

BILL ANALYSIS

Senate Research Center

S.B. 424
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Jurisprudence
2-13-97
As Filed

DIGEST

Currently, Texas law requires a county or district clerk to record each deed, mortgage, or other instrument required or permitted by law. However, the filing of fraudulent documents have overwhelmed the courts and forced state and local governments to incur large legal bills defending themselves from these fraudulent claims. This bill will provide a criminal penalty for filing a fraudulent court record, will authorize court clerks to reject court records they believe to be false, and provide a cause of action for filing a fraudulent court record.

PURPOSE

As proposed, S.B. 424 creates an offense for filing a fraudulent court record, authorizes court clerks to reject records they believe to be false, and creates a cause of action for filing a fraudulent court record.

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 Section 32.21, Penal Code, to make conforming changes.

SECTION 2. Amends Section 37.01, Penal Code, to define "court record." Makes conforming changes.

SECTION 3. Amends Chapter 37, Penal Code, by adding Section 37.13, as follows:

Sec. 37.13. FRAUDULENT COURT RECORD. Provides that a person commits an offense if the person makes, presents, or uses any document or other record with knowledge that the document or other record is not a genuine court record, and intent that the document or other record be given the same legal effect as a genuine court record. Provides that a person commits a Class A misdemeanor if the person commits an offense under this section, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under this section on two or more occasions.

SECTION 4. Amends Section 51.605(c), Government Code, to require a clerk to successfully complete at least one hour of continuing education regarding fraudulent court documents.

SECTION 5. Amends Chapter 51G, Government Code, by adding Section 51.607, as follows:

Sec. 51.607. FRAUDULENT COURT RECORD. Authorizes certain clerks, except as provided by Subsection (d), to reject a purported court document or purported court record if the clerk reasonably believes that the purported court document or purported court record is a fraudulent court record under Chapter 37, Penal Code. Authorizes a district clerk or county clerk to request the written advice of a county attorney, district attorney, or criminal district attorney regarding the legitimacy of a document or other record presented to the clerk. Requires a clerk to post a sign in or near the clerk's office stating that it is a crime to file a fraudulent court record with the clerk. Authorizes a person to petition a court to

require the clerk of that court to accept a document or other record rejected by the clerk.

SECTION 6. 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 the court to issue an order under Section 12.003, if it is shown that the recorded document is false or not a document that may be recorded under law.

Sec. 12.003. COURT ORDER. Requires the court, if the court grants relief under this chapter, to issue an order that meets certain requirements.

Sec. 12.004. DEFENDANT. Requires the plaintiff to name as defendant to the action the person who caused the recorded document to be recorded. Authorizes the citation, if that person is unknown to the plaintiff, to be made by publication as provided in the Texas Rules of Civil Procedure.

Sec. 12.005. VENUE. Authorizes an action under this chapter to be brought in any justice, county, or district court in the county in which the recorded document is recorded.

Sec. 12.006. FILING FEES. Sets forth filing fees for an action under this chapter.

Sec. 12.007. PLAINTIFF'S COST. Requires the court to award the plaintiff the costs of bringing the action if certain criteria are met. Provides that for purposes of this section, the costs of bringing the action include all court costs, attorney's fees, and related expenses of bringing the action, including investigative expenses.

Sec. 12.008. REPRESENTATION BY COUNTY ATTORNEY. Requires the county attorney to represent a district clerk or county clerk seeking relief under this chapter.

Sec. 12.009. EFFECT ON OTHER LAW. Provides that the remedy established under this chapter is in addition to any other remedy authorized by statute or common law.

SECTION 7. Amends Section 202.001(b), Local Government Code, to authorize the destruction, without meeting the conditions of Subsection (a), of records the destruction or obliteration of which is directed by an expunction order issued by a court, rather than a district court, pursuant to state law.

SECTION 8. Makes application of this Act retroactive.

SECTION 9. Requires a clerk to complete one hour of continuing education regarding fraudulent court documents required by Section 51.605(c), Government Code, as amended by this Act, before September 1, 1999.

SECTION 10. Effective date: September 1, 1997.

SECTION 11. Emergency clause.