

BILL ANALYSIS

S.B. 149
By: Wentworth
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, an aircraft repair and maintenance lien may only be filed with the Federal Aviation Administration (FAA) on an aircraft that is registered with the FAA. Only aircraft owned by a United States citizen, a resident alien, a United States corporation, or a United States governmental entity is eligible for registration with the FAA.

Senate Bill No. 149 would allow an aircraft repair and maintenance lien to be filed on any aircraft, whether domestic or foreign-owned, with the Texas Secretary of State's office, and requires the Secretary of State to maintain and index records of the liens filed.

Because the bill would have allowed liens on domestic aircraft to be filed with either the FAA or the Texas Secretary of State, potential aircraft purchasers would have to run title searches both places. The engrossed version of the bill allows only liens on foreign aircraft to be filed with the Texas Secretary of State. Liens on domestic aircraft would continue to be filed with the FAA.

Senate Bill No. 149 provides a criminal penalty for obtaining possession of an aircraft subject to lien through surreptitious removal, by trick, or by fraud. It also allows the Secretary of State to collect a filing fee to offset the costs of accepting and maintaining the lien records.

RULEMAKING AUTHORITY

It is the opinion of the Committee on Business and Industry that this bill confers limited rulemaking authority to the Texas Secretary of State in order to establish filing fees in Subsection (d) of the proposed new Section 70.303.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Changes the heading of Section 70.303 of the Property Code.

SECTION 2. Establishes the process by which a lienholder on an aircraft registered in a foreign nation, or not registered at all, may record the lien by filing with the Texas Secretary of State's office not later than the 180th day after the date of the completion of a contractual storage period or the performance of the last repair, fueling, or maintenance an affidavit that states:

- (1) the name, address, and telephone number of the lienholder;
- (2) the amount due for storage, repairs, fuel, or maintenance;
- (3) a complete description of the aircraft; and
- (4) the name and last-known address of the owner of the aircraft together with the number assigned to the aircraft by the applicable jurisdiction, if known.

An inaccurate address stated under Subsection (a)(4) does not invalidate the affidavit.

The Texas Secretary of State's office is to maintain a record of information filed with that office under the terms of Senate Bill No. 149 and is required to index the records in the name of the aircraft's owner.

The fee for filing information with the Texas Secretary of State's office under the terms of Senate Bill No. 149 would be:

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- (1) \$15 if the information is communicated in writing and consists of one or two pages;
- (2) \$30 if the information is communicated in writing and consists of more than two pages;
- (3) \$5 if the information is communicated by another medium authorized by rule authorized by the Texas Secretary of State

SECTION 3. Changes from the 30th day to the 60th day the timeframe for the completion of the contractual storage period to be established in Subsection (a) of the new Section 70.3031, Property Code, and adds "or the secretary of state" to the offices in which lien records may be deposited.

SECTION 4. Changes from the 60th day to the 90th day the timeframe for the completion of the contractual storage period to be established in Subsection (a) of the new Section 70.3031, Property Code, relative to aircraft to be sold at a public sale.

SECTION 5. Adds a new Section 70.307 to the Property Code to establish that it is a criminal offense to improperly obtain possession of an aircraft that is subject to lien if a person, through surreptitious removal or by trick, fraud, or device perpetrated on the holder of a lien, obtains all or part of the aircraft. An offense hereunder would be a Class B misdemeanor. If the conduct constituting this offense also constitutes a violation of any other law, the actor may be prosecuted under the terms of Senate Bill No. 149 or the other law, but not both.

SECTION 6. Specifies that the provisions of Senate Bill No. 149 are prospective and that circumstances arising prior to its enactment are covered by existing laws.

EFFECTIVE DATE

September 1, 2005, or immediately, if the bill receives the necessary super-majority vote in both houses of the Legislature, as prescribed by Article III, Section 39, of the Texas Constitution.