

## **BILL ANALYSIS**

Senate Research Center  
83R8206 RWG-F

H.B. 1728  
By: Ashby (Seliger)  
Jurisprudence  
4/26/2013  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

County clerks are seeing an increase in the number of documents filed without notaries that potentially place fraudulent liens on properties. As a result, there is a need to update current law regarding the use of unsworn declarations to prevent this fraud.

Additionally, in order to increase efficiency, clerks should be able to dispose of criminal exhibits more expediently than the law currently provides under certain circumstances and to impress seals and affix signatures on documents using electronic means.

H.B. 1728 amends current law relating to the use of an unsworn declaration, the disposition of certain court exhibits, and the seal of a constitutional county court or county clerk.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 132.001(b), Civil Practice and Remedies Code, to provide that this section (Unsworn Declaration) does not apply to a lien required to be filed with a county clerk, an instrument concerning real or personal property required to be filed with a county clerk, or an oath of office or an oath required to be taken before a specified official other than a notary public.

SECTION 2. Amends Article 2.21(e), Code of Criminal Procedure, to authorize that an eligible exhibit be disposed of as provided by this article (Duty of Clerks) on certain dates, including on or after the first anniversary of the date of the acquittal of a defendant or on or after the first anniversary of the date of the death of a defendant, and to make a nonsubstantive change.

SECTION 3. Amends Section 26.005, Government Code, by amending Subsection (b) and adding Subsections (c) and (d), as follows:

(b) Requires that the seal provided to each county court be impressed on all process other than subpoenas issued out of the court and be used to authenticate the official acts of the county clerk and county judge, rather than requiring that the impress of the seal be attached to all process other than subpoenas issued out of the court and be used to authenticate the official acts of the county clerk and county judge. Authorizes the seal to be created using electronic means, including by using an optical disk or another electronic reproduction technique, if the means by which the seal is impressed on an original document created using the same type of electronic means does not allow for changes, additions, or deletions to be made to the document.

(c) Authorizes the signature of the county clerk to be affixed on an original document using electronic means, provided those means meet the requirements described by Subsection (b).

(d) Authorizes the seal impressed or a signature affixed by electronic means to be delivered or transmitted electronically.

SECTION 4. Amends Section 191.001(b), Local Government Code, to authorize the county clerk to affix the seal on an original document by stamp, electronic means, facsimile, or other means that legibly reproduces all of the required elements of the seal for the purposes of reproduction.

SECTION 5. Effective date: upon passage or September 1, 2013.