

SUBJECT: Confidentiality of personal information on deeds and deeds of trust

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 6 ayes — Swinford, Gattis, B. Cook, Farrar, J. Keffer, Villarreal

0 nays

3 absent — Miller, Martinez Fischer, Wong

WITNESSES: None

BACKGROUND: The 78th Legislature in 2003 enacted HB 2930 by Lewis, which requires that certain real property records carry a notice informing a person filing the instrument that the person may strike certain information from a document prior to having it filed in the public record. County clerks have interpreted the legislation in different ways and have not uniformly accepted the affected real property records or applied rules assessing fees for these documents.

DIGEST: HB 1368 would require that deeds or deeds of trust transferring an interest in real property that displayed a social security or driver's license number include a notice of confidentiality rights on the top of the first page. This notice would explain that the social security and driver's license numbers could be stricken before the document was filed in the public records.

A county clerk could not under any circumstance reject a deed or deed of trust presented for recording solely because it failed to comply with the notice provision. These documents would be subject to inspection by the public. A deed or deed of trust would be exempted from the specifications for headings of legal papers, and the filing fee for such documents could not be increased due to this nonstandard heading format.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005, and would apply to a deed or deed of trust executed on or after this date.

**SUPPORTERS
SAY:**

HB 1368 would clarify the intent of the 78th Legislature to allow the removal of social security numbers and driver's license numbers from a deed or deed of trust prior to filing. The growing prevalence of identity theft and the misuse of personal identification numbers make it essential that people have the right to prevent such information from being a part of public record. In particular, access to social security numbers, in combination with other information that might appear in real property documents, could open the door to fraudulent use of a person's credit or medical benefits. HB 1368 would help reduce the risk of identity theft by restricting the public availability of these identifying numbers.

Following HB 2390, many clerks rejected documents that did not comply with the notice requirement and assessed extra filing fees because these documents did not conform to typical specifications for headings on legal documents. This bill would prevent further confusion among county clerks who felt a burden to determine the legality of the contents of real property documents.

Although it would be ideal for all deeds and deeds of trust to include the required confidentiality notice, it would be overly strict to prevent records from being filed if this provision had not been followed. Most documents already include the confidentiality notice, and county clerks are competent to inform individuals of their right to remove personal information from documents in instances where a notice was not provided. By statute, each county clerk's office also would display a general notice that documents are not required to contain a social security number or driver's license number.

**OPPONENTS
SAY:**

Allowing clerks to accept deeds or deeds of trust that do not have the confidentiality notice would defeat the purpose of trying to protect confidentiality. There is a risk that consumers might not realize they had a right to remove social security numbers and driver's license numbers from their records. Also, the specifications for legal papers were established for a reason, and these real property documents should not be excepted from those standards. It would be easier for administrators to handle paperwork that had a clear heading at the top of the page because they must deal efficiently with a large volume of records. The notice would not be any less apparent if it was placed somewhere else on the first page of a deed or deed of trust.

NOTES: The companion bill, SB 461 by Madla, passed the Senate on the Local and Uncontested Calendar on April 7 and was reported favorably, without amendment, by the House State Affairs Committee on April 25, making it eligible to be considered in lieu of HB 1368.