



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 828 (Substitute S-2 as reported)
 Sponsor: Senator Loren Bennett
 Committee: Local, Urban and State Affairs

Date Completed: 6-25-96

RATIONALE

It has been pointed out that, apparently, there is nothing in Michigan's statutes to prevent a person from placing a lien on the property of another person, even though the person placing the lien does not have a valid reason for doing so. This means, then, that if a person submits to the register of deeds a document in the proper form placing a lien on another person's property, the register of deeds must accept and record the document. Since there is no requirement that a register of deeds notify a property owner that a lien has been filed, the property owner may be unaware that this action has been taken. Further, there is no penalty for placing an unjust lien.

Placing a lien on the property of another person can have serious consequences for the property owner if and when the owner tries to sell his or her property, because a clear title to the property cannot be obtained until the lien is removed. A lien can be removed only if a document stating that the lien has been satisfied is filed, or the lien is challenged in court and found unenforceable. This can cause great problems for the owner and has the potential to delay, or prevent, the sale of his or her property.

In recent months, there have been many reports of the activities of the Montana "Freemen", including the strategy of filing liens against the property of their local enemies, such as law enforcement personnel and elected officials. Though this is not widely known, township and county officials in Michigan have reported that members of antigovernment groups have filed liens against the property of local police officers, judges, and elected officials, in an attempt to harass or intimidate them. Further, it has been pointed out that this strategy could be used by anyone, to harass anyone else who owns property. Some people feel that there should be penalties for persons who file false or fraudulent liens against

the property of another, and that current procedures for the placing and recording of liens on property should be revised.

CONTENT

The bill would amend Chapter 65 of the Revised Statutes of 1846, which pertains to the recording of conveyances and the canceling of mortgages, to revise the procedures for the placing and recording of liens on property, and provide penalties for persons who illegally filed instruments of encumbrance on property.

Currently, under Chapter 65, the register of deeds must keep and record an entry book of deeds, an entry book of mortgages, and an entry book of levies. The entry book of levies must include all levies, notices of lis pendens, sheriffs' certificates of sale, U.S. marshals' certificates of sale, and the day, hour, and minute of the receipt of any of these instruments. The bill would add to this list liens and "other instruments of encumbrances". The bill provides that the recording of these instruments or any other instrument of encumbrance would not perfect the instrument of encumbrance unless a court found that both of the following accompanied the instrument when it was presented to the register for entry:

- A full and fair accounting of the facts that supported recording of the instrument of encumbrance and supporting documentation, as available.
- Proof that actual notice had been given to the recorded landowner of the land to which the instrument of encumbrance applied.

This requirement for an accounting and actual notice would not apply to any of the following:

- A tax lien that was not required to be recorded pursuant to the General Property Tax Act.
- The filing of an instrument of encumbrance authorized by State or Federal statute.
- The filing of a consensual agreement to encumber real property, entered into between the owner of real property and the person who sought to record an encumbrance. A consensual agreement would include but not be limited to, a mortgage, loan agreement, land contract, or other consensual or contractual agreement of whatever description entered into between the owner of real property and the person who sought to record an encumbrance.
- The filing of an encumbrance authorized in a final order by a court.
- A filing of a levy, attachment, lien, lis pendens, sheriff's certificate, marshal's certificate, or other instrument of encumbrance by a "commercial lending institution".

(A "commercial lending institution" would be a State- or nationally chartered bank; a State- or Federally chartered savings and loan association or savings bank, credit union, or any other lending institution or regulated affiliate or regulated subsidiary; an insurance company authorized to do business in Michigan; a motor vehicle finance company subject to the Motor Vehicle Finance Act with net assets in excess of \$50 million; a foreign bank; a retirement fund regulated by State law, or a pension fund of a local unit of government or a pension fund regulated by Federal law with net assets in excess of \$50 million; a Federal, State, or local agency authorized by law to hold a security interest in real property or a local unit of government holding a reversionary interest in real property; a nonprofit tax-exempt organization created to promote economic development in which a majority of the organization's assets were held by a local unit of government; an entity within the Federally chartered farm credit system; a licensee under the Mortgage Brokers, Lenders, and Servicers Licensing Act; a holder under the Home Improvement Finance Act; a retail seller under the Retail Installment Sales Act; a licensee under Public Act 125 of 1981, which pertains to secondary mortgages; a licensee under the Consumer Financial Services Act; a licensee under the Regulatory Loan Act; and a regulated lender under the Credit Reform Act.)

The bill provides that if a nonexempt person encumbered property through the recording of a levy, attachment, lien, lis pendens, sheriff's or marshal's certificate, or other instrument of encumbrance, without lawful cause and with the intent to harass or intimidate any person, the court could award the landowner all the costs of bringing an action, including actual attorney fees and exemplary damages; the court also would have to order payment of all damages the landowner sustained as a result of the filing of the encumbrance. In addition, the person would be guilty of a felony punishable by imprisonment for up to three years, a fine of up to \$5,000, or both.

MCL 565.25

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

In Michigan, since there is nothing in statute to prevent a person from filing a lien against the property of another person (and no penalty for filing a false or unenforceable lien), as long as the document submitted is in the proper form, the register of deeds is obligated to accept and record it. Further, since there is no requirement that a register of deeds notify a property owner that a lien has been filed, the property owner may be unaware that this action has been taken. Having a lien attached to one's property has great potential to harm the property owner, regardless of whether the lien has been filed without a legitimate claim against the property. Once filed, a person cannot obtain clear title to his or her property until the lien is removed, meaning that the property cannot be sold. In addition, once filed, a lien cannot be removed unless the person who filed it files a document stating that the lien has been satisfied, or the lien is challenged in court and the court rules that the lien is not enforceable. This means, then, that a property owner with a bogus lien attached to his or her property is faced with two choices: 1) somehow satisfy the lien holder; or (more likely) 2) file a quiet title action (an action to clear the title). Even in filing a quiet title action, however, the property owner's troubles are not over because, in practice, the action will take a minimum of two months; if a question of fact is raised, the action must be placed on the regular court docket, likely causing a lengthy delay; and

the property owner, while likely to succeed in clearing the title, will be liable for attorney fees and court costs. In the meantime the sale of the property will be delayed, or perhaps negated entirely because the potential buyer moved on to seek other property. The bill would tighten the procedures used in the filing of a lien by requiring a full and fair accounting of the facts to support the lien and supporting documentation; requiring that notice be given to the property owner that a lien had been filed; and providing stiff penalties for persons who filed a lien without cause, or with the intent to harass or intimidate the property owner.

Supporting Argument

Members of the Montana Freeman, who deny the legitimacy of state, most local, and Federal governments and the laws adopted by them, have been accused by Federal indictments of generating bogus checks and money orders that were used, over the past year, to defraud banks, credit card companies, and mail order businesses of over \$1.8 million. Reportedly, one of the favorite practices of the Freeman was to place sometimes outrageous liens against the property of their local enemies, such as county officials, sheriffs, and police officers, and use the liens as collateral to back the checks they were writing.

While the activities of antigovernment groups in Michigan and their dealings with local officials here have not yet produced anything as spectacular as the alleged organized scamming by the Montana Freeman, reports that various antigovernment groups are active in various parts of the State keep surfacing. Township and county officials especially have reported that, among the tactics used to harass and intimidate judges, police officers, and local elected officials is the filing of liens against those persons' properties. While the bill could not prevent the filing of liens by members of antigovernment groups, it would make it much more difficult, and potentially costly, for members to use liens as a weapon to punish or harass local officials for carrying out their duties.

Legislative Analyst: G. Towne

FISCAL IMPACT

The fiscal impact would depend on the number of people found guilty of the felony and degree to which these people would be either imprisoned or fined.

Fiscal Analyst: R. Ross

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.