



Senate Fiscal Agency
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BILL ANALYSIS



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

Date Completed: 5-15-96

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 pertain 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

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.