

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 2611
By: West
Criminal Justice
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2024, one of the most recognizable properties in our country drew national attention when an individual attempted to steal the property. This property was none other than Graceland! In Texas, real property theft and fraud has increased exponentially over the last several years causing more innocent land owners to have to fight to maintain their property rights. This bill is a nuts to bolts effort to insulate property owners of Texas from bad actors and strengthen investigations and prosecutions while providing actual remedies for victims of these crimes.

Right now, theft of real property looks no different than theft of a purse for the purposes of Office of Court Administration and Department of Public Safety reporting. Same with real property fraud. Working with these agencies this bill moves language from the theft and fraud statutes into specific criminal codes for real property theft and real property fraud to reinforce that these are crimes against real property owners and buyers, banks lending on real property, and title companies insuring title.

Currently, a real property thief, even after conviction, is still the apparent owner in the real property records. Let that sink in. This bill facilitates ways to help victims return title to their names in civil court that they do not currently have. Critical tools are included in this bill for real property owners to have this issue addressed by a civil court to an effort to clear their titles.

This bill also provides for restitution to the victim, lending agency, and title companies that have paid out fraudulent claims providing for extraordinary solution for these extraordinary crimes against property owners in Texas.

Section 1 creates a 10-year statute of limitations period for real estate theft and real estate fraud.

Section 2 requires that the judgment identify the real property that is subject of the theft and requires the judgment to be filed in real property record.

Section 3 requires a trial court to order restitution for the value, the value of the benefit, the value paid by title insurance, the value of actual loss, costs of repairing any damage to property, or attorney's fees related to an action to quiet title. Restitution is not required or may be reduced for the value of interest if the defendant executes a quit claim deed to remove the cloud of title.

Section 4 clarifies that a judge may clear title without notice when a document or instrument purports to create a lien or claim on real or personal property and the document reflects the real or personal property is subject to a criminal judgment.

Sections 5 and 6 allow a victim an avenue to clear title to real property when they are the victim of real property theft or fraud, including necessary pleadings necessary for the action.

Section 7 moves the offense of theft of real property from the theft statute into its own "new" Section 31.22 allowing for the tracking of this offense in the state of Texas. This section also adds enhancements for targeting the elderly and homesteads.

Section 8 moves the offense of real property fraud from the fraud statute into its own "new" Section 32.56. This section also adds enhancements for targeting the elderly and homesteads.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 2611 amends current law relating to the status of certain documents or instruments concerning real or personal property, creates the criminal offenses of real property theft and real property fraud and establishes a statute of limitations for those offenses, harmonizes other statute of limitations provisions, and increases a criminal penalty.

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. Reenacts Article 12.01, Code of Criminal Procedure, as amended by Chapters 93 (S.B. 1527), 118 (H.B. 467), 127 (H.B. 1207), 422 (H.B. 1769), 520 (H.B. 3025), 689 (H.B. 1506), 704 (H.B. 2019), 709 (H.B. 2190), 768 (H.B. 4595), 830 (H.B. 2187), 885 (H.B. 4635), and 1041 (S.B. 129), Acts of the 88th Legislature, Regular Session, 2023, and amends it, as follows:

Art. 12.01. FELONIES. Authorizes felony indictments, except as provided in Articles 12.015 (Racketeering and Unlawful Debt Collection) and 12.03 (Aggravated Offenses, Attempt, Conspiracy, Solicitation, Organized Criminal Activity), to be presented within these limits, and not afterward:

- (1) makes nonsubstantive changes to this subdivision;
- (2) ten years from the date of the commission of certain offenses, including real estate theft under Section 31.22, Penal Code, or real estate fraud under Section 32.56, Penal Code;
- (3) makes no changes to this subdivision;
- (4) five years from the date of the commission of certain offenses, including abandoning or endangering an elderly or disabled individual, rather than a child, elderly individual, or disabled individual; or
- (5) makes no changes to this subdivision;
- (6) 20 years from the 18th birthday of the victim of one of certain offenses, including trafficking of a child, rather than persons, under certain provisions of the Penal Code; or
- (7)-(10) makes nonsubstantive changes to these subdivisions.

Makes nonsubstantive changes to this article.

SECTION 2. Amends Title 1, Code of Criminal Procedure, by adding Chapter 5C, as follows:

CHAPTER 5C. PROCEDURES FOR REAL PROPERTY THEFT AND FRAUD

Art. 5C.001. VERDICT; JUDGMENT. (a) Provides that if an offense under Section 31.22 or Section 32.56, Penal Code, involves more than one parcel of real property:

- (1) for a case determined by a trial by jury:
 - (A) the verdict form is required to clearly identify each parcel of real property by street address or legal description of the real property;

(B) the jury foreperson is required to indicate whether the jury unanimously finds that the parcel of real property is included in the conduct constituting the offense; and

(C) the judgment is required to 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;

(2) for a case determined by a judge without a jury:

(A) the judge in rendering the verdict is required to state, for each parcel of real property, whether the judge finds the property to be included in the conduct constituting the offense; and

(B) the judgment is required to 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

(3) 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 is required to provide that information to the court. Requires the court to include the information in the judgment.

(b) Requires that a judgment of conviction entered for an offense under Section 31.22 or Section 32.56, Penal Code, 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.

Art. 5C.002. JUDGMENT TO BE FILED WITH COUNTY CLERK. Requires the prosecutor or the court clerk, not later than the 10th day after the date the court enters a judgment for an offense under Section 31.22 or Section 32.56, Penal Code, as determined by local court rule, to file with the county clerk 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 Article 5C.001(b), a certified copy of the indictment.

Art. 5C.003. EFFECT OF NONCOMPLIANCE ON JUDGMENT. Provides that a judgment for an offense under Section 31.22 or Section 32.56, Penal Code, is not invalid solely because the judgment fails to comply with Article 5C.001(b) or 5C.002.

SECTION 3. Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.0376, as follows:

Art. 42.0376. MANDATORY RESTITUTION FOR REAL ESTATE THEFT. (a) Requires the court, except as provided by Subsection (b) and subject to Subsection (c), to order a defendant convicted of an offense under Section 31.22, Penal Code, to pay restitution, as applicable, to certain persons.

(b) Prohibits the court from ordering a defendant convicted of an offense under Section 31.22(b)(1), Penal Code, to pay restitution if, before judgment is entered in the case, the defendant, 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.

(c) Requires the court to reduce the amount of restitution that a defendant is ordered to pay under this article 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.

SECTION 4. Amends Sections 51.901(c), (d), and (e), Government Code, as follows:

(c) Provides that, for purposes of Section 51.901 (Fraudulent Document or Instrument), a document or instrument is presumed to be fraudulent if:

(1) makes no changes to this subdivision;

(2) 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 all of the following are true:

(A) the document or instrument is not a document or instrument provided for by the constitution or laws of this state or of the United States; and

(B) the document or instrument is not created by implied or express consent or agreement of the purported 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 the laws of this state, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person; and

(C) makes conforming and nonsubstantive changes to this paragraph;

(3) makes a nonsubstantive change to this subdivision; or

(4) 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 under Chapter 31 (Theft), 32 (Fraud), or 37 (Perjury and Other Falsification), Penal Code.

(d) Requires a county clerk, if the clerk believes in good faith that a document filed with the clerk to create a lien against or assert a claim to or interest in real or personal property is fraudulent, to take certain actions, including requesting that the prospective filer provide to the county clerk additional documentation supporting the existence of the lien, claim, or interest, such as a contract or other document that contains the alleged obligor's, debtor's, or grantor's signature. Makes a nonsubstantive change.

(e) Authorizes a presumption under Subsection (c)(3) (relating to providing that a document or instrument is presumed to be fraudulent if it purports to create certain or assert certain claims and it is filed by 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, 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, rather than the property designated as collateral, stating that the person entered into an agreement, rather than a security 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 as provided by Section 9.509 (Persons Entitled to File a Record), Business & Commerce Code. Makes a nonsubstantive change.

SECTION 5. Amends the heading to Section 51.903, Government Code, to read as follows:

Sec. 51.903. ACTION ON FRAUDULENT DOCUMENT OR INSTRUMENT.

SECTION 6. Amends Sections 51.903(a), (b), (c), (e), and (g), Government Code, as follows:

(a) Authorizes 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 to complete and file with the district clerk a motion, verified as required by Subsection (b), that contains, at a minimum, the information in a certain suggested form. Amends the language of the form and makes conforming and nonsubstantive changes.

Deletes existing text authorizing 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 real or personal property or an interest in the real or personal 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, of the same type described by Section 121.007 (Form for Ordinary Certificate of Acknowledgement), Civil Practice and Remedies Code, that contains, at a minimum, the information in a certain suggested form.

(b) Requires that a motion filed under Subsection (a) be verified by an affidavit in substantially a certain form. Sets forth the required language of the form. Deletes existing text requiring that the completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, be in a certain form.

(c) Authorizes a motion under this section to be ruled on by a district judge having jurisdiction over real property matters in the county where the subject document or instrument was filed. Authorizes the court's finding to be made solely on a review of the document, rather than documentation, or instrument attached to the motion and without hearing any testimonial evidence.

(e) Requires that a copy of the finding of fact and conclusion of law be sent, by first class mail, to the movant and to the person who filed the document or instrument for recording, rather than the fraudulent lien or claim, at the last known address of each person within seven days of the date that the finding of fact and conclusion of law is issued by the judge. Makes conforming changes.

(g) Provides that a suggested form order appropriate to comply with this section is in a certain form. Amends the language of the form and to make conforming and nonsubstantive changes.

SECTION 7. Amends Chapter 31, Penal Code, by adding Section 31.22, as follows:

Sec. 31.22. REAL PROPERTY THEFT. (a) Defines "nonpossessory interest," "owner," and "transfer."

(b) Provides that a person commits an offense if the person:

(1) 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

(2) 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.

(c) Provides that, except as provided by Subsection (e), an offense under Subsection (b)(1) is a felony of the second degree 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 felony of the first degree if it is shown on the trial of the offense that the market value of the real property is \$300,000 or more.

(d) Provides that, except as provided by Subsection (e), an offense under Subsection (b)(2) is a felony of the third degree if it is shown on the trial of the offense that the value of the benefit received is less than \$30,000, a felony of the second degree 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 felony of the first degree if it is shown on the trial of the offense that the value of the benefit received is \$150,000 or more.

(e) Provides that an offense described for purposes of punishment by Subsections (c) and (d) is increased to the next higher category of offense if it is shown on the trial of the offense that at the time of the offense:

- (1) 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
- (2) the real property was subject to a property tax exemption under Subchapter B (Exemptions), Chapter 11 (Taxable Property and Exemptions), Tax Code, as an individual's residence homestead as defined by Section 11.13(j) (relating to defining "residence homestead," "trustor," and "qualifying trust."), Tax Code.

(f) Provides that, for purposes of Subsection (c), 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.

(g) Authorizes the actor, if conduct that constitutes an offense under this section also constitutes an offense under another law, to be prosecuted under this section, the other law, or both.

SECTION 8. Amends Subchapter D, Chapter 32, Penal Code, by adding Section 32.56, as follows:

Sec. 32.56. REAL PROPERTY FRAUD. (a) Defines "deception," "document," and "effective consent."

(b) Provides that a person commits an offense if the person:

- (1) intentionally or knowingly makes a materially false or misleading written statement to obtain real property; or
- (2) with the intent to defraud or harm any person:
 - (A) 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

(B) 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.

(c) Provides that, except as provided by Subsection (d), an offense under this section is a felony of the second degree 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 felony of the first degree 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.

(d) Provides that an offense described for purposes of punishment by Subsection (b) is increased to the next higher category of offense 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 Subchapter B, Chapter 11, Tax Code, as an individual's residence homestead as defined by Section 11.13(j), Tax Code.

(e) Provides that, for purposes of Subsection (c), 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.

SECTION 9. Amends Section 37.101(b), Penal Code, to provide that an offense under certain provisions is a state jail felony, rather than a Class A misdemeanor, unless the person commits the offense with the intent to defraud or harm another, in which event the offense is a felony of the third degree, rather than a state jail felony.

SECTION 10. Makes application of this Act prospective.

SECTION 11. Provides that the changes in law made by this Act in amending Article 12.01, Code of Criminal Procedure, do not apply to an offense if the prosecution of that offense becomes barred by limitation before the effective date of this Act. Provides that the prosecution of that offense remains barred as if this Act had not taken effect.

SECTION 12. Effective date: September 1, 2025.