

BILL ANALYSIS

C.S.H.B. 1128
By: Wray
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties are concerned that attendance at public foreclosure auctions and other sales of real property is negatively affected when the sale, which currently must be held on the first Tuesday of a month, falls on New Year's Day or Independence Day. C.S.H.B. 1128 seeks to address this issue by shifting the date of certain property sales to the first Wednesday of the month if the first Tuesday occurs on January 1 or July 4.

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. 1128 amends the Civil Practice and Remedies Code to require a public sale of real property subject to a writ of execution to take place between 10 a.m. and 4 p.m. on the first Tuesday of a month or, if the first Tuesday of a month occurs on January 1 or July 4, between 10 a.m. and 4 p.m. on the first Wednesday of the month. The bill prohibits the Texas Supreme Court from amending or adopting rules in conflict with this requirement.

C.S.H.B. 1128 amends the Property Code to require a public sale at auction of real property under a power of sale conferred by a contract lien to be held between 10 a.m. and 4 p.m. on the first Wednesday of the month instead of the first Tuesday of a month if the first Tuesday occurs on January 1 or July 4.

C.S.H.B. 1128 amends the Tax Code to require a public sale of real property seized under a tax warrant or ordered sold pursuant to foreclosure of a tax lien, including a sale conducted by means of a public auction using online bidding and sale, to take place between 10 a.m. and 4 p.m. on the first Tuesday of a month or, if the first Tuesday of a month occurs on January 1 or July 4, between 10 a.m. and 4 p.m. on the first Wednesday of the month.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1128 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

No equivalent provision.

No equivalent provision.

SECTION 1. Sections 51.002, Property Code, is amended

No equivalent provision.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. The heading to Section 34.041, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 34.041. SALE AT PLACE OTHER THAN COURTHOUSE DOOR; DATE AND TIME OF SALE.

SECTION 2. Section 34.041, Civil Practice and Remedies Code, is amended by adding Subsection (c) to read as follows:

(c) A sale of real property under this subchapter must take place between 10 a.m. and 4 p.m. on the first Tuesday of a month or, if the first Tuesday of a month occurs on January 1 or July 4, between 10 a.m. and 4 p.m. on the first Wednesday of the month. Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this subsection.

SECTION 3. Substantially the same as the introduced version.

SECTION 4. Section 34.01, Tax Code, is amended by adding Subsection (r-1) to read as follows:

(r-1) A sale of real property under this section, including a sale conducted by means of a public auction using online bidding and sale under Subsection (a-1), must take place between 10 a.m. and 4 p.m. on the first Tuesday of a month or, if the first Tuesday of a month occurs on January 1 or July 4, between 10 a.m. and 4 p.m. on the first Wednesday of the month.

SECTION 5. Section 34.07(f), Tax Code, is amended to read as follows:

(f) A suit filed against the taxing units under Subsection (d) may not be maintained unless the action is instituted before the first anniversary of the date of sale or resale. In this subsection:

(1) "Date of sale" means the date [~~first Tuesday of the month~~] on which the sheriff or constable conducted the sale of the

property under Section 34.01.

(2) "Date of resale" means the date on which the grantor's acknowledgment was taken or, in the case of multiple grantors, the latest date of acknowledgment by the grantors as shown in the deed.

SECTION 2. Section 51.002, Property Code, as amended by this Act, applies only to a sale for which a notice is required under Section 51.002, Property Code, on or after the effective date of this Act. A sale for which notice is required under Section 51.002, Property Code, before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2017.

SECTION 6. The changes in law made by this Act apply only to the sale of real property under Subchapter C, Chapter 34, Civil Practice and Remedies Code, Section 51.002, Property Code, or Section 34.01, Tax Code, for which notice is given on or after the effective date of this Act.

SECTION 7. 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, 2017.