,
 3-67 or disabled individual under Section 32.53, Penal Code;
 3-68 (I) health care fraud under Section 35A.02, Penal
 3-69 Code; or

4-1 (J) bigamy under Section 25.01, Penal Code,
4-2 except as provided by Subdivision (6);
4-3 (4) five years from the date of the commission of the
4-4 offense:
4-5 (A) theft or robbery;
4-6 (B) except as provided by Subdivision (5),
4-7 kidnapping or burglary;
4-8 (C) injury to an elderly or disabled individual
4-9 that is not punishable as a felony of the first degree under Section
4-10 22.04, Penal Code;
4-11 (D) abandoning or endangering a child; or
4-12 (E) insurance fraud;
4-13 (5) if the investigation of the offense shows that the
4-14 victim is younger than 17 years of age at the time the offense is
4-15 committed, 20 years from the 18th birthday of the victim of one of
4-16 the following offenses:
4-17 (A) sexual performance by a child under Section
4-18 43.25, Penal Code;
4-19 (B) aggravated kidnapping under Section
4-20 20.04(a)(4), Penal Code, if the defendant committed the offense
4-21 with the intent to violate or abuse the victim sexually; or
4-22 (C) burglary under Section 30.02, Penal Code, if
4-23 the offense is punishable under Subsection (d) of that section and
4-24 the defendant committed the offense with the intent to commit an
4-25 offense described by Subdivision (1)(B) or (D) of this article or
4-26 Paragraph (B) of this subdivision;
4-27 (6) ten years from the 18th birthday of the victim of
4-28 the offense:
4-29 (A) trafficking of persons under Section
4-30 20A.02(a)(5) or (6), Penal Code;
4-31 (B) injury to a child under Section 22.04, Penal
4-32 Code; or
4-33 (C) bigamy under Section 25.01, Penal Code, if
4-34 the investigation of the offense shows that the person, other than
4-35 the legal spouse of the defendant, whom the defendant marries or
4-36 purports to marry or with whom the defendant lives under the
4-37 appearance of being married is younger than 18 years of age at the
4-38 time the offense is committed;
4-39 (7) two years from the date the offense was
4-40 discovered: sexual assault punishable as a state jail felony under
4-41 Section 22.011(f)(2), Penal Code; or
4-42 (8) three years from the date of the commission of the
4-43 offense: all other felonies.

4-44 SECTION 7. Section 250.006(b), Health and Safety Code, is
4-45 amended to read as follows:
4-46 (b) A person may not be employed in a position the duties of
4-47 which involve direct contact with a consumer in a facility or may
4-48 not be employed by an individual employer before the fifth
4-49 anniversary of the date the person is convicted of:
4-50 (1) an offense under Section 22.01, Penal Code
4-51 (assault), that is punishable as a Class A misdemeanor or as a
4-52 felony;
4-53 (2) an offense under Section 30.02, Penal Code
4-54 (burglary);
4-55 (3) an offense under Chapter 31, Penal Code (theft),
4-56 that is punishable as a felony;
4-57 (4) an offense under Section 32.45, Penal Code
4-58 (misapplication of fiduciary property or property of financial
4-59 institution), that is punishable as a Class A misdemeanor or a
4-60 felony;
4-61 (5) an offense under Section 32.46, Penal Code
4-62 (fraudulent securing of document execution [~~of document by~~
4-63 ~~deception~~]), that is punishable as a Class A misdemeanor or a
4-64 felony;
4-65 (6) an offense under Section 37.12, Penal Code (false
4-66 identification as peace officer; misrepresentation of property);
4-67 or
4-68 (7) an offense under Section 42.01(a)(7), (8), or (9),
4-69 Penal Code (disorderly conduct).

5-1 SECTION 8. The change in law made by this Act applies only
5-2 to an offense committed on or after the effective date of this Act.
5-3 An offense committed before the effective date of this Act is
5-4 governed by the law in effect on the date the offense was committed,
5-5 and the former law is continued in effect for that purpose. For
5-6 purposes of this section, an offense was committed before the
5-7 effective date of this Act if any element of the offense was
5-8 committed before that date.

5-9 SECTION 9. This Act takes effect September 1, 2021.

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