

BILL ANALYSIS

Senate Research Center

S.B. 234
By: Carona
Jurisprudence
1-27-97
As Filed

DIGEST

Currently, there is an ongoing debate whether or not district and county clerks can dispose of records and documents relating to the so-called Republic of Texas in accordance with Chapters 202 and 203, Local Government Code, relating to the preservation and destruction of government records. The attorney general has issued an opinion (DM-389) cautioning the destruction of these documents under Chapters 202 and 203 since Section 552.351, Government Code, creates a criminal offense for willful destruction of records. The Texas State Library and Archives Commission is of the opinion that Section 202.001(b)(2), Local Government Code, does not give the commission rulemaking authority to exempt the documents in question from preservation. The commission also believes that such documents can only be released and/or expunged by court order. This bill explicitly authorizes a county or district clerk to bring a cause of action to obtain a court order which identifies the document, states that it is false or may not be recorded under law, and either records the order or orders the document to be destroyed.

PURPOSE

As proposed, S.B. 234 sets forth the guidelines for a cause of action allowing a county or district clerk to seek a court order in regard to recorded documents that are either falsely recorded or may not be recorded under law.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 2A, Civil Practice and Remedies Code, by adding Chapter 12, as follows:

CHAPTER 12. RECORDED DOCUMENTS

Sec. 12.001. DEFINITIONS. Defines "plaintiff" and "recorded document."

Sec. 12.002. CAUSE OF ACTION. Authorizes a plaintiff to bring an action to obtain an order under Section 12.003. Requires a court to issue such an order if the recorded document is shown to be either false or not a document that may be recorded under law.

Sec. 12.003. COURT ORDER. Requires a court order granting relief to identify the recorded document, state that it is false or may not be recorded under law, and either record the order or order the document in question to be destroyed.

Sec. 12.004. DEFENDANT. Requires the plaintiff to name as defendant the person who caused the document to be recorded. Authorizes citation to be made by publication, as provided in the Texas Rules of Civil Procedure, when the plaintiff does not know who the defendant is.

Sec. 12.005. VENUE. Sets forth the venue for the cause of action authorized in this chapter.

Sec. 12.006. FILING FEES. Sets forth provisions for the imposition and payment of filing fees.

Sec. 12.007. PLAINTIFF'S COSTS. Requires a court to award a plaintiff the costs of bringing the action if the plaintiff wins and the court finds the defendant knew or should have known that the document is false, or not a document that may be recorded under law.

Sec. 12.008. REPRESENTATION BY COUNTY ATTORNEY. Requires the county attorney to represent a plaintiff in an action under this chapter.

Sec. 12.009. EFFECT ON OTHER LAW. Provides that this law is cumulative of other law under which a plaintiff may obtain judicial relief with respect to a recorded document.

SECTION 2. Amends Section 202.001(b), Local Government Code, to make a conforming change.

SECTION 3. Makes application of this Act retroactive.

SECTION 4. Emergency clause.
Effective date: upon passage.