

BILL ANALYSIS

C.S.H.B. 2067
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have expressed concern regarding the acceleration of the maturity date of certain debt secured by a real property lien when a person defaults on the debt, contending that current law lacks a clear method for rescinding the accelerated maturity date. There is concern among these parties that certain federal administrative actions interfere with the state's lien enforcement process and can hinder enforcement for long periods of time. These parties explain that borrowers, lenders, and loan servicers subsequently may be inhibited from exploring options for a borrower seeking loss mitigation and extended payment periods. C.S.H.B. 2067 seeks to address these concerns as they relate to lien enforcement and borrower defaults.

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

C.S.H.B. 2067 amends the Civil Practice and Remedies Code to establish that if the maturity date of a series of notes or obligations or a note or obligation payable in installments and secured by a real property lien is accelerated and the accelerated maturity date is rescinded or waived before the limitations period expires, the acceleration is deemed rescinded and waived and the note, obligation, or series of notes or obligations is to be governed by statutory provisions relating to real property liens as if no acceleration had occurred.

C.S.H.B. 2067 establishes that a rescission or waiver of acceleration is effective if made by a written notice served by the lienholder, the servicer of the debt, or an attorney representing the lienholder on each debtor who, according to the records of the lienholder or the servicer of the debt, is obligated to pay the debt. The bill requires service of the written notice to be by first-class or certified mail and establishes that service is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the debtor at the debtor's last known address. The bill specifies that the affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service. The bill specifies that a written notice served under the bill's provisions does not affect a lienholder's right to accelerate the maturity date of the debt in the future nor does it waive past defaults.

C.S.H.B. 2067 expressly does not create an exclusive method for waiver and rescission of acceleration or affect the accrual of a cause of action and the running of the related limitations period on any subsequent maturity date, accelerated or otherwise, of the note, or obligation, or

series of notes or obligations. The bill applies with respect to a maturity date accelerated before, on, or after the bill's effective date and any notice of a rescission or waiver of an accelerated maturity date served before, on, or after the bill's effective date.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2067 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter B, Chapter 16, Civil Practice and Remedies Code, is amended by adding Section 16.038 to read as follows:

Sec. 16.038. RESCISSION OR WAIVER OF ACCELERATED MATURITY DATE.

(a) If the acceleration of the maturity date of a note, obligation, or installment causes the limitations period provided by Section 16.035 to begin running under Section 16.035(e), and the accelerated maturity date is rescinded or waived in accordance with this section before the limitations period expires, the cause of action that accrued based on the accelerated maturity date is extinguished and the running of the related limitations period terminates.

(b) A written notice of a rescission or waiver made for purposes of this section must be served by the lienholder, the servicer of the debt, or an attorney representing the lienholder on each debtor who, according to the records of the lienholder or the servicer of the debt, is obligated to pay the debt.

(c) Service of a notice under Subsection (b) must be by first class or certified mail and is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the debtor at the debtor's last known address. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service.

(d) A notice served under this section does not affect a lienholder's right to accelerate the maturity date of the debt in the future.

(e) This section does not affect the accrual

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter B, Chapter 16, Civil Practice and Remedies Code, is amended by adding Section 16.038 to read as follows:

Sec. 16.038. RESCISSION OR WAIVER OF ACCELERATED MATURITY DATE.

(a) If the maturity date of a series of notes or obligations or a note or obligation payable in installments is accelerated, and the accelerated maturity date is rescinded or waived in accordance with this section before the limitations period expires, the acceleration is deemed rescinded and waived and the note, obligation or series of notes or obligations shall be governed by Section 16.035 as if no acceleration had occurred.

(b) Rescission or waiver of acceleration is effective if made by a written notice of a rescission or waiver served as provided in subsection (c) by the lienholder, the servicer of the debt, or an attorney representing the lienholder on each debtor who, according to the records of the lienholder or the servicer of the debt, is obligated to pay the debt.

(c) Service of a notice under Subsection (b) must be by first class or certified mail and is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the debtor at the debtor's last known address. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service.

(d) A notice served under this section does not affect a lienholder's right to accelerate the maturity date of the debt in the future nor does it waive past defaults.

(e) This section does not create an

of a cause of action and the running of the related limitations period under Section 16.035(e) on any subsequent maturity date, accelerated or otherwise, of the note, obligation, or installment.

SECTION 2. The change in law made by this Act applies with respect to a maturity date accelerated before, on, or after the effective date of this Act and any notice of a rescission or waiver of an accelerated maturity date served before, on, or after the effective date of this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

exclusive method for waiver and rescission of acceleration or affect the accrual of a cause of action and the running of the related limitations period under Section 16.035(e) on any subsequent maturity date, accelerated or otherwise, of the note or obligation or series of notes or obligations.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.