

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Kuempel

H.B. No. 556

A BILL TO BE ENTITLED

AN ACT

relating to payment of attorney's fees in certain actions to  
recover possession of real property.

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

SECTION 1. Section 16.034(a), Civil Practice and Remedies  
Code, is amended to read as follows:

(a) In a suit for the possession of real property between a  
person claiming under record title to the property and one claiming  
by adverse possession, if the prevailing party recovers possession  
of the property from a person unlawfully in actual possession, the  
court shall ~~may~~ award costs and reasonable attorney's fees to the  
prevailing party if the court finds that the person unlawfully in  
actual possession made a claim of adverse possession that was  
groundless and made in bad faith.

SECTION 2. The change in law made by this Act applies only  
to a suit for the possession of real property filed on or after the  
effective date of this Act. A suit filed before the effective date  
of this Act is governed by the law in effect immediately before the  
effective date of this Act, and that law is continued in effect for  
that purpose.

SECTION 3. This Act takes effect September 1, 2009.

ADOPTED

MAY 26 2009

*Lately Drew*  
Secretary of the Senate

By: Harris

H.B. No. 556

Substitute the following for H.B. No. 556:

By: Harris

C.S. H.B. No. 556

A BILL TO BE ENTITLED

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3 recover possession of real property.

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6 Code, is amended to read as follows:

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8 person claiming under record title to the property and one claiming  
9 by adverse possession, if the prevailing party recovers possession  
10 of the property from a person unlawfully in actual possession, the  
11 court:

12 (1) shall [may] award costs and reasonable attorney's  
13 fees to the prevailing party if the court finds that the person  
14 unlawfully in actual possession made a claim of adverse possession  
15 that was groundless and made in bad faith; and

16 (2) may award costs and reasonable attorney's fees to  
17 the prevailing party in the absence of a finding described by  
18 Subdivision (1).

19 SECTION 2. The change in law made by this Act applies only  
20 to a suit for the possession of real property filed on or after the  
21 effective date of this Act. A suit filed before the effective date  
22 of this Act is governed by the law in effect immediately before the  
23 effective date of this Act, and that law is continued in effect for  
24 that purpose.

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SECTION 3. This Act takes effect September 1, 2009.

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 28, 2009**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

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

**IN RE: HB556** by Kuempel (Relating to payment of attorney's fees in certain actions to recover possession of real property.), **As Passed 2nd House**

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

The bill would amend the Civil Practice and Remedies Code relating to payment of attorney's fees in certain actions to recover possession of real property.

The bill would require a court to award costs and reasonable attorney's fees to the prevailing party, rather than making such awards permissive. The costs and fees would be awarded only if the court finds that the person unlawfully in actual possession made a claim of adverse possession that was groundless and made in bad faith. The court may also award costs and fees to the prevailing party in the absence of a finding of adverse possession.

The bill would take effect September 1, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated. In a suit for the possession of real property, the bill would require payments of costs and reasonable attorney's fees to the prevailing party.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** JOB, SZ, KJG, TB, MN, TP, JP

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 22, 2009

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

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

IN RE: **HB556** by Kuempel (Relating to payment of attorney's fees in certain actions to recover possession of real property.), **Committee Report 2nd House, Substituted**

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

The bill would amend the Civil Practice and Remedies Code relating to payment of attorney's fees in certain actions to recover possession of real property.

The bill would require a court to award costs and reasonable attorney's fees to the prevailing party, rather than making such awards permissive. The costs and fees would be awarded only if the court finds that the person unlawfully in actual possession made a claim of adverse possession that was groundless and made in bad faith. The court may also award costs and fees to the prevailing party in the absence of a finding of adverse possession.

The bill would take effect September 1, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated. In a suit for the possession of real property, the bill would require payments of costs and reasonable attorney's fees to the prevailing party.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** JOB, KJG, TB, MN, TP, JP

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 20, 2009**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

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

**IN RE: HB556** by Kuempel (Relating to payment of attorney's fees in certain actions to recover possession of real property.), **As Engrossed**

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

The bill would amend the Civil Practice and Remedies Code relating to payment of attorney's fees in certain actions to recover possession of real property.

The bill would require a court to award costs and reasonable attorney's fees to the prevailing party, rather than making such awards permissive. The costs and fees would be awarded only if the court finds that the person unlawfully in actual possession made a claim of adverse possession that was groundless and made in bad faith.

The bill would take effect September 1, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated. In a suit for the possession of real property, the bill would require payments of costs and reasonable attorney's fees to the prevailing party.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** JOB, KJG, TB, MN, TP, JP

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

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 13, 2009**

**TO:** Honorable Todd Hunter, Chair, House Committee on Judiciary & Civil Jurisprudence

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

**IN RE: HB556** by Kuempel (Relating to payment of attorney's fees in certain actions to recover possession of real property.), **Committee Report 1st House, Substituted**

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

The bill would amend the Civil Practice and Remedies Code relating to payment of attorney's fees in certain actions to recover possession of real property. No significant fiscal implication to the State is anticipated as the bill requires a court to award costs and reasonable attorney's fees to the prevailing party, rather than making such awards permissive. The bill would take effect September 1, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated. In a suit for the possession of real property, the bill would require payments of costs and reasonable attorney's fees to the prevailing party.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** JOB, TB, MN, TP, JP

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**March 29, 2009**

**TO:** Honorable Todd Hunter, Chair, House Committee on Judiciary & Civil Jurisprudence

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

**IN RE: HB556** by Kuempel (Relating to payment of attorney's fees in certain actions to recover possession of real property.), **As Introduced**

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

The bill would amend the Civil Practice and Remedies Code relating to payment of attorney's fees in certain actions to recover possession of real property. No significant fiscal implication to the State is anticipated as the bill merely indicates which of two parties in a particular lawsuit must bear the costs and pay attorney's fees. The bill would take effect September 1, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated. In a suit for the possession of real property, the bill would require a person claiming by adverse possession to pay the costs and reasonable attorney's fees.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** JOB, MN, TB, TP, JP