

BILL ANALYSIS

Senate Research Center

C.S.S.B. 424
By: Bivins
Jurisprudence
3-14-97
Committee Report (Substituted)

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, authorize court clerks to notify individuals that questionable documents have been filed against them, and provide a cause of action for filing a fraudulent court record.

PURPOSE

As proposed, C.S.S.B. 424 creates an offense for filing a fraudulent court record, authorizes court clerks to notify individuals that questionable documents have been filed against them, 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 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. Provides that this section does not apply to a copy of a document made as provided by court order or as authorized by rules of evidence, rules of procedure, local rules of court, or customary practice.

SECTION 4. Amends Section 51.605(c), Government Code, to require the 20 hours of required continuing education courses to include at least one hour of continuing education regarding fraudulent court documents and fraudulent document filings.

SECTION 5. Amends Chapter 51, Government Code, by adding Subchapter J, as follows:

SUBCHAPTER J. CERTAIN FRAUDULENT RECORDS OR DOCUMENTS

Sec. 51.901. FRAUDULENT DOCUMENT OR INSTRUMENT. Authorizes certain clerks to take certain actions if they have reason to believe that a document or instrument

previously filed or recorded or offered or submitted for filing or for filing and recording is fraudulent.

Sec. 51.902. ACTION ON FRAUDULENT JUDGMENT LIEN. Sets forth procedures to be followed by a person against whom a purported judgment was rendered and procedures to be followed by the court.

Sec. 51.093. ACTION ON FRAUDULENT LIEN ON PROPERTY. Sets forth procedures to be followed by a person against whom a fraudulent lien is filed. Sets forth procedures to be followed by the court.

Sec. 51.904. WARNING SIGN. Requires a clerk to post a sign that meets certain requirements stating that it is a crime to intentionally or knowingly file a fraudulent court record or a fraudulent instrument with the clerk.

Sec. 51.905. DOCUMENTS FILED WITH SECRETARY OF STATE. Authorizes any person, if the lien or other claim that is the subject of a judicial finding of fact and conclusion of law authorized by this subchapter is one that is authorized by law to be filed with the secretary of state, to file a certified copy of the judicial finding of fact and conclusion of law in the records of the secretary of state. Requires the secretary of state to file the certified copy of the finding in the same class of records as the subject document or instrument was originally filed and index it using the same names that were used in indexing the subject document or instrument. Prohibits the secretary of state from collecting a filing fee for filing a certified copy of a judicial finding of fact and conclusion of law under this section.

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 "bona fide court," "court record," "plaintiff" and "recorded document."

Sec. 12.002. CAUSE OF ACTION. Authorizes a plaintiff to bring an action to obtain an order under Section 12.005. Requires the court to issue an order under Section 12.005, if it is shown that the recorded document is fraudulent because the document meets certain criteria.

Sec. 12.003. PLAINTIFF'S PLEADING. Requires an original pleading that sets forth a claim for relief under this chapter to be executed by the plaintiff or the plaintiff's attorney and requires the pleading to be substantially in a certain form.

Sec. 12.004. DEFENDANT. Requires the plaintiff to name as defendant to the action the lienholder of record as the lienholder appears in the records in which the recorded document that is the subject of the cause of action is recorded. Authorizes the citation, if the address of that person is unknown to the plaintiff, to be made by publication as provided in the Texas Rules of Civil Procedure.

Sec. 12.005. COURT ORDER. Requires the court, if the court grants relief under this chapter, to issue an order that meets certain requirements.

Sec. 12.006. 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. 12.007. FILING FEES. Sets forth filing fees for an action under this chapter.

Sec. 12.008. 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. 12.009. DEFENDANT'S COSTS. Requires the court to award the defendant the costs of defending the action if the defendant prevails. Provides that, for purposes of this section, the costs of defending the action include all court costs, attorney's fees, and related expenses of defending the action, including investigative expenses.

Sec. 12.010. REPRESENTATION BY COUNTY ATTORNEY. Requires the county attorney to represent a district clerk or county clerk seeking relief under this chapter.

Sec. 12.011. 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 an order under Chapter 12, Civil Practice and Remedies Code, 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.

SUMMARY OF COMMITTEE CHANGES

Amends SECTION 2, Section 37.01, Penal Code, to make a nonsubstantive change.

Amends SECTION 3, Section 37.13, Penal Code, to provide that this section does not apply to a copy of a document made as provided by court order or as authorized by certain rules. Makes a nonsubstantive change.

Amends SECTION 4, Section 51.605(c), Government Code, to make a nonsubstantive change.

Amends SECTION 5, Chapter 51, Government Code, to delete proposed Section 51.607 regarding fraudulent court records, and to propose Subchapter J, regarding procedures to be followed if a fraudulent document or instrument is filed. Requires a clerk to post a sign warning that it is crime to intentionally or knowingly file a fraudulent court record or instrument. Provides for the filing of judicial findings with the secretary of state.

Amends SECTION 6, Section 12.001, Civil Practice and Remedies Code, to define "bona fide court" and "court record," and to redefine "plaintiff" and "recorded document."

Amends SECTION 6, Section 12.002, Civil Practice and Remedies Code, to expand the list of criteria for what constitutes a fraudulent document. Makes conforming changes.

Amends SECTION 6, Section 12.003, Civil Practice and Remedies Code, to set forth the form of a plaintiff's pleadings.

Amends SECTION 6, Section 12.004, Civil Practice and Remedies Code, to delete existing text regarding a defendant to be named in the action and to add that the lienholder of record is to be named as the defendant.

Amends SECTION 6, Section 12.005, Civil Practice and Remedies Code, formerly designated as Section 12.003.

Amends SECTION 6, Section 12.006, Civil Practice and Remedies Code, formerly designated as Section 12.005.

Amends SECTION 6, Section 12.007, Civil Practice and Remedies Code, to prohibit a plaintiff who is a county or district clerk from being assessed certain fees for filing an action or for service of notice of an action under this chapter. Makes a conforming change.

Amends SECTION 6, Section 12.008, Civil Practice and Remedies Code, formerly designated as Section 12.007. Makes a conforming change.

Amends SECTION 6, Section 12.009, Civil Practice and Remedies Code, to require the court to award the defendant certain costs if the defendant prevails.

Amends SECTION 6, Sections 12.010 and 12.011, Civil Practice and Remedies Code, formerly designated as Sections 12.008 and 12.009.