

## **BILL ANALYSIS**

C.S.H.B. 1833  
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Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been noted that because of the relative ease with which complex business entities can be created through online legal services or otherwise, it may be difficult to determine whether a given individual has the authority to sell real property owned by such an entity. C.S.H.B. 1833 seeks to provide certainty regarding real property transactions through the execution and recording of an affidavit.

### **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. 1833 amends the Property Code to authorize an applicable domestic entity or foreign entity that is active or in good standing under the laws of the entity's jurisdiction of formation to execute and record an affidavit identifying one or more individuals with authority to transfer on behalf of the entity an estate or interest in real property in the name of the entity. The bill authorizes the transfer of such an estate or interest in real property by one or more individuals identified as authorized to do so in the affidavit. The bill sets out the required contents of the affidavit and requires the affidavit to be executed under penalty of perjury by an individual who satisfies certain criteria. The bill authorizes an individual to execute the affidavit on behalf of a domestic entity that files a franchise tax public information report if, on the date the affidavit is executed, the individual is a director or officer of a corporation, a manager or member of a limited liability company, a general partner of a limited partnership, or a director or officer of a professional corporation or association, as applicable. The bill prohibits the individual executing the affidavit from being the individual authorized to transfer an estate or interest in the real property described in the affidavit, subject to certain exceptions.

C.S.H.B. 1833 authorizes the affidavit to be recorded in the county clerk's office in the county in which the real property is located and authorizes the county clerk to collect a fee for recording the affidavit in the amount authorized for recording a transfer of real property. The bill establishes that an affidavit that complies with the bill's provisions and is filed in the county clerk's office is conclusive proof of the factual matters stated in the affidavit and that a bona fide purchaser or mortgagee for value, a successor or assign of such a purchaser or mortgagee, or a third party without actual knowledge that the representations contained in the affidavit are incorrect may rely conclusively on the affidavit. The bill exempts a person who in good faith acts in reliance on such an affidavit, without actual knowledge that the representations contained

in the affidavit are incorrect, from liability to any person for that act and authorizes a person who so acts to assume without inquiry the existence of the facts contained in the affidavit. The bill establishes that nothing in the bill's provisions requires a person to rely on an affidavit.

C.S.H.B. 1833 makes the bill's provisions inapplicable to a domestic nonprofit entity or foreign entity that is a charitable organization exempt from federal income tax under the federal Internal Revenue Code of 1986 or that is described by certain provisions of that code.

### **EFFECTIVE DATE**

September 1, 2019.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1833 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a provision excluding certain domestic nonprofit and foreign entities from the application of its provisions.

The substitute extends an applicable entity's authority to identify by affidavit an individual who is authorized to transfer certain property on behalf of the entity to authorize the identification of one or more such individuals.

The substitute includes a provision authorizing certain individuals, as applicable to the type of entity, to execute the affidavit on behalf of a domestic entity that files a franchise tax public information report. The substitute includes additional exceptions to the prohibition against the individual executing the affidavit being the individual authorized by the affidavit.

The substitute does not specifically include a title insurance company among the entities that may rely conclusively on the affidavit but includes instead a third party without actual knowledge that the representations contained in the affidavit are incorrect.

The substitute includes a provision establishing that nothing in its provisions requires a person to rely on the affidavit.