

SOLICITATION OF DEEDS ACT

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Senate Bill 366 (H-4, adopted on the House Floor)

Sponsor: Sen. Curtis Hertel, Jr.

House Committee: Commerce and Trade

Senate Committee: Commerce

Complete to 3-15-16

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 79 of 2016)

SUMMARY:

The bill would create the "Solicitation of Deeds Act" to require a person soliciting a fee for a copy of a deed to state the following:

- That the solicitation was not from a public body,
- That no action was legally required by the person being solicited,
- The statutory fee for (or cost of) obtaining a copy of the deed from the public body,
- Contact information for the public body that had custody of the deed, and
- The name and address of the person soliciting the fee.

Also, the bill would prohibit a person from charging for a copy of a deed more than four times the statutory fee charged by the public body that had custody of the deed.

A solicitation document could not be in a form or use deadline dates or other language that would make the document appear to be issued by a public body or that appears to impose a legal duty on the person being solicited. The Department of Attorney General could promulgate rules specifying the contents and form of a solicitation document. A person soliciting a fee for a copy of a deed would have to give a copy of the solicitation document to the register of deeds at least 15 days before distributing it.

The department could investigate violations of the proposed act, and could request the attorney general to bring an action against any person who violated the act. The court could order a person who violated the act to refund all of the money paid to the violator. Also, for each solicited document distributed in violation of the act, the court could order the person to pay a civil fine of \$100 for a first violation and up to \$200 for a subsequent violation.

A fine would be paid to the clerk of court, and a civil fine would be distributed to public libraries in the same manner as provided for penal fines.

The bill also allows the attorney general to bring an action in circuit court to restrain a person from engaging in violations by temporary or permanent injunction. The action would be brought in the county where the defendant is established or conducts business, or if the defendant is not established in the state, in Ingham County. Unless waived by the court for good cause shown at least 10 days before beginning such an action, the attorney

general must provide notification and allow the person an opportunity to cease and desist or to confer with the attorney general.

A person who knowingly violates the terms of an injunction, order, decree or judgment would forfeit and pay to the state a civil fine of not more than \$5,000 for each violation.

The circuit court, upon the ex parte application of the attorney general, could issue a subpoena compelling a person to appear before the attorney general and answer under oath questions relating to an alleged violation. The person served with a subpoena could be accompanied by counsel. The subpoena could compel a person to produce books, records, papers, documents, and other things related to the alleged violation. These would be confidential records of the office of attorney general. A person who improperly discloses confidential information would be guilty of a misdemeanor, subject to a fine of up to \$2,500 and/or imprisonment for up to one year.

The bill would not apply to a title insurance company, a licensed mortgage loan originator, mortgage broker lender, a depository financial institution, or a licensed real estate broker or salesperson.

BACKGROUND:

According to the sponsor, the bill aims to prevent predatory solicitations by entities that charge exorbitant fees for obtaining records that can be obtained with very little cost from the county register of deeds office. Those targeted are led to believe, say critics of the practice, that the solicitation is from a government agency and that there is a deadline by which they must respond. The bill requires notices to customers of such entities and limits how much can be charged for the service of obtaining the public record. Fines would be imposed for violations. The attorney general would enforce the act.

FISCAL IMPACT:

The bill could impose costs on the Department of Attorney General, which is charged with enforcing the new act. Costs would be associated with the promulgation of rules, and the investigation and prosecution of violations. There would also be additional civil fines and misdemeanor fines under the act, which could benefit public libraries.

Legislative Analyst: Chris Couch

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.