



**Senate Fiscal Agency**  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

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

### **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 placing and recording liens on property, and provide penalties for persons who illegally filed instruments of encumbrance on property.

Currently, 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; and proof that actual notice had been given to the recorded owner 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; the filing of an encumbrance authorized in a final order by a court; or 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".

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

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.

Date Completed: 5-20-96

Fiscal Analyst: R. Ross

floor\sb828

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.