

BILL ANALYSIS

S.B. 16
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

According to AARP, the FBI's Internet Crime Complaint Center (IC3) found that almost 1,500 Americans ages 60 and older lost \$65 million in real estate scams in 2023, the FBI reported an overall 14 percent increase in complaints filed by older victims with the IC3 since 2022, and deed fraud is within this category of fraud. Also, because bad actors seeking to commit deed fraud and title theft are so sophisticated, the conveyance documents that can be produced to commit these acts are often quite well-prepared and can fool even the most well-trained clerks in a county clerk's office, according to AARP. Further, once the fake deed is recorded, scammers may sell the home, take out loans against it, or even rent it out to make money, according to AARP. Finally, according to AARP, older adults are frequently targeted for deed fraud, as they are more likely than younger adults to have more than one home and to have their home or homes paid off, and the rise of electronic transactions makes it is easier than ever for bad actors to commit these crimes. While these crimes can technically be prosecuted under existing statutes, those statutes are not designed to prosecute these crimes most efficiently due to the complex nature of the crimes and the complex nature of any restitution, as suggested by recent news reports. S.B. 16 seeks to address these issues by, among other things, creating the offenses of real property theft and real property fraud and by providing restitution for real property theft.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes 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

S.B. 16 amends the Code of Criminal Procedure, Government Code, Local Government Code, Penal Code, and Property Code to create the offenses of real property theft and real property fraud, provide restitution for real property theft, and establish filing and recording requirements for certain documents concerning real property.

Criminal Offenses

Real Property Theft

S.B. 16 amends the Penal Code to create the offense of real property theft for a person who does the following:

- brings about or attempts to bring about a transfer or purported transfer of real property or title to real property or a nonpossessory interest in real property, to any transferee or intended transferee:
 - without the effective consent of the owner of the real property or the nonpossessory interest in real property; and
 - with the intent to deprive the owner of the real property or the nonpossessory interest in the real property; or
- sells or otherwise transfers or encumbers, or attempts to sell or otherwise transfer or encumber, real property or title to real property or a nonpossessory interest in real property to or with respect to a person in exchange for a benefit from any person:
 - without the effective consent of the owner of the benefit; and
 - with the intent to deprive the owner of the benefit.

For these purposes, the bill specifies that the term "nonpossessory interest" includes an interest that may be conveyed by a quitclaim deed or conditional transfer and that the term "owner" includes an owner's estate and known successors in interest if the owner is deceased. The bill establishes that "transfer" has the meaning assigned by Property Code provisions relating to an affidavit of authority to transfer an estate or interest in real property.

S.B. 16 establishes the following penalties for the offense of real property theft in which the actor brings about or attempts to bring about a transfer or purported transfer of real property or title to real property or a nonpossessory interest in real property:

- a second degree felony if it is shown on the trial of the offense that the market value of the real property is less than \$300,000; and
- a first degree felony if it is shown on the trial of the offense that the market value of the real property is \$300,000 or more.

For these purposes, the market value of real property is the market value of that property for the tax year in which the offense was committed, as indicated on the appraisal roll for the appraisal district in which the property is located.

S.B. 16 establishes the following penalties for the offense of real property theft in which the actor sells or otherwise transfers or encumbers, or attempts to sell or otherwise transfer or encumber, real property or title to real property or a nonpossessory interest in real property:

- a third degree felony if it is shown on the trial of the offense that the value of the benefit received is less than \$30,000;
- a second degree felony if it is shown on the trial of the offense that the value of the benefit received is \$30,000 or more but less than \$150,000; and
- a first degree felony if it is shown on the trial of the offense that the value of the benefit received is \$150,000 or more.

S.B. 16 increases the penalty for real property theft to the next higher category if it is shown on the trial of the offense that at the time of the offense:

- the owner of the real property or nonpossessory interest in real property or the owner of the benefit was an elderly individual, a disabled individual, or a nonprofit organization; or
- the real property was subject to a property tax exemption under applicable Tax Code provisions as an individual's residence homestead.

The bill establishes that "disabled individual" and "elderly individual" have the meanings assigned by Penal Code provisions relating to assault of a child, elderly individual, or disabled individual. If conduct that constitutes an offense of real property theft also constitutes an offense under another law, the actor may be prosecuted under the bill's provisions, the other law, or both. Accordingly, the bill revises the definition of "appropriate" for purposes of theft offenses by specifying that the term applies to a transfer or purported transfer of title to or other nonpossessory interest in property other than real property.

Real Property Fraud

S.B. 16 creates the offense of real property fraud for a person who does the following:

- intentionally or knowingly makes a materially false or misleading written statement to obtain real property; or
- 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 real property or any person's interest in real property; or
 - causes a public servant, without the public servant's effective consent, to file or record any purported judgment or other document purporting to memorialize or evidence title to real property, or any person's interest in real property, or a lien or claim against real property or against any person's interest in real property.

For purposes of the offense, "deception" has the meaning assigned by Penal Code provisions relating to theft offenses and "document" and "effective consent" have the meanings assigned by Penal Code provisions relating to the offense for the fraudulent securing of document execution.

S.B. 16 establishes the following penalties for the offense of real property fraud:

- a second degree felony if it is shown on the trial of the offense that the market value of the real property or the value of the interest in the real property is less than \$300,000; or
- a first degree felony if it is shown on the trial of the offense that the market value of the real property or the value of the interest in the real property is \$300,000 or more.

For these purposes, the market value of real property is the market value of that property for the tax year in which the offense was committed, as indicated on the appraisal roll for the appraisal district in which the property is located.

S.B. 16 increases the penalty for real property fraud to the next higher category if it is shown on the trial of the offense that at the time of the offense:

- the owner of the real property was an elderly individual, a disabled individual, or a nonprofit organization; or
- the real property was subject to a property tax exemption under the applicable Tax Code provisions as an individual's residence homestead.

The bill establishes that "disabled individual" and "elderly individual" have the meanings assigned by Penal Code provisions relating to assault of a child, elderly individual, or disabled individual.

Statute of Limitations

S.B. 16 amends the Code of Criminal Procedure to set the statute of limitations period for real property theft and real property fraud at ten years from the date of the commission of the offense. This provision does not apply to a felony offense if the prosecution of that offense becomes barred by limitation before the bill's effective date. The prosecution of that offense remains barred as if the bill had not taken effect.

Applicability

S.B. 16 applies only to an offense committed on or after the bill's effective date. An offense committed before the bill's effective date is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For these purposes, an offense was committed before the bill's effective date if any element of the offense was committed before that date.

Procedures for Real Property Theft and Fraud

S.B. 16 amends the Code of Criminal Procedure to require the judgement of conviction or order of deferred adjudication for an offense of real property theft or real property fraud to include the

following:

- the street address or legal description of the real property that the court finds to be included in the conduct constituting the offense; and
- the identifying reference number assigned by the county clerk to each document:
 - that relates to real property that the court finds to be included in the conduct constituting the offense; and
 - that is recorded in the real property records of the county.

The bill requires the prosecutor or the court clerk, as determined by local court rule, to file the following with the county clerk not later than the 10th day after the date the court enters a judgment of conviction or order of deferred adjudication for an offense of real property theft or real property fraud:

- a certified copy of the judgment or order for recording in the real property records of the county where the real property that is the subject of the offense is located;
- a statement explaining the filing; and
- if the judgment or order does not include the requisite information, a certified copy of the indictment.

The bill establishes that a judgment of conviction or order of deferred adjudication for either offense is not invalid solely because the judgment or order fails to comply with these procedures.

Restitution for Real Property Theft

S.B. 16 requires the court to order a defendant convicted of or placed on deferred adjudication community supervision for real property theft to pay restitution, as applicable, as follows:

- for an offense of real property theft in which the actor brings about or attempts to bring about a transfer or purported transfer of real property or title to real property or a nonpossessory interest in real property, to the owner of the real property or nonpossessory interest in real property that is the subject of the offense in an amount equal to the value of the real property or nonpossessory interest;
- for an offense of real property theft in which the actor sells or otherwise transfers or encumbers, or attempts to sell or otherwise transfer or encumber, real property or title to real property or a nonpossessory interest in real property, to the owner of the benefit that is the subject of the offense in an amount equal to the value of the benefit;
- to a title company or insurer that paid a claim based on the conduct constituting the offense, in an amount equal to the value of the payment made by the title company or insurer; or
- to the owner of the real property or nonpossessory interest in real property or the owner of the benefit in an amount equal to, as applicable:
 - the value of losses incurred as a reasonably foreseeable result of the conduct constituting the offense, including loss of or damage to:
 - personal property, including machinery or vehicles located on or in the real property that is the subject of the offense;
 - trees, landscaping, flora, and growing or harvested agricultural commodities placed or maintained on the real property by the owner, regardless of the state of growth; or
 - a structure attached to the real property that is not included in the market value of the property for the tax year in which the offense was committed, as indicated on the appraisal roll for the appraisal district in which the real property is located; or
 - reasonable attorney's fees and court costs related to an action brought to quiet title to or dispute the conveyance or possession of the real property that is the subject of the offense.

S.B. 16 prohibits the court from ordering a defendant convicted of or placed on deferred adjudication community supervision for an offense of real property theft in which the actor brings about or attempts to bring about a transfer or purported transfer of real property or title

to real property or a nonpossessory interest in real property to pay the requisite restitution if, before judgment is entered in the case, the defendant does the following:

- is listed in the county real property records as the owner of the real property or nonpossessory interest in real property that is the subject of the offense;
- executes a quitclaim deed or other instrument conveying the title or interest to the owner of the property or interest;
- files for recording in the county real property records the quitclaim deed or other instrument; and
- provides to the court a certified copy of the recorded quitclaim deed or other instrument.

The bill requires the court to reduce the amount of restitution that such a defendant is ordered to pay by an amount equal to the value of a payment made by a title company or insurer for a claim based on the conduct constituting the offense to the person to whom the court orders the defendant to pay restitution.

Certain Fraudulent Records or Documents

S.B. 16 amends the Local Government Code to replace the authorization for a county clerk in a county that allows for electronic filing of documents in the real property records of the county to require a person presenting a document in person for filing in the real property records to present a photo identification to the clerk with a requirement for a county clerk to require a person presenting a document in person for filing in the real property records of the county to present a photo identification to the clerk. Accordingly, the bill removes the clerk's discretion to copy the photo identification or record information from the photo identification.

S.B. 16, effective January 1, 2026, amends the Government Code to require a county clerk, if an individual advises the county clerk that a document or instrument that purports to convey an interest in real property and that was filed for recording with the county clerk after that date is fraudulent, to provide to law enforcement with jurisdiction in the area where the real property is located notice of the allegation and the applicable photo identification information provided to the county clerk by the person who presented the document or instrument to the county clerk for filing.

Instruments Concerning Real Property

S.B. 16 amends the Property Code to expand the conditions that must be met before an instrument conveying real property may be recorded by requiring any individual presenting the instrument in person for recording to present a photo identification to the county clerk, as required by the bill's provisions.

EFFECTIVE DATE

Except as otherwise provided, the 91st day after the last day of the legislative session.