

BILL ANALYSIS

Senate Research Center
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S.B. 109
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the 2017 Legislative Session, the Dallas County District Attorney's Office began its current focus on crimes that take advantage of and exploit seniors, the disabled, and other vulnerable citizens with the passage of S.B. 998 that extended the statute of limitations on offenses of this kind from three to seven years. The work to protect seniors and others who may be of diminished capacity continues this session with S.B. 109.

According to the Dallas County District Attorney, across the country on average, about \$36 billion per year is lost by seniors to various forms of financial abuse. S.B. 109 would amend Section 32.46(a), Penal Code, that pertains to securing execution of a document by deception. The new language amends Section 32.46(a) by making a transaction illegal if it is entered into without the buyer's or customer's effective consent.

Effective consent is taken from the Chapter 31.01, Penal Code, and makes entering into an agreement illegal if the seller knows that the subject, may at the time, not be capable of making good decisions due to their age, mental state, or other factors. The section also states that a person cannot be induced, coerced, or enter into an agreement based on deception by the seller.

Under current law, the charges available for committing an offense of exploitation against the elderly, the disabled, or other persons of diminished capacity carry a maximum third degree felony penalty. By adding the effective consent element, the penalty for commission of offenses under S.B. 109 would be based on the monetary value of the agreement or transaction in question.

S.B. 109 also amends Sections 33.013 and 41.008, Civil Practices and Remedies Code, extends the statute of limitations for filing criminal charges under Chapter 12.01, Code of Criminal Procedure, and contains employment considerations under Chapter 250.006, Health and Safety Code.

As proposed, S.B. 109 amends current law relating to the criminal offense of fraudulent securing of document execution.

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 the heading to Section 32.46, Penal Code, to read as follows:

Sec. 32.46. FRAUDULENT SECURING OF DOCUMENT EXECUTION.

SECTION 2. Amends Section 32.46(a), Penal Code, to provide that a person commits an offense if the person, with the intent to defraud or harm any person, causes another person, without that person's effective consent, to sign or execute any document affecting property or service or the pecuniary interest of any person, or causes a public servant, without the public servant's effective consent, rather than causes or induces a public servant, to file or record any purported judgment

or other document purporting to memorialize or evidence an act, an order, a directive, or process of a purported court, judicial entity, or judicial officer. Makes a conforming and a nonsubstantive change.

SECTION 3. Amends Section 32.46(d), Penal Code, by adding Subdivision (3), to provide that "effective consent" includes consent by a person legally authorized to act for the owner, and that consent is not effective under certain circumstances.

SECTION 4. Amends Section 33.013(b), Civil Practice and Remedies Code, to make conforming and nonsubstantive changes.

SECTION 5. Amends Section 41.008(c), Civil Practice and Remedies Code, to make conforming changes.

SECTION 6. Amends Article 12.01, Code of Criminal Procedure, to make conforming changes.

SECTION 7. Amends Section 250.006(b), Health and Safety Code, to make conforming changes.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2021.