

BILL ANALYSIS

C.S.H.B. 4086
By: Wray
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties raise an issue in which the expunction of a notice of lis pendens is rendered unreliable due to the means by which it is communicated. C.S.H.B. 4086 seeks to address this issue by clarifying the effect of a notice of lis pendens and the expunction of such a notice.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 4086 amends the Property Code to make the statutory provision relating to the effect of a notice of lis pendens and any information derived from such notice after a certified copy of an order expunging the notice has been recorded also applicable to information that could be derived from the notice and authorizes an interest in the real property, after such recording, to be sold or encumbered free of all matters asserted or disclosed in the notice and all claims or other matters asserted or disclosed in the action in connection with which the notice was filed.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4086 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 12.0071, Property Code, is amended by amending Subsection (f) and adding Subsection (h) to read as follows:

(f) After a certified copy of an order expunging a notice of lis pendens has been

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 12.0071(f), Property Code, is amended to read as follows:

(f) After a certified copy of an order expunging a notice of lis pendens has been

recorded,
the notice of lis pendens and any information derived or that could be derived from the notice:

(1) does not:

(A) constitute constructive or actual notice of any matter contained in the notice or of any matter relating to the action in connection with which the notice was filed [proceeding];

(B) create any duty of inquiry in a person with respect to the property described in the notice; or

(C) affect the validity of a conveyance to a purchaser for value or of a mortgage to a lender for value; and

(2) is not enforceable against a purchaser or lender described by Subdivision (1)(C), regardless of whether the purchaser or lender knew of the lis pendens action.

(h) When a notice of lis pendens is expunged in accordance with this section, the notice of lis pendens or the action in connection with which the notice was filed does not encumber any transfer of the real property.

No equivalent provision.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

recorded:

(1) [;] the notice of lis pendens and any information derived or that could be derived from the notice:

(A) [(+)] does not:

(i) [(A)] constitute constructive or actual notice of any matter contained in the notice or of any matter relating to the action in connection with which the notice was filed [~~proceeding~~];

(ii) [(B)] create any duty of inquiry in a person with respect to the property described in the notice; or

(iii) [(C)] affect the validity of a conveyance to a purchaser for value or of a mortgage to a lender for value; and

(B) [(2)] is not enforceable against a purchaser or lender described by Paragraph (A)(iii) [Subdivision (1)(C)], regardless of whether the purchaser or lender knew of the lis pendens action; and

(2) an interest in the real property may be sold or encumbered free of all matters asserted or disclosed in the notice and all claims or other matters asserted or disclosed in the action in connection with which the notice was filed.

SECTION 2. The change in law made by this Act applies only to a certified copy of an order expunging a notice of lis pendens recorded on or after the effective date of this Act. A certified copy of an order expunging a notice of lis pendens recorded before the effective date of this Act is governed by the law in effect at that time, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2017.