

BILL ANALYSIS

C.S.H.B. 3197
By: Hartnett
Judiciary
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. The purpose of this bill is to allow for the removal of such a cloud in the case of an inappropriate filing.

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

The bill would require a copy of the filing of lis pendens to be served on appropriate parties in the lawsuit which forms the basis for the lis pendens filing. The bill would provide for a hearing on a motion to expunge a lis pendens filing, which shall be expunged if the court determines the required service of notice has not been made or upon a showing that the pleading on which the notice is based does not contain a real property claim or the claimant cannot establish the probable validity of the real property claim. If a lis pendens notice is expunged, the notice does constitute notice of the proceeding or create any duty of inquiry.

The act is prospective.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Section 1 of the substitute, requiring notice of the lis pendens to parties in the underlying lawsuit having an interest in the real property, is new. The substitute removes the provision in the original requiring a determination of good faith in the filing of the lis pendens and substitutes the determination of whether there is evidence of the probable validity of the underlying real property claim.