

BILL ANALYSIS

H.B. 4204
By: Harless
Trade, Workforce & Economic Development
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill author has informed the committee that some Texas homeowners have fallen victim to a deceptive real estate practice in which a company offers them small up-front cash payments in exchange for the right to exclusively list their home for future sale, sometimes for up to 40 years, and then records a memorandum of the agreement as a lien on the property's title. These agreements can make it difficult for homeowners to refinance, access home equity, or transfer their property, and homeowners who try to list their property with a different agent may face harsh financial penalties that they were not made aware of. H.B. 4204 seeks to address this issue by making these predatory agreements unenforceable, prohibiting their recording in property records, and creating penalties if they are recorded.

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

H.B. 4204 amends the Business & Commerce Code, with respect to deceptive trade practices, to establish that a service agreement is unfair if any part of the service subject to the agreement is not to be performed on or before the first anniversary of the date the agreement is entered into and, as follows:

- purports to run with the land or bind current owners or successors in title to specified real property located in Texas;
- allows for assignment of the right to provide service without notice to and consent of the owner of residential real estate; or
- purports to create a lien, encumbrance, or other real property security interest.

Such a service agreement is void and unenforceable, and a person that enters into such a service agreement with a consumer commits a false, misleading, or deceptive act or practice actionable under the Deceptive Trade Practices-Consumer Protection Act. The bill exempts the following from the application of these provisions regarding unfair service agreements:

- a home warranty or similar guarantee that is designed to guarantee or warrant the repair or service of an appliance, system, or component of a residential property for a fixed period;
- an insurance contract;
- an option or right of refusal to purchase the residential real estate;

- a declaration created in the formation of a common interest community or an amendment to the declaration;
- a maintenance or repair agreement entered into by a homeowners' association in a common interest community;
- a mortgage loan or a commitment to make or receive a mortgage loan;
- a security agreement under the Uniform Commercial Code relating to the sale or lease of personal property or fixtures; and
- water, sewer, electrical, telephone, cable, or other regulated utility service providers.

H.B. 4204 establishes that its provisions relating to the characteristics of an unfair service agreement do not impair the rights granted by state law with respect to the priority with which a mechanic's lien is attached and enforced over other liens.

H.B. 4204 prohibits a person from filing for recording or causing to be filed for recording an unfair service agreement or notice or memorandum of an unfair service agreement. The bill creates a Class A misdemeanor offense for a person who files for recording or causes to be filed for recording an unfair service agreement or notice or memorandum of an unfair service agreement. The bill authorizes a county clerk to refuse to record an unfair service agreement and establishes that if such an agreement is recorded, it does not provide actual or constructive notice against an otherwise bona fide purchaser or creditor.

H.B. 4204 authorizes any person with an interest in the real property that is the subject of an unfair service agreement, if that agreement or a notice or memorandum of the unfair service agreement is recorded, to file an application with the district court in the county in which the agreement is recorded for the issuance of an order declaring that the agreement is void and unenforceable. The bill entitles any such person, if an unfair service agreement or a notice or memorandum of the service agreement is recorded, to recover the following from the service provider who recorded the agreement:

- actual damages; and
- reasonable attorney's fees and other litigation costs reasonably incurred.

H.B. 4204 defines the following terms:

- "residential real estate" as real property located in Texas used primarily for personal, family, or household purposes and improved by one to four dwelling units;
- "service agreement" means a contract under which a person agrees to provide services in connection with the maintenance of residential real estate or the purchase or sale of residential real estate; and
- "service provider" means an individual or entity that provides services to a person.

H.B. 4204 applies only to a contract entered into on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2025.