

BILL ANALYSIS

Senate Research Center
83R8948 SCL-F

S.B. 693
By: Carona
State Affairs
4/9/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1997, the 75th Texas Legislature passed H.B. 1185, which created criminal and civil penalties for those who file fraudulent documents purporting to create a lien against real or personal property. This bill was intended to address a problem that has developed in the state whereby individuals were purposefully filing fraudulent liens against properties as a form of harassment.

Last year, the United States Court of Appeals for the Fifth Circuit applied the penalty provisions adopted in H.B. 1185 in ways that were never intended. Under the Fifth Circuit opinion, filing a single erroneous lien could result in a damage award of \$10,000 to any person who held an interest in the property while the lien was in effect, whether or not they actually suffered any damages. Furthermore, under the Fifth Circuit opinion, liability is calculated separately for each person who has ever had an interest in the lien, including corporate parents, whether or not they committed any fraud. This broad interpretation of the statute has had a chilling effect on affordable housing manufacturers, as the exponentially higher levels of liability that are now associated with any lien mistake make business risks unattainable.

S.B. 693 amends Chapter 12 (Liability Related to a Fraudulent Court Record or a Fraudulent Lien or Claim Filed Against Real or Personal Property) of the Civil Practice and Remedies Code to clarify that multiple persons who either have an interest in a property subject to a fraudulent lien or who jointly file the fraudulent lien are required to be treated as a single person for purposes of calculating damages. In addition, S.B. 693 provides definitions for "fraud" and "fraudulent lien," in an effort to underscore the fact that the chapter does not apply to erroneous liens that are unrelated to fraud. S.B. 693 also creates a statute of limitations period applicable to causes of action that arise under the chapter.

As proposed, S.B. 693 amends current law relating to clarifying liability and damages for certain liens placed on and certain court records of real property.

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 12.001, Civil Practice and Remedies Code, to redefine "exemplary damages" and define "fraud" and "fraudulent lien."

SECTION 2. Amends Section 12.002, Civil Practice and Remedies Code, by amending Subsection (b) and adding Subsections (b-1), (b-2), and (b-3), as follows:

(b) Provides that a person who violates Subsection (a) or (a-1) is liable to each injured person for:

(1) the greater of:

(A) \$10,000; or

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

(2) court costs;

(3) reasonable attorney's fees; and

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

(b-1) Requires multiple persons with an interest in a single property subject to a fraudulent lien, notwithstanding any other provision of this chapter, to be treated as a single person for purposes of calculating total damages.

(b-2) Requires multiple persons that jointly file a single fraudulent lien, notwithstanding any other provision of this chapter, to be treated as a single person for purposes of calculating total damages.

(b-3) Prohibits damages from being awarded under Subsection (b)(4) (relating to liability for exemplary damages in an amount determined by the court) when an award made as provided by Subsection (b)(1)(A) exceeds the actual economic damages caused by the violation.

SECTION 3. Amends Section 12.003, Civil Practice and Remedies Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Authorizes the following persons to bring an action to enjoin violation of this chapter, rather than authorizing the following persons to bring an action to enjoin violation of this chapter or to recover damages under this chapter:

(1) the attorney general;

(2) a district attorney;

(3) a criminal district attorney;

(4) a county attorney with felony responsibilities;

(5) a county attorney;

(6) a municipal attorney;

(7) in the case of a fraudulent judgment lien, the person against whom the judgment is rendered; and

(8) in the case of a fraudulent lien or claim against real or personal property or an interest in real or personal property, the obligor or debtor, or a person who owns an interest in the real or personal property.

(a-1) Authorizes the person described by Subsections (a)(7) and (8) to also bring an action to recover damages under this chapter. Authorizes the persons described by Subsections (a)(1) through (6) to also bring an action to recover damages on behalf of any person described by Subsection (a)(7) or (8).

SECTION 4. Amends Chapter 12, Civil Practice and Remedies Code, by adding Section 12.008, as follows:

Sec. 12.008. FOUR-YEAR LIMITATIONS PERIOD. (a) Requires a person to bring suit under this chapter not later than four years after the date the cause of action accrues.

(b) Provides that a cause of action under this chapter accrues on the earlier of the date the fraud is or by the exercise of reasonable diligence should have been

discovered or the date that property subject to a fraudulent lien or court record is conveyed.

(c) Requires a person, notwithstanding Subsection (a), to bring suit for damages under this chapter not later than 10 years after the date the fraudulent lien or court record was recorded.

SECTION 5. Provides that this Act is intended to clarify existing law with respect to which fines may be imposed and which persons are entitled to receive damages for actions under Chapter 12, Civil Practice and Remedies Code.

SECTION 6. Effective date: upon passage or September 1, 2013.