

## **BILL ANALYSIS**

S.B. 335  
By: Carona  
Business & Industry  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Electronic information technology has progressed rapidly in recent years, resulting in innovations in software, hardware communications technology, and security protocols. These technological advances have made it feasible to create, sign, and transmit real estate transactions electronically.

In 1999, Texas adopted its version of the Uniform Electronic Transaction Act (UETA). In 2000, the federal Electronic Signatures in Global and National Commerce Act (E-Sign) was adopted. Even though documents resulting from electronic transactions are valid and enforceable between parties, there is some uncertainty and confusion about whether or how electronic documents may be recorded in land records offices. Existing laws and regulations have been interpreted to limit recordable documents to ones that are in writing or on paper or require the originals.

In response to some of the uncertainty regarding the recordation of electronic documents, Senate Bill No. 335 seeks to clarify and build upon existing state laws which relate to electronic recordation of electronic transactions. Specifically, Senate Bill No. 335 complements the framework provided in UETA and further clarifies the authority of a recorder to receive and record documents and information in electronic form. Likewise, a fundamental principle of Senate Bill No. 335 is to maintain any state law requirements, such as describing or requiring that a document be an original, on paper, or in writing, and to ensure that a document in electronic form satisfies those requirements.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas State Library and Archives Commission (commission) in SECTION 1 (Section 15.006, Property Code) of this bill. Rulemaking authority previously granted to the commission is modified in SECTION 4 (Section 195.002, Local Government Code) of this bill.

### **SECTION-BY-SECTION ANALYSIS**

SECTION 1. Amends Title 3, Property Code, by adding Chapter 15, as follows:

#### CHAPTER 15. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

Sec. 15.001. SHORT TITLE. Provides that this chapter may be cited as the Uniform Real Property Electronic Recording Act.

Sec. 15.002. DEFINITIONS. Defines "document," "electronic," "electronic document," "electronic signature," and "paper document."

Sec. 15.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION. Provides that in applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law substantially similar to this chapter.

Sec. 15.004. VALIDITY OF ELECTRONIC DOCUMENTS. (a) Provides that if a law requires, as a condition for recording, that a document be an original, be on paper

or another tangible medium, or be in writing, the requirement is satisfied by an electronic document that complies with the requirements of this chapter.

(b) Provides that if a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) Provides that a requirement that a document or signature associated with the document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. Provides that a physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

Sec. 15.005. RECORDING OF DOCUMENTS. (a) Requires a county clerk who implements any of the functions described by this section to act in compliance with rules and standards adopted by the Texas State Library and Archives Commission (commission).

(b) Authorizes a county clerk to receive, index, store, archive and transmit electronic documents and to provide for access to, and for search and retrieval of, documents and information by electronic means. Authorizes the county clerk to convert paper documents accepted for recording into electronic form, and to convert into electronic form information recorded before the county clerk began to record electronic documents. Authorizes the county clerk to accept electronically any fee or tax that the county clerk is authorized to collect. Authorizes the county clerk to agree with other officials of a state, a political subdivision of a state, or the United States on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.

(c) Requires a county clerk who accepts electronic documents for recording to continue to accept paper documents and to place entries for paper documents and electronic documents in the same index.

Sec. 15.006. UNIFORM STANDARDS. (a) Requires the commission by rule to adopt standards to implement this chapter.

(b) Requires the commission to consider certain factors in adopting, amending, and repealing standards, in order to keep the standards and practices of county clerks in this state in harmony with the standards and practices in other jurisdictions that enact a law that is substantially similar to this chapter and to keep the technology used by county clerks in this state compatible with technology used by those other jurisdictions.

Sec. 15.007. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. Provides that this chapter modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act. Provides that this chapter does not modify, limit, or supersede Section 101(c) (Consumer Disclosures) of that act or authorize electronic delivery of any of the notices described in Section 103(b) (court orders and certain other notices) of that act.

Sec. 15.008. CONSTRUCTION WITH OTHER LAW. Provides that, except as otherwise provided by this chapter, Chapter 195, Local Government Code, and the rules adopted by the commission under that chapter apply to electronic documents filed in accordance with this chapter.

SECTION 2. Amends Section 191.009, Local Government Code, to authorize a county clerk to accept by electronic filing and record electronically certain electronic documents and other instruments, rather than instruments. Deletes the provision that such an instrument is an electronic record. Makes a conforming change. Defines "instrument" and "electronic document."

SECTION 3. Amends Section 195.001, Local Government Code, by adding Subdivision (3) to define "electronic document."

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SECTION 4. Amends Sections 195.002-195.007 and Section 195.009, Local Government Code, as follows:

Sec. 195.002. Requires the commission to adopt rules by which a county clerk may accept by electronic filing and record electronically electronic documents or other instruments, rather than instruments. Makes conforming and nonsubstantive changes.

Sec. 195.003. Makes a conforming change.

Sec. 195.004. Makes conforming changes.

Sec. 195.005. Makes conforming changes.

Sec. 195.006. Makes conforming changes.

Sec. 195.007. Makes conforming changes.

Sec. 195.008. Makes a conforming change.

SECTION 5. (a) Makes application of this Act prospective.

(b) Provides that a rule adopted before the effective date of this Act by the commission under Chapter 195, Local Government Code, applies to an electronic document filed for recording in accordance with Chapter 15, Property Code, as added by this Act, on or after the effective date of this Act.

SECTION 6. Effective date: September 1, 2005.

**EFFECTIVE DATE**

September 1, 2005.