

BILL ANALYSIS

C.S.H.B. 1176
By: Darby
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that the current two-year statute of repose for a technical defect in the notarial acknowledgment of an instrument conveying real property may be too long, considering the high volume of property transactions that depend on conveyance documents. C.S.H.B. 1176 seeks to alleviate this problem by amending the law relating to technical defects in instruments affecting real property.

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. 1176 amends the Civil Practice and Remedies Code to change from two years to six months the minimum length of time an instrument affecting real property containing a defect in, omission of, or informality in the acknowledgment must have been filed for record in the office of the county recorder of the county in which the property is located before the instrument is considered to have been lawfully recorded and to be notice of the existence of the instrument on and after the date the instrument is filed. The bill removes the specification that an applicable defect is a ministerial defect.

C.S.H.B. 1176 removes the following from the technical defects in an instrument to convey real property or an interest in real property for which an action for the recovery of the property or property interest, as applicable, on the basis of such a defect is subject to a two-year limitations period:

- acknowledgment of the instrument in an individual, rather than a representative or official, capacity; and
- failure of the record or instrument to show an acknowledgment or jurat that complies with applicable law.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1176 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include a change of the two-year limitations period for an action for the recovery of real property or an interest in real property conveyed by an instrument with specified technical defects. The substitute removes the following from among those defects:

- acknowledgment of the instrument in an individual, rather than a representative or official, capacity; and
- failure of the record or instrument to show an acknowledgment or jurat that complies with applicable law.