

BILL ANALYSIS

C.S.H.B. 2566
By: Madden
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Elected officials, appointed officials and state employees have had fraudulent liens filed against them by inmates. These officials and employees have to spend their time getting the lien released. The official or employee's legitimate business transactions may be delayed while the lien is pending until it can be released.

CSHB 2566 establishes a requirement that an instrument concerning real or personal property must include a statement indicating whether the person recording the instrument, or on whose behalf the person is recording the instrument, is an inmate. The bill adds a requirement that an abstract of judgment must show whether the plaintiff is an inmate. The bill provides that a financing statement must reflect whether the secured party is an inmate. The bill creates a presumption that a document or instrument which purports to create a lien or assert a claim against real or personal property or an interest in real or personal property and is filed by an inmate or on behalf of an inmate is fraudulent. The bill also describes the conditions for rebutting such a presumption.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Section 12.001, Property Code, by amending Subsection (a) and adding Subsection (e) to provide that an instrument concerning real or personal property must include a statement indicating whether the person recording the instrument, or on whose behalf the person is recording the instrument, is an inmate. Defines an inmate as a person housed in a secure correctional facility. Notes that a secure correctional facility has the meaning assigned by Section 1.07, Penal Code.

SECTION 2. Amends Section 52.003, Property Code, by amending Subsection (a) and adding Subsection (c) to provide that an abstract of a judgment must show whether the plaintiff is an inmate. Defines an inmate as a person housed in a secure correctional facility. Notes that a secure correctional facility has the meaning assigned by Section 1.07, Penal Code.

SECTION 3. Amends Section 9.502, Business & Commerce Code, by amending Subsection (a) and adding Subsection (e) to provide that a financing statement is sufficient only if it states whether the secured party is an inmate. Defines an inmate as a person housed in a secure correctional facility. Notes that a secure correctional facility has the meaning assigned by Section 1.07, Penal Code.

SECTION 4. Amends Section 51.901, Government Code, by amending Subsection (c) and adding Subsections (e) and (f) to provide that, for the purposes of this section, a document or instrument is presumed to be fraudulent if the document or instrument purports to create a lien or assert a claim against real or personal property or an interest in real or personal property and the document or instrument is filed by an inmate or on behalf of an inmate. Provides that a presumption under Subsection (c)(3), Section 51.901, Government Code, may be rebutted by providing the clerk of the court in which the document is filed or recorded the original or a copy of a sworn and notarized document signed by the obligor, debtor, or owner of the property

designated as collateral stating that a person entered into a security agreement with the inmate and authorized the filing of the financial statement as provided by Section 9.509, Business & Commerce Code. Defines an inmate as a person housed in a secure correctional facility. Notes that a secure correctional facility has the meaning assigned by Section 1.07, Penal Code.

SECTION 5. The change in law made by this Act applies only to a document or instrument presented for recording on or after the effective date of this Act. A document or instrument presented for recording before the effective date of this Act is covered by the law in effect when the document or instrument was presented for recording, and the former law is continued in effect for that purpose.

SECTION 6. Effective date clause.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSHB 2566 adds language, not in the original bill, which provides that a presumption under Subsection (c)(3), Section 51.901, Government Code, may be rebutted by providing the clerk of the court in which the document is filed or recorded the original or a copy of a sworn and notarized document signed by the obligor, debtor, or owner of the property designated as collateral stating that a person entered into a security agreement with the inmate and authorized the filing of the financial statement as provided by Section 9.509, Business & Commerce Code.