

1-1 By: Madden (Senate Sponsor - Carona) H.B. No. 2566
1-2 (In the Senate - Received from the House May 11, 2007;
1-3 May 15, 2007, read first time and referred to Committee on Criminal
1-4 Justice; May 21, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 May 21, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2566 By: Hinojosa

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to a document or instrument filed by an inmate with a court
1-11 concerning real or personal property.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 12.001, Civil Practice and Remedies
1-14 Code, is amended by adding Subdivisions (2-a), (2-b), (2-c), and
1-15 (5) to read as follows:

1-16 (2-a) "Filing office" has the meaning assigned by
1-17 Section 9.102, Business & Commerce Code.

1-18 (2-b) "Financing statement" has the meaning assigned
1-19 by Section 9.102, Business & Commerce Code.

1-20 (2-c) "Inmate" means a person housed in a secure
1-21 correctional facility.

1-22 (5) "Secure correctional facility" has the meaning
1-23 assigned by Section 1.07, Penal Code.

1-24 SECTION 2. Section 12.002, Civil Practice and Remedies
1-25 Code, is amended by adding Subsections (a-1) and (a-2) and amending
1-26 Subsection (b) to read as follows:

1-27 (a-1) Except as provided by Subsection (a-2), a person may
1-28 not file an abstract of a judgment or an instrument concerning real
1-29 or personal property with a court or county clerk, or a financing
1-30 statement with a filing office, if the person:

1-31 (1) is an inmate; or

1-32 (2) is not licensed or regulated under Title 11,
1-33 Insurance Code, and is filing on behalf of another person who the
1-34 person knows is an inmate.

1-35 (a-2) A person described by Subsection (a-1) may file an
1-36 abstract, instrument, or financing statement described by that
1-37 subsection if the document being filed includes a statement
1-38 indicating that:

1-39 (1) the person filing the document is an inmate; or

1-40 (2) the person is filing the document on behalf of a
1-41 person who is an inmate.

1-42 (b) A person who violates Subsection (a) or (a-1) is liable
1-43 to each injured person for:

1-44 (1) the greater of:

1-45 (A) \$10,000; or

1-46 (B) the actual damages caused by the violation;

1-47 (2) court costs;

1-48 (3) reasonable attorney's fees; and

1-49 (4) exemplary damages in an amount determined by the
1-50 court.

1-51 SECTION 3. Section 51.901, Government Code, is amended by
1-52 amending Subsection (c) and adding Subsections (e) and (f) to read
1-53 as follows:

1-54 (c) For purposes of this section, a document or instrument
1-55 is presumed to be fraudulent if:

1-56 (1) the document is a purported judgment or other
1-57 document purporting to memorialize or evidence an act, an order, a
1-58 directive, or process of:

1-59 (A) a purported court or a purported judicial
1-60 entity not expressly created or established under the constitution
1-61 or the laws of this state or of the United States; or

1-62 (B) a purported judicial officer of a purported
1-63 court or purported judicial entity described by Paragraph (A); [~~or~~]

(2) 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:

(A) is not a document or instrument provided for by the constitution or laws of this state or of the United States;

(B) is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person; or

(C) is not an equitable, constructive, or other lien imposed by a court with jurisdiction created or established under the constitution or laws of this state or of the United States; or

(3) 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.

(e) A presumption under Subsection (c)(3) may be rebutted by providing the filing officer in the filing office 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 the person entered into a security agreement with the inmate and authorized the filing of the financing statement as provided by Section 9.509, Business & Commerce Code.

(f) In this section:

(1) "Inmate" means a person housed in a secure correctional facility.

(2) "Secure correctional facility" has the meaning assigned by Section 1.07, Penal Code.

SECTION 4. Section 405.021, Government Code, as added by Chapter 407, Acts of the 79th Legislature, Regular Session, 2005, is amended to read as follows:

Sec. 405.021. FILING OR RECORDING OF FRAUDULENT DOCUMENT. (a) If the secretary of state believes in good faith that a document filed with the secretary of state to create a lien is fraudulent, the secretary of state shall:

(1) request the assistance of the attorney general to determine whether the document is fraudulent before filing or recording the document;

(2) request that the prospective filer provide to the secretary of state additional documentation supporting the existence of the lien, such as a contract or other document that contains the alleged debtor or obligor's signature; and

(3) forward any additional documentation received to the attorney general.

(b) For purposes of this section, a document or instrument is presumed to be fraudulent if the document or instrument is filed by an inmate or on behalf of an inmate.

(c) A presumption under Subsection (b) may be rebutted by providing the secretary of state 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 the person entered into a security agreement with the inmate and authorized the filing of the instrument as provided by Section 9.509, Business & Commerce Code.

(d) In this section:

(1) "Inmate" means a person housed in a secure correctional facility.

(2) "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

3-1 purpose.

3-2 SECTION 6. This Act takes effect September 1, 2007.

3-3

* * * * *