

BILL ANALYSIS

S.B. 2611
By: West
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that in Texas, real property theft and fraud have increased exponentially over the last several years, forcing innocent landowners to fight to maintain their property rights. S.B. 2611 seeks to insulate property owners in Texas from bad actors and strengthen the ability of law enforcement and prosecutors to conduct investigations, while also providing actual remedies for victims of these crimes. The bill sponsor has also informed the committee that in Texas, theft of real property looks no different than theft of physical items, like handbags and wallets, for the purposes of certain reporting by the Office of Court Administration (OCA) and the Department of Public Safety (DPS) and that sometimes, a real property thief, even after conviction, may remain the apparent owner in the real property records. S.B. 2611 also seeks to provide restitution to the victims who have paid out fraudulent claims, providing an extraordinary solution for these extraordinary crimes against property owners in Texas.

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. 2611 amends the Code of Criminal Procedure, Government Code, and Penal Code to create the offenses of real property theft and real property fraud and to revise provisions relating to the status of certain documents or instruments concerning real or personal property.

Criminal Offenses

Real Property Theft

S.B. 2611 amends the Penal Code to create the offense of real property theft for a person who, as follows:

- 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 defines "transfer" by reference to Property Code provisions relating to an affidavit of authority to transfer.

S.B. 2611 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; or
- 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. 2611 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; or
- 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. 2611 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 a person 65 years of age or older 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.

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.

Real Property Fraud

S.B. 2611 creates the offense of real property fraud for a person who, as follows:

- 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, the bill defines "deception" by reference to Penal Code provisions governing theft and defines "document" and "effective consent" by reference to Penal Code provisions relating to fraudulent securing of document execution.

S.B. 2611 establishes the following penalties for 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. 2611 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 a person 65 years of age or older 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.

Statute of Limitations

S.B. 2611 amends the Code of Criminal Procedure to set the statute of limitations period for real estate theft and real estate 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.

Fraudulent Filing of Financial Statement

S.B. 2611 amends the Penal Code to increase from a Class A misdemeanor to a state jail felony the penalty for an offense for the fraudulent filing of a financing statement involving a person who knowingly presents for filing or causes to be presented for filing a financing statement that the person knows contains a material false statement or is groundless. Accordingly, the bill increases the penalty enhancement for such an offense from a state jail felony to a third degree felony for a person who commits the offense with the intent to defraud or harm another.

Applicability

S.B. 2611 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. 2611 amends the Code of Criminal Procedure to provide for the following if an offense of real estate theft or real estate fraud involves more than one parcel of real property:

- for a case determined by a trial by jury:
 - the verdict form must clearly identify each parcel of real property by street address or legal description of the real property;
 - the jury foreperson must indicate whether the jury unanimously finds that the parcel of real property is included in the conduct constituting the offense; and
 - the judgment must reflect the jury's verdict for each parcel of real property that the jury unanimously finds to be included in the conduct constituting the offense;

- for a case determined by a judge without a jury:
 - the judge in rendering the verdict must state for each parcel of real property, whether the judge finds the property to be included in the conduct constituting the offense; and
 - the judgment must reflect the judge's finding for each parcel of real property that the judge finds to be included in the conduct constituting the offense; and
- for a case determined based on the defendant's plea, if the indictment does not clearly identify each parcel of real property alleged to be included in the conduct constituting the offense, the prosecutor must provide that information to the court and the court must include the information in the judgment.

The bill requires a judgment of conviction entered for those offenses to include the street address or legal description of the real property and, for each document that relates to the real property that is the subject of the offense and that is recorded in the real property records of the county, the identifying reference number assigned to that document by the county clerk.

S.B. 2611 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 for an offense of real estate theft or real estate fraud:

- a certified copy of the judgment 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 does not comply with the content requirements for a judgement of conviction entered for either offense, a certified copy of the indictment.

The bill establishes that a judgment for either offense is not invalid solely because the judgment fails to comply with those content or filing requirements.

Mandatory Restitution for Real Estate Theft

S.B. 2611 requires the court to order a defendant convicted of an offense of real property theft to pay the following for restitution, as applicable:

- 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 the result of the conduct constituting the offense, including loss of personal property located on or in the real property that is the subject of the offense;
 - the cost of repairing damage caused by or resulting from the conduct constituting the offense; 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. 2611 prohibits the court from ordering a defendant convicted of 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 restitution if, before judgment is entered in the case, the defendant does the following:

- with respect to 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 if the defendant is listed as the owner of the property or interest in the county real property records;
- files for recording in the county property records a copy of the quitclaim deed or other instrument; and
- files a certified copy of the recorded quitclaim deed or other instrument with the court.

The bill requires the court to reduce the amount of restitution that 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 Documents or Instruments

Fraudulent Document or Instrument

S.B. 2611 amends the Government Code to establish that a document or instrument is presumed to be fraudulent if the document or instrument purports to create a lien or assert a claim against real or personal property or an interest in real or personal property and the document or instrument is referenced in a certified copy of the judgment for an offense of theft, fraud, or perjury and other falsification. Current law establishes that a document or instrument is presumed to be fraudulent if the document or instrument purports to create a lien or assert a claim against real or personal property or an interest in real or personal property and meeting one of the following conditions:

- the document or instrument is not a document or instrument provided for by the constitution or laws of Texas or of the United States;
- the document or instrument is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under state law, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person; or
- the document or instrument is not an equitable, constructive, or other lien imposed by a court with jurisdiction created or established under the constitution or laws of Texas or of the United States.

However, the bill revises that provision by instead requiring all of those conditions to be met and, with respect to the condition that the document or instrument is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the property or an interest in the property, if required under state law, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person, does the following:

- specifies that the obligor, debtor, or owner to which the condition applies is the purported obligor, debtor, or grantor; and
- expands the applicability of the condition to include that the document or instrument is not created by implied or express consent or agreement of the purported grantor of the property or an interest in the property, required under state law, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person.

S.B. 2611 further revises statutory provisions relating to fraudulent documents or instruments by doing the following:

- with respect to the requirement for a county clerk who believes in good faith that a document filed with the county clerk to create a lien is fraudulent to take certain actions, specifying that the lien is against a claim to or interest in real or personal property and including as an alternative condition under which to take those actions the county clerk believing in good faith that a document filed with the clerk to assert a claim to or interest in real or personal property is fraudulent; and

- with respect to the requirement for such a clerk to request that the prospective filer provide to the county clerk additional documentation supporting the existence of the lien, such as a contract or other document that contains the alleged debtor or obligor's signature:
 - includes among the documentation that must be provided additional documentation supporting the existence of the claim or interest; and
 - includes among such supporting documentation a contract or other document that contains the alleged grantor's signature.

Current law authorizes the presumption that a document or instrument is fraudulent if the document or instrument purports to create a lien or assert a claim against real or personal property or an interest in real or personal property and the document or instrument is filed by an inmate or on behalf of an inmate to be rebutted by providing the filing officer in the filing office in which the document is filed or recorded the original or a copy of a sworn and notarized document signed by the obligor, debtor, or owner of the property designated as collateral stating that the person entered into a security agreement with the inmate and authorized the filing of the financing statement. The bill revises this requirement by changing the documentation that may be provided to the applicable filing officer for purposes of rebutting that presumption to the original or a copy of a sworn and notarized document signed by the obligor, debtor, grantor, or owner of the property or interest that is designated in the document or instrument that purports to create a lien or assert a claim against the property or interest stating that the person entered into an agreement with the inmate, including a security agreement for which the obligor, debtor, grantor, or owner of the property or interest authorized the filing of the financing statement.

Action on Fraudulent Document or Instrument

Current law authorizes a person who is the purported debtor or obligor or who owns real or personal property or an interest in real or personal property and who has reason to believe that the document purporting to create a lien or a claim against the property or an interest in the property previously filed or submitted for filing and recording is fraudulent to complete and file with the district clerk a motion, verified by affidavit by a completed form for ordinary certificate of acknowledgment, that contains certain information in a suggested form. S.B. 2611 revises this authorization by doing the following:

- changing the person who may file the motion to a person who owns real or personal property or an interest in real or personal property that is the subject of a document or instrument recorded in or filed for recording in the records of a county, or a person who is the purported obligor, debtor, or grantor named in the document or instrument, who has reason to believe that the document or instrument is fraudulent; and
- replacing the condition that the motion be verified by affidavit by a completed form for ordinary certificate of acknowledgment that contains, at a minimum, the requisite information in a specified suggested form with the condition that the motion be verified by an affidavit in substantially a specified form.

Accordingly, the bill revises the contents of the suggested form of the motion by doing the following:

- including among those contents the name of the purported obligor or grantor, in addition to the name of the purported debtor, and a description of the property, as an alternative to the name of such entities;
- specifying that the applicable movant is the person who owns the real or personal property or the interest in real or personal property described in or the purported obligor, debtor, or grantor named in the document or instrument attached to the motion;
- requiring the form to acknowledge that the applicable clerk stamped the filed and recorded document or instrument with the applicable instrument number or other reference number;
- requiring the form to include a description of the real or personal property, including the address of the real property, a legal description of the real property, if different from the legal description contained in the attached document or instrument, and the description of personal property;

- expanding the allegations that may be included in the form to include an allegation that the attached document or instrument is presumed fraudulent because the document or instrument does the following:
 - purports to create a lien or assert a claim against real or personal property or an interest in real or personal property and the document or instrument is filed by an inmate or on behalf of an inmate; or
 - purports to create a lien or assert a claim against real or personal property or an interest in real or personal property and the document or instrument is referenced in a certified copy of the judgment for an offense of theft, fraud, or perjury and other falsification;
- replacing the statement in the form that a movant alleges that an attached document or instrument is fraudulent and should therefore not be accorded lien status with a statement that a lien purported to be created or claim purported to be asserted by the document or instrument is not valid; and
- replacing the statement in the form that the movant requests the court to review the attached documentation or instrument and enter an order determining whether it should be accorded lien status, together with such other orders as the court deems appropriate, with a statement that the movant requests the court to review the attached document or instrument and enter an order determining whether the document or instrument creates a valid lien or asserts a valid claim, together with such other orders as the court deems appropriate.

S.B. 2611 requires a form for judicial finding of fact and conclusion of law regarding a document or instrument purporting to create a lien or assert claim against real or personal property to provide spaces for the following information:

- the name of the purported obligor or grantor, in addition to the name of the purported debtor, and a description of the property, as an alternative to the name of such entities;
- the instrument number or other reference number of the document or instrument;
- a description of the real or personal property purported to be subject to the lien created or claim asserted by the document or instrument, including the address of the real property, a legal description of the real property if different from the legal description contained in the attached document or instrument, and a description of the personal property.

The bill also revises that form as follows with respect to the portion providing a checklist regarding a court's findings:

- makes the checklist applicable regarding the court's orders, in addition to the court's findings;
- makes the conditions relating to the documentation or instrument attached to the motion that is asserted against real or personal property or an interest in real or personal property applicable when the court declines to agree to find the document or instrument invalid, because the court finds all of those conditions are true;
- with respect to the condition that the document or instrument is created by implied or express consent or agreement of the obligor, debtor, or grantor, or the owner of the real or personal property or an interest in the real or personal property, if required under state law, or by consent of an agent, fiduciary, or other representative of that person, clarifies that the alternative is by implied or express consent or agreement of an agent, fiduciary, or other representative of that person;
- includes as a condition under which the court may decline to agree to find the document or instrument invalid that the court finds that there is no apparent basis to presume the document or instrument is fraudulent;
- provides for when the court agrees and concludes as a matter of law that the document or instrument attached to the motion does not create a valid lien or assert a valid claim against real or personal property or an interest in real or personal property based on a finding that one or more of the following conditions are true:

- the document or instrument is not asserted against real or personal property or an interest in real or personal property and there is no valid lien created or claim asserted by the document or instrument;
- the document or instrument is presumed to be fraudulent because it meets certain existing conditions on the form, excluding the condition, as removed by the bill, that the document or instrument is presumed to be fraudulent because it is not asserted against real or personal property or an interest in real or personal property and there is no valid lien or claim created by the applicable documentation or instrument;
- the document or instrument is filed by an inmate or on behalf of an inmate and is therefore presumed fraudulent; and
- the document or instrument attached to the motion is presumed fraudulent because the document or instrument is referenced in a certified copy of the judgment for a theft, fraud, or perjury and other falsification offense in a specific, stated criminal action;
- with respect to the stated criminal action, includes spaces for the cause number, the venue in which the criminal action appeared, and the date of the action; and
- includes a space for the court to specify any further orders.

EFFECTIVE DATE

September 1, 2025.