

BILL ANALYSIS

Senate Research Center

H.B. 1185
By: Hightower (Sponsor)
Jurisprudence
3-16-97
Engrossed

DIGEST

Currently, individuals and organizations have begun to take action based on their refusal to recognize the authority and sovereignty of the government of the State of Texas. These entities have filed fraudulent judgment liens issued by so-called "common law courts" and fraudulent documents purporting to create liens or claims on personal and real property with the secretary of state and many county and district court clerks throughout the state. Many of the filings have been against the State of Texas and public officers and employees, as well as private individuals. These filings have clogged the channels of commerce and have amounted to harassment and intimidation of both public officials and ordinary citizens. This bill provides both civil and criminal remedies for those against whom such fraudulent filings have been made. Specifically, this bill creates a criminal offense for filing a fraudulent court document or record, exercising a function of public office that has no lawful existence, to deliver or cause to be delivered a document that simulates a legal process, and refusing to execute a release of a fraudulent instrument purporting to create a lien or claim. This bill creates an expedited judicial process that permits someone aggrieved by the fraudulent filing to obtain an expedited legal process to obtain a court order declaring the filing to be fraudulent. This bill also provides for civil remedies by creating a private cause of action against a person who files fraudulent judgment liens or fraudulent documents purporting to create a lien against real or personal property in favor of a person aggrieved by the filing or an attorney representing the state, county, or municipality.

PURPOSE

As proposed, H.B. 1185 creates a criminal offense for filing a fraudulent court document or record, exercising a function of public office that has no lawful existence, delivering a document that simulates a legal process, and refusing to execute a release of a fraudulent instrument purporting to create a lien or claim. This bill creates an expedited judicial process that permits someone aggrieved by the fraudulent filing to obtain a court order declaring the filing to be fraudulent. This bill also provides for civil remedies by creating a private cause of action against a person who files fraudulent judgment liens or fraudulent documents purporting to create a lien against real or personal property in favor of a person aggrieved by the filing or an attorney representing the state, county, or municipality.

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 Sections 32.21(e) and (f), Penal Code, to provide that an offense under this section is a felony if the writing is a government record listed in Section 37.01(2)(C), rather than 37.01(1)(C), Penal Code. Makes a conforming change.

SECTION 2. Amends Section 32.46, Penal Code, to provide that a person commits an offense if, by deception, the person induces a public servant to file certain documents containing certain deceptive information. Provides that an offense under Subsection (a)(2) is a state jail felony. Defines "deception."

SECTION 3. Amends Chapter 32D, Penal Code, by adding Section 32.48, as follows:

Sec. 32.48. SIMULATING LEGAL PROCESS. Sets forth requirements under which a person commits an offense for simulating legal process. Provides that proof the document was mailed is proof of delivery. Provides that it is not a defense to prosecution that the simulating document contains certain provisions. Sets forth the conditions whereby there is a rebuttable presumption that a simulated document was delivered with certain intent. Provides that an offense under this section is a Class A misdemeanor, except as provided by Subsection (f). Provides that an offense under this section is a state jail felony if the defendant has previously been convicted of a violation under this section.

SECTION 4. Amends Chapter 32D, Penal Code, by adding Section 32.49, as follows:

Sec. 32.49. REFUSAL TO EXECUTE RELEASE OF FRAUDULENT LIEN OR CLAIM. Provides that a person commits a Class A misdemeanor if the person takes certain actions with an intent to defraud or harm another person.

SECTION 5. Amends Section 37.01, Penal Code, to define "court record" and redefine "governmental record." Makes a conforming change.

SECTION 6. Amends Section 37.10, Penal Code, by amending Subsection (d) and adding Subsection (h), to provide that an offense under this section is a third degree felony if the governmental record was shown at trial to be a letter of patent. Authorizes a person to be prosecuted under this section and Sections 32.48 or 37.13, Penal Code.

SECTION 7. Amends Section 37.11, Penal Code, to provide that it is a third degree felony, rather than a Class A misdemeanor, if a person knowingly exercises any function of certain public servants and the position has no lawful existence under the constitution of the United States or this state.

SECTION 8. Amends Chapter 37, Penal Code, by adding Section 37.13, as follows:

Sec. 37.13. RECORD OF A FRAUDULENT COURT. Provides that a person commits a Class A misdemeanor if a person makes, presents, or uses any document or record with knowledge or intent that the record is not a genuine court record. Provides that an offense under this section is a Class A misdemeanor, 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. Authorizes an offender to be prosecuted under this section or Section 32.49 or 37.10, Penal Code, if conduct that constitutes an offense under this section also constitutes an offense under the above sections.

SECTION 9. Amends Section 71.02(a), Penal Code, to provide that a person commits an offense if he or she commits or conspires to commit an offense under Section 37.11(a), Penal Code.

SECTION 10. Amends Chapter 37, Penal Code, by adding Section 37.101, as follows:

Sec. 37.101. FRAUDULENT FILING OF FINANCING STATEMENT. Provides that a person commits an offense if he or she files or causes a financing statement to be presented for filing if certain provisions are met. Sets forth the classes of the offense.

SECTION 11. Amends Chapter 1, Code of Criminal Procedure, by adding Article 1.052, as follows:

Art. 1.052. SIGNED PLEADINGS OF DEFENDANT. Sets forth who is to sign a pleading or motion filed for or on behalf of a defendant. Sets forth the effect of a signature on a pleading or motion. Sets forth the effect of an unsigned pleading or motion. Sets forth sanctions for pleadings or motions signed in violation of this article. Requires a court to presume a pleading or motion is filed in good faith. Prohibits sanctions from being imposed except for good cause stated in a sanction order. Sets forth certain pleas which do not constitute a violation of this article. Provides that an allegation that an event took place on or about a particular date does not constitute a violation of this article. Defines "groundless."

SECTION 12. Amends Chapter 13, Code of Criminal Procedure, by adding Article 13.26, as follows:

Art. 13.26. SIMULATING LEGAL PROCESS. Authorizes an offense under Section 32.46, 32.48, 32.49, or 37.13, Penal Code, to be prosecuted in the county from which the document was sent or in the county in which the document was delivered.

SECTION 13. Amends Section 51.605(c), Government Code, to require 20 hours of a required continuing education course to include at least one hour of continuing education regarding fraudulent court documents and filings.

SECTION 14. 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. Requires certain clerks to take certain actions if there is reason to believe that a document or instrument is fraudulent. Sets forth requirements of a clerk's written notice. Sets forth provisions by which a document or instrument is presumed fraudulent.

Sec. 51.902. ACTION ON FRAUDULENT JUDGMENT LIEN. Sets forth a form which is authorized to be filed with the district clerk by a person against whom a judgment was rendered and has reason to believe a filing previously filed against him or her is fraudulent. Sets forth actions to be taken by a judge on a motion filed under this section. Prohibits a district clerk from collecting a fee for filing a motion under this section. Requires the judge to enter an appropriate finding of fact and conclusion of law, which is to be filed, and prohibits a district clerk from collecting a fee for filing a motion under this section. Prohibits a district clerk from collecting a fee for filing a district judge's finding of fact and conclusion of law under this section. Sets forth a suggested form order appropriate to comply with this section.

Sec. 51.903. ACTION ON FRAUDULENT LIEN ON PROPERTY. Sets forth a form which is authorized to be filed with the district clerk by a person who is a debtor or obligor or who owns real property and has reason to believe a filing previously filed to create a lien or a claim against the real property of the person is fraudulent. Sets forth a form for an ordinary certificate of acknowledgment. Sets forth actions to be taken by a judge on a motion filed under this section. Requires an appellate court to expedite review of a court's finding under this section. Prohibits a district clerk from collecting a fee for filing a motion under this section. Requires the judge to enter an appropriate finding of fact and conclusion of law, which is to be filed. Prohibits a district clerk from collecting a fee for filing a motion under this section. Requires a district judge to enter an appropriate finding of fact and conclusion of law under this section. Prohibits the county clerk from collecting a filing fee for a district judge's finding of fact and conclusion of law. Sets forth a suggested form order appropriate to comply with this section.

Sec. 51.904. WARNING SIGN. Sets forth requirements of a warning sign stating that it is a crime to file a fraudulent court record or instrument with the clerk, to be posted by a clerk described in Section 51.901(c), Government Code.

Sec. 51.905. DOCUMENTS FILED WITH SECRETARY OF STATE. Authorizes any person to file a judicial finding of fact and conclusion of law in the records of the secretary of state, who is required to file a 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, if the lien or claim is the subject of a judicial finding of fact and conclusion of law. Authorizes the secretary of state to charge a filing fee of \$15 to file a judicial finding of fact and conclusion of law.

SECTION 15. Amends Section 12.013, Property Code, to set forth certain situations in which a judgment or abstract may be recorded. Makes a conforming change.

SECTION 16. Amends Title 2A, Civil Practice and Remedies Code, by adding Chapter 11, as follows:

CHAPTER 11. LIABILITY RELATED TO A FRAUDULENT COURT RECORD OR A FRAUDULENT LIEN OR CLAIM FILED AGAINST REAL OR PERSONAL PROPERTY

Sec. 11.001. DEFINITIONS. Defines "court record," "exemplary damages," "lien," and "public servant."

Sec. 11.002. LIABILITY. Prohibits a person from making, presenting or using a document with certain knowledge or intent. Provides that a person is liable to each injured person for certain costs, fees, and damages for violating Subsection (a).

Sec. 11.003. CAUSE OF ACTION. Sets forth a list of persons authorized to enjoin violation of this chapter. Provides that a person does not have the duty to disclose certain fraudulent documents, notwithstanding any other law.

Sec. 11.004. VENUE. Authorizes an action to be brought in any district court in the county in which the document was recorded or where the real property is located.

Sec. 11.005. FILING FEES. Sets forth requirements for the payment of filing fees.

Sec. 11.006. PLAINTIFF'S COSTS. Requires the court to award the plaintiff costs of bringing the action if certain provisions are met. Sets forth the costs of bringing an action.

Sec. 11.007. EFFECT ON OTHER LAW. Provides that this law is cumulative of other law under which a person may obtain judicial relief with respect to a recorded document or record.

SECTION 17. Repealer: Section 9.412(c), Business and Commerce Code (Fraudulent filing).

SECTION 18. Makes application of Chapter 51J, Government Code, retroactive.

SECTION 19. Requires a clerk to successfully complete one hour of continuing education regarding fraudulent court documents before September 1, 1998.

SECTION 20. Makes application of SECTION 16 of this Act prospective.

SECTION 21. Makes application of this Act prospective.

SECTION 22. Emergency clause.
Effective date: upon passage.