

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1955  
By: Hughes  
State Affairs  
4/10/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 2009, the legislature adopted a process whereby a lis pendens could be expunged. Recently, there has been concern that possible interpretations of this statute may result in a more limited applicability than was the intent of the original legislation. In order for the statute to function as intended, purchasers of real property, lenders, title companies, and others must be able to rely on an expungement of a lis pendens to determine whether or not to purchase, lend against, or insure the title of a given piece of property. At question is whether or not a subsequent purchaser learned of the claims regarding the property through direct knowledge of the underlying proceeding would not be entitled to bona fide purchaser status under Section 13.004(b) and have the benefits of the certainty the expungement statute was intended to provide.

An interpretation that the statute does not extend to actual knowledge is wholly incompatible with the need for uniform standards regarding the status of title because it requires an individual and fact-intensive analysis of whether a purchaser learned of the lawsuit, and if so, how. As explained by the Court of Appeals, “under this interpretation, whether an expungement can remove the cloud of a lis pendens does not turn on whether the party encumbering the real property can demonstrate a probable right of recovery on an underlying real-property claim, but instead on details about exactly how the purchaser seeking to rely on an expungement learns of the underlying claim.” 469 S.W.3d 173, 184. If a title insurer or lender could not rely on the existence of an expungement order in the chain of title to determine whether a subsequent purchaser could take title to real property without regard to any existing litigation over the property, then title examiners and lenders would be forced to engage in fact-intensive analyses of a purchaser or lender’s knowledge (or knowledge that could be imputed to a purchaser or lender) of pending litigation. Such a task is at odds with the certainty intended to be created through the Texas real property records and destroys the goal of providing purchasers with secure title.

S.B. 1955 amends Section 12.0071(f), Property Code, and applies to all real property in Texas. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1955 amends current law relating to expunction of a notice of lis pendens.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 12.0071(f), Property Code, to provide that, after a certified copy of an order expunging a notice of lis pendens has been recorded, the notice of lis pendens and any information derived or that could be derived from the notice does not constitute constructive or actual notice of any matter contained in the notice or of any matter relating to the action in which the notice was filed, rather than of any matter relating to the proceeding, and an interest in the real property is authorized to be transferred or encumbered free of all matters asserted or disclosed in the notice and all claims or other matters asserted or disclosed in the action in connection with which the notice was filed. Makes conforming and nonsubstantive changes.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2017.