

SUBJECT: Presumption that certain lien documents filed by inmates are fraudulent

COMMITTEE: Corrections — committee substitute recommended

VOTE: 4 ayes — Madden, Hochberg, McReynolds, Jones
0 nays
3 absent — Dunnam, Haggerty, Oliveira

WITNESSES: For — None
Against — (*Registered, but did not testify:* Allen Place, Texas Land Title Association)
On — Melinda Bozarth and Brad Livingston, Texas Department of Criminal Justice

BACKGROUND: Government Code sec. 51.901 establishes procedures that county clerks must follow if in good faith they believe that a fraudulent document has been filed to try and create a lien. They must request help from the county or district attorney to decide if the document is fraudulent, request that the person filing the document give the clerk additional information supporting the existence of the lien, and forward the additional documentation to the county or district attorney. Sec. 51.901 (c) establishes circumstances under which the document or instrument is presumed to be fraudulent.

DIGEST: CSHB 2566 would add to circumstances under which documents filed with county clerks to create a lien were presumed to be fraudulent and would require that certain financial documents include information about whether someone involved with the document was an inmate in a correctional facility.

Documents and instruments filed to create a lien would be presumed fraudulent if they were filed by or on behalf of an inmate in a correctional facility and purported to create a lien or assert a claim against real or personal property or an interest in real or personal property. This presumption could be rebutted by giving the court clerk a sworn and

notarized document signed by the obligor, debtor, or owner of the property serving as collateral that the person had entered into a security agreement with the inmate and had authorized the filing of the financial statement.

Instruments concerning real or personal property would have to include whether the person recording it was an inmate or recording it on behalf of an inmate. Abstracts of judgment under the Property Code would have to show whether the plaintiff was an inmate. Financing statements used for secure transactions under the Business and Commerce Code would have to state whether the secured party was an inmate.

The bill would take effect September 1, 2007, and apply only to documents and instruments filed on or after that date.

**SUPPORTERS
SAY:**

CSHB 2566 is necessary to strengthen laws designed to prevent prison inmates from filing fraudulent liens against state employees and officials and others.

In 2005 the Legislature enacted laws to help reduce the filing of fraudulent liens by requiring county clerks to take certain actions if they believed that documents being filed to create a lien were fraudulent. This has worked to greatly reduce the number of fraudulent liens being filed by prison inmates against state employees and elected and appointed officials. However, some fraudulent liens still are slipping through on the local level, causing state employees and officials to spend time getting the liens released. This often can delay their legitimate business transactions.

CSHB 2566 would address this problem by requiring that documents or instruments filed to create a lien and dealing with real and personal property contain a statement about whether it was being recorded by an inmate or on behalf of an inmate. It also would create a presumption that a document or instrument filed by or for an inmate was fraudulent. However, the bill would ensure that inmates with legitimate claims to property through bargained security agreements would have due process to rebut that presumption.

Complying with CSHB 2566 would balance the needs of inmates to conduct real estate business and the state's interest in cutting down on fraudulent liens. The bill would not be a barrier to inmates conducting legitimate real estate transactions while in prison. While it may require that such inmates take the additional step of rebutting the presumption

about a document or interest filed by them, the requirement would not be burdensome and easily could be accomplished if their transactions were legitimate.

OPPONENTS
SAY:

CSHB 2566 could be unfair to inmates conducting legitimate real estate business by requiring that they rebut the presumption that a document or instrument was fraudulent. Inmates conducting legitimate business should not have to jump through an additional hoop to conduct their business.

OTHER
OPPONENTS
SAY:

CSHB 2566 would go too far in requiring numerous real estate documents to include a statement that they are not being filed by or on behalf of an inmate. It would be better to make a requirement that inmates filing documents and instruments include the fact that they are an inmate rather than having all other persons state that they are not inmates.

NOTES:

Rep. Madden plans to offer a floor amendment that would amend provisions requiring numerous documents to include a statement that they were not being filed by or on behalf of an inmate.