

By: Paddie

H.B. No. 3474

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to clarifying liability and damages for certain liens  
3 placed on and certain court records of real property.

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

5 SECTION 1. Section 12.001, Civil Practice and Remedies  
6 Code, is amended to read as follows:

7 Sec. 12.001. DEFINITIONS. In this chapter:

8 (1) "Court record" has the meaning assigned by Section  
9 37.01, Penal Code.

10 (2) "Exemplary damages" has the meaning assigned by  
11 Section 41.001 and includes any amount awarded under Section  
12 12.002(b)(1)(A) in excess of actual economic damages.

13 (3) [~~2-a~~] "Filing office" has the meaning assigned  
14 by Section 9.102, Business & Commerce Code.

15 (4) [~~2-b~~] "Financing statement" has the meaning  
16 assigned by Section 9.102, Business & Commerce Code.

17 (5) "Fraud" means a knowing misrepresentation or  
18 concealment of a material fact made to induce another to act to that  
19 person's detriment.

20 (6) "Fraudulent lien" means a lien that is created by  
21 fraud and filed or recorded without the consent of the person whose  
22 property is encumbered by the lien.

23 (7) [~~2-c~~] "Inmate" means a person housed in a secure  
24 correctional facility.

1           (8) [~~(3)~~] "Lien" means a claim in property for the  
2 payment of a debt and includes a security interest.

3           (9) [~~(4)~~] "Public servant" has the meaning assigned by  
4 Section 1.07, Penal Code, and includes officers and employees of  
5 the United States.

6           (10) [~~(5)~~] "Secure correctional facility" has the  
7 meaning assigned by Section 1.07, Penal Code.

8           SECTION 2. Section 12.002, Civil Practice and Remedies  
9 Code, is amended by amending Subsection (b) and adding Subsections  
10 (b-1), (b-2), and (b-3) to read as follows:

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

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

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

25           (b-2) Notwithstanding any other provision of this chapter,  
26 multiple persons that jointly file a single fraudulent lien shall  
27 be treated as a single person for purposes of calculating total

1 damages.

2 (b-3) When an award made as provided by Subsection (b)(1)(A)  
3 exceeds the actual economic damages caused by the violation,  
4 damages may not be awarded under Subsection (b)(4).

5 SECTION 3. Section 12.003, Civil Practice and Remedies  
6 Code, is amended by amending Subsection (a) and adding Subsection  
7 (a-1) to read as follows:

8 (a) The following persons may bring an action to enjoin  
9 violation of this chapter [~~or to recover damages under this~~  
10 ~~chapter~~]:

- 11 (1) the attorney general;
- 12 (2) a district attorney;
- 13 (3) a criminal district attorney;
- 14 (4) a county attorney with felony responsibilities;
- 15 (5) a county attorney;
- 16 (6) a municipal attorney;
- 17 (7) in the case of a fraudulent judgment lien, the  
18 person against whom the judgment is rendered; and
- 19 (8) in the case of a fraudulent lien or claim against  
20 real or personal property or an interest in real or personal  
21 property, the obligor or debtor, or a person who owns an interest in  
22 the real or personal property.

23 (a-1) The persons described by Subsections (a)(7) and (8)  
24 may also bring an action to recover damages under this chapter. The  
25 persons described by Subsections (a)(1) through (6) may also bring  
26 an action to recover damages on behalf of any person described by  
27 Subsection (a)(7) or (8).

1 SECTION 4. Chapter 12, Civil Practice and Remedies Code, is  
2 amended by adding Section 12.008 to read as follows:

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

6 (b) A cause of action under this chapter accrues on the  
7 earlier of:

8 (1) the date the fraud is or by the exercise of  
9 reasonable diligence should have been discovered; or

10 (2) the date that property subject to a fraudulent  
11 lien or court record is conveyed.

12 (c) Notwithstanding Subsection (a), a person must bring  
13 suit for damages under this chapter not later than 10 years after  
14 the date the fraudulent lien or court record was recorded.

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

19 SECTION 6. This Act takes effect immediately if it receives  
20 a vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
22 Act does not receive the vote necessary for immediate effect, this  
23 Act takes effect September 1, 2013.