

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Madden

H.B. No. 2566

A BILL TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

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

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

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

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

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

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

(1) is an inmate; or

(2) is not licensed or regulated under Title 11,

1 Insurance Code, and is filing on behalf of another person who the  
2 person knows is an inmate.

3 (a-2) A person described by Subsection (a-1) may file an  
4 abstract, instrument, or financing statement described by that  
5 subsection if the document being filed includes a statement  
6 indicating that:

- 7 (1) the person filing the document is an inmate; or  
8 (2) the person is filing the document on behalf of a  
9 person who is an inmate.

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

- 12 (1) the greater of:  
13 (A) \$10,000; or  
14 (B) the actual damages caused by the violation;  
15 (2) court costs;  
16 (3) reasonable attorney's fees; and  
17 (4) exemplary damages in an amount determined by the  
18 court.

19 SECTION 3. Section 51.901, Government Code, is amended by  
20 amending Subsection (c) and adding Subsections (e) and (f) to read  
21 as follows:

22 (c) For purposes of this section, a document or instrument  
23 is presumed to be fraudulent if:

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

- 27 (A) a purported court or a purported judicial

1 entity not expressly created or established under the constitution  
2 or the laws of this state or of the United States; or

3 (B) a purported judicial officer of a purported  
4 court or purported judicial entity described by Paragraph (A); [~~or~~]

5 (2) the document or instrument purports to create a  
6 lien or assert a claim against real or personal property or an  
7 interest in real or personal property and:

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

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

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

20 (3) the document or instrument purports to create a  
21 lien or assert a claim against real or personal property or an  
22 interest in real or personal property and the document or  
23 instrument is filed by an inmate or on behalf of an inmate.

24 (e) A presumption under Subsection (c)(3) may be rebutted by  
25 providing the clerk of the court in which the document is filed or  
26 recorded the original or a copy of a sworn and notarized document  
27 signed by the obligor, debtor, or owner of the property designated

1 as collateral stating that the person entered into a security  
2 agreement with the inmate and authorized the filing of the  
3 financial statement as provided by Section 9.509, Business &  
4 Commerce Code.

5 (f) In this section:

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

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

10 SECTION 4. The change in law made by this Act applies only  
11 to a document or instrument presented for recording on or after the  
12 effective date of this Act. A document or instrument presented for  
13 recording before the effective date of this Act is covered by the  
14 law in effect when the document or instrument was presented for  
15 recording, and the former law is continued in effect for that  
16 purpose.

17 SECTION 5. This Act takes effect September 1, 2007.

ADOPTED

MAY 23 2007

*Atty Gen*  
Secretary of the Senate

By: Carona

H.B. No. 2566

Substitute the following for H.B. No. 2566:

By: J. J. King

C.S.H.B. No. 2566

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to a document or instrument filed by an inmate with a  
3 court concerning real or personal property.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

8 (2-a) "Filing office" has the meaning assigned by  
9 Section 9.102, Business & Commerce Code.

10 (2-b) "Financing statement" has the meaning assigned by  
11 Section 9.102, Business & Commerce Code.

12 (2-c) "Inmate" means a person housed in a secure  
13 correctional facility.

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

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

19 (a-1) Except as provided by Subsection (a-2), a person may  
20 not file an abstract of a judgment or an instrument concerning real  
21 or personal property with a court or county clerk, or a financing

1 statement with a filing office, if the person:

2 (1) is an inmate; or

3 (2) is not licensed or regulated under Title 11,  
4 Insurance Code, and is filing on behalf of another person who the  
5 person knows is an inmate.

6 (a-2) A person described by Subsection (a-1) may file an  
7 abstract, instrument, or financing statement described by that  
8 subsection if the document being filed includes a statement  
9 indicating that:

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

11 (2) the person is filing the document on behalf of a  
12 person who is an inmate.

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

15 (1) the greater of:

16 (A) \$10,000; or

17 (B) the actual damages caused by the violation;

18 (2) court costs;

19 (3) reasonable attorney's fees; and

20 (4) exemplary damages in an amount determined by the  
21 court.

22 SECTION 3. Section 51.901, Government Code, is amended by  
23 amending Subsection (c) and adding Subsections (e) and (f) to read  
24 as follows:

25 (c) For purposes of this section, a document or instrument is

1 presumed to be fraudulent if:

2 (1) the document is a purported judgment or other  
3 document purporting to memorialize or evidence an act, an order, a  
4 directive, or process of:

5 (A) a purported court or a purported judicial  
6 entity not expressly created or established under the constitution  
7 or the laws of this state or of the United States; or

8 (B) a purported judicial officer of a purported  
9 court or purported judicial entity described by Paragraph (A); [~~or~~]

10 (2) the document or instrument purports to create a lien  
11 or assert a claim against real or personal property or an interest  
12 in real or personal property and:

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

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

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

25 (3) the document or instrument purports to create a lien

1 or assert a claim against real or personal property or an interest  
2 in real or personal property and the document or instrument is  
3 filed by an inmate or on behalf of an inmate.

4 (e) A presumption under Subsection (c)(3) may be rebutted by  
5 providing the filing officer in the filing office in which the  
6 document is filed or recorded the original or a copy of a sworn and  
7 notarized document signed by the obligor, debtor, or owner of the  
8 property designated as collateral stating that the person entered  
9 into a security agreement with the inmate and authorized the filing  
10 of the financing statement as provided by Section 9.509, Business &  
11 Commerce Code.

12 (f) In this section:

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

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

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

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

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



1 recording the document;

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

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

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

11 (c) A presumption under Subsection (b) may be rebutted by  
12 providing the secretary of state the original or a copy of a sworn  
13 and notarized document signed by the obligor, debtor, or owner of  
14 the property designated as collateral stating that the person  
15 entered into a security agreement with the inmate and authorized  
16 the filing of the instrument as provided by Section 9.509, Business  
17 & Commerce Code.

18 (d) In this section:

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

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

23 SECTION 5. The change in law made by this Act applies only to  
24 a document or instrument presented for recording on or after the  
25 effective date of this Act. A document or instrument presented for

1 recording before the effective date of this Act is covered by the  
2 law in effect when the document or instrument was presented for  
3 recording, and the former law is continued in effect for that  
4 purpose.

5 SECTION 6. This Act takes effect September 1, 2007.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 19, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2566** by Madden (Relating to a document or instrument filed by an inmate with a court concerning real or personal property. ), **Committee Report 2nd House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Property Code and provides that when an instrument concerning real or personal property is being recorded, the instrument must include a statement indicating whether the person recording the instrument, or on whose behalf the person is recording the instrument, is an inmate. "Inmate" is defined as any person who is housed in a secure correctional facility. The bill also provides that 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. The bill would also amend the Government Code to provide a method of rebuttal for a document presumed to be fraudulent. It is assumed that any additional costs associated with implementation of the provisions of the bill could be absorbed within current state resources.

The bill would take effect September 1, 2007.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General

**LBB Staff:** JOB, ES, JM



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 17, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2566** by Madden (Relating to a document or instrument filed by an inmate with a court concerning real or personal property.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Property Code and provides that when an instrument concerning real or personal property is being recorded, the instrument must include a statement indicating whether the person recording the instrument, or on whose behalf the person is recording the instrument, is an inmate. "Inmate" is defined as any person who is housed in a secure correctional facility. The bill also provides that 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. It is assumed that any additional costs associated with implementation of the provisions of the bill could be absorbed within current state resources.

The bill would take effect September 1, 2007.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General

**LBB Staff:** JOB, ES, JM

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**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 18, 2007**

**TO:** Honorable Jerry Madden, Chair, House Committee on Corrections

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2566** by Madden (Relating to a document or instrument filed by an inmate with a court concerning real or personal property. ), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Property Code and provides that when an instrument concerning real or personal property is being recorded, the instrument must include a statement indicating whether the person recording the instrument, or on whose behalf the person is recording the instrument, is an inmate. "Inmate" is defined as any person who is housed in a secure correctional facility. The bill also amend the Business and Commerce Code and provides that 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. It is assumed that any additional costs associated with implementation of the provisions of the bill could be absorbed within current state resources.

The bill would take effect September 1, 2007.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General

**LBB Staff:** JOB, ES, JM





**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 10, 2007**

**TO:** Honorable Jerry Madden, Chair, House Committee on Corrections

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** **HB2566** by Madden (Relating to a document or instrument filed by an inmate with a court concerning real or personal property.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Property Code and provides that when an instrument concerning real or personal property is being recorded, the instrument must include a statement indicating whether the person recording the instrument, or on whose behalf the person is recording the instrument, is an inmate. "Inmate" is defined as any person who is housed in a secure correctional facility. The bill also amend the Business and Commerce Code and provides that 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. It is assumed that any additional costs associated with implementation of the provisions of the bill could be absorbed within current state resources.

The bill would take effect September 1, 2007.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General

**LBB Staff:** JOB, ES, JM



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**May 19, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2566** by Madden (Relating to a document or instrument filed by an inmate with a court concerning real or personal property. ), **Committee Report 2nd House, Substituted**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, GG

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**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**May 17, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2566** by Madden (Relating to a document or instrument filed by an inmate with a court concerning real or personal property.), **As Engrossed**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, GG



**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**April 20, 2007**

**TO:** Honorable Jerry Madden, Chair, House Committee on Corrections

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2566** by Madden (Relating to a document or instrument filed by an inmate with a court concerning real or personal property.), **Committee Report 1st House, Substituted**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, GG





**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**April 6, 2007**

**TO:** Honorable Jerry Madden, Chair, House Committee on Corrections

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2566** by Madden (Relating to a document or instrument filed by an inmate with a court concerning real or personal property.), **As Introduced**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, GG

