

BILL ANALYSIS

Senate Research Center
80R15427 AJA-F

H.B. 3197
By: Hartnett, Branch (Wentworth)
Jurisprudence
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

An improper filing of lis pendens can cloud the title of property even though the lawsuit on which it is based is frivolous or not related to the title of the property.

H.B. 3197 allows for the removal of such a cloud in the case of an inappropriate filing.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.007, Property Code, by adding Subsection (d), to provide that not later than the seventh day after the date a person files a notice for record under this section, the person must serve a copy of the notice on each party to the action who has an interest in the real property affected by the notice.

SECTION 2. Amends Chapter 12, Property Code, by adding Section 12.0071, as follows:

Sec. 12.0071. MOTION TO EXPUNGE LIS PENDENS. (a) Authorizes a party in an action in connection with which a notice of lis pendens has been filed to apply to the court to expunge the notice and file evidence, including declarations, with the motion to expunge the notice.

(b) Authorizes the court to permit evidence on the motion to be received in the form of oral testimony and make any orders the court considers just to provide for discovery by a party affected by the motion.

(c) Requires the court to order the notice of lis pendens expunged if the court determines that the pleading on which the notice is based does not contain a real property claim, the claimant fails to establish by a preponderance of the evidence the probable validity of the real property claim, or the person who filed the notice for record did not serve a copy of the notice on each party entitled to a copy under Section 12.007(d), Property Code.

(d) Provides that notice of a motion to expunge under Subsection (a) must be served on each affected party on or before the 20th day before the date of the hearing on the motion.

(e) Requires the court to rule on the motion for expunction based on the affidavits and counteraffidavits on file and on any other proof the court allows.

(f) Provides that after a certified copy of an order expunging a notice of lis pendens has been recorded, the notice of lis pendens and any information derived from the notice does not constitute constructive or actual notice of any matter contained in the notice or of any matter relating to the proceeding or create any duty of inquiry in a person with respect to the property described in the notice.

(g) Authorizes the court in its discretion to require that the party prevailing in the expunction hearing submit an undertaking to the court in an amount determined by the court.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2007.