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BILL ANALYSIS



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House Bills 4462 and 4478 (as passed by the House)
Sponsor: Representative Marty Knollenberg (H.B. 4462)
Representative Lisa Posthumus Lyons (H.B. 4478)
House Committee: Judiciary
Senate Committee: Banking and Financial Institutions

Date Completed: 10-6-11

CONTENT

House Bill 4462 would amend the Michigan Penal Code to extend a felony penalty to the forgery of a discharge of mortgage or another document that affects an interest in real property, and uttering and publishing such a forged document; and to include these documents in recording requirements.

House Bill 4478 would amend the sentencing guidelines in the Code of Criminal Procedure to include forgery of a real estate document and uttering and publishing a forged real estate document as Class C felonies against property with a 14-year statutory maximum.

House Bill 4478 is tie-barred to House Bill 4462. Both bills would take effect on January 1, 2012.

House Bill 4462

Under Section 248 of the Penal Code, a person who falsely makes, alters, forges, or counterfeits certain documents, including a deed, with intent to injure or defraud another person, is guilty of a felony punishable by imprisonment for up to 14 years. Under Section 249, the same penalty applies to a person who knowingly, and with intent to injure or defraud, utters and publishes as true a false, forged, altered, or counterfeit deed or other document specified in Section 248.

The bill would add Section 248b to prescribe a 14-year maximum sentence for a person who falsely made, altered, forged, or counterfeited a deed, a discharge of mortgage, or a power or letter of attorney or other document affecting an interest in real property with intent to injure or defraud another person. The bill also would add Section 249b to prescribe a 14-year maximum sentence for a person who uttered and published as true a false, forged, altered, or counterfeit deed or other document listed in Section 248b, knowing it to be false, forged, altered, or counterfeit, with intent to injure or defraud.

Currently, if a violation of Section 248 or 249 involves a deed, discharge of mortgage, or other real estate document, the court must enter an order indicating that the document is invalid and requiring a copy of it and a certified copy of the order to be recorded in the office of the register of deeds of any county where the property is located. If the invalid document was previously recorded, the prosecutor must provide the court with the liber and

page number or unique identifying reference number of the document, which must be included in the order, and the register of deeds must refer to the number in the index of the recorded documents. Any recording fees incurred must be paid as ordered by the court.

Under the bill, these requirements would apply to a document involved in a violation of proposed Section 248b or 249b.

As provided in Section 248, the venue in a prosecution under Section 248b could be in the county where the forgery was performed, where a false, altered, forged, or counterfeit document was uttered and published with intent to injure or defraud, or where the rightful property owner resided.

Also as currently provided, Sections 248b and 249b would not apply to a scrivener's error.

House Bill 4478

Under the Code of Criminal Procedure, a violation of Section 248 or 249 of the Penal Code is a Class E felony against property with a 14-year statutory maximum sentence.

Under the bill, a violation of proposed Section 248b or 249b of the Penal Code would be a Class C felony against property with a 14-year statutory maximum.

MCL 750.248 et al. (H.B. 4462)
777.16n (H.B. 4478)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

By changing certain crimes related to forged real estate documents from Class E to Class C felonies, the bills could increase the minimum sentences for offenders convicted of these crimes. Thus, the bills could increase the length of time incarcerated and thereby increase state and local correctional costs. The average appropriated cost of prison incarceration is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. Costs of parole and probation supervision, excluding the cost of electronic tether, average about \$2,100 per supervised offender per year. Average local correctional costs vary by jurisdiction. Any increase in penal fine revenue could benefit local libraries, which are the constitutionally designated recipients of that revenue.

Fiscal Analyst: Matthew Grabowski

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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.