

## **BILL ANALYSIS**

H.B. 2544  
By: Lozano  
Judiciary & Civil Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Stakeholders contend that the current policy regarding adverse possession of property does not expressly account for a situation involving a cotenancy. H.B. 2544 seeks to address this issue.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 2544 amends the Civil Practice and Remedies Code to authorize one or more cotenant heirs of real property to acquire the interests of other cotenant heirs in the property by adverse possession if, for a continuous, uninterrupted 10-year period immediately preceding the filing of an affidavit, the possessing cotenant heir or heirs hold the property in peaceable and exclusive possession; cultivate, use, or enjoy the property; and pay all property taxes on the property not later than two years after the date the taxes become due, provided that during that period no other cotenant heir has contributed to the property's taxes or maintenance, challenged a possessing cotenant heir's exclusive possession of the property, asserted any claim against a possessing cotenant heir in connection with the property, acted to preserve the cotenant heir's interest in the property by filing certain notice, or entered into a written agreement with the possessing cotenant heir under which the possessing cotenant heir is allowed to possess the property but the other cotenant heir does not forfeit that heir's ownership interest. The bill defines "cotenant heir" to mean one of two or more persons who simultaneously acquire identical, undivided ownership interests in, and rights to possession of, the same real property by operation of the applicable intestate succession laws of this state or a successor in interest of one of those persons.

H.B. 2544 requires a cotenant heir or cotenant heirs making a claim of adverse possession against another cotenant heir under the bill's provisions to file in the deed records of the county in which the real property is located an affidavit of heirship in the statutorily prescribed form and an affidavit of adverse possession that complies with the bill's requirements; to publish notice of the claim in a newspaper of general circulation in the county in which the property is located for the four consecutive weeks immediately following the date the required affidavits are filed; and to provide written notice of the claim to the last known addresses of all other cotenant heirs by certified mail, return receipt requested. The bill authorizes the required affidavits to be filed separately or combined into a single instrument and sets out the information that must be included in the affidavit of adverse possession.

H.B. 2544 requires a cotenant heir to file a controverting affidavit or bring suit to recover the cotenant heir's interest in real property adversely possessed by another cotenant heir not later than the fifth anniversary of the date a right of adverse possession is asserted by the filing of the required affidavits. The bill sets out conditions under which title vests in the adversely possessing cotenant heir or heirs, precluding all claims by other cotenant heirs, and sets out conditions under which a bona fide lender for value without notice accepting a voluntary lien against the real property to secure the adversely possessing cotenant heir's indebtedness or a bona fide purchaser for value without notice may conclusively rely on the affidavits.

H.B. 2544 limits peaceable and adverse possession without a title instrument to 160 acres, including improvements, but extends peaceable and adverse possession to the real property actually enclosed if the number of enclosed acres exceeds 160 acres. The bill establishes that peaceable possession of real property held under a duly registered deed or other memorandum of title that fixes the boundaries of the possessor's claim extends to the boundaries specified in the instrument.

**EFFECTIVE DATE**

September 1, 2015.