



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 631 and 632 (as passed by the Senate)
 Sponsor: Senator Joe Conroy
 Committee: Financial Services

Date Completed: 10-2-96

RATIONALE

“Adverse possession” refers to a method by which a person can gain legal title to the land of another by possessing the property exclusively and continuously for a certain length of time, in a manner that is adverse or hostile to the interests of the owner, and under circumstances that give clear notice of the possession to the owner and to the community. In addition, the person obtaining legal title must acquire it under a “claim of right”; in other words, that party must believe that the property actually belonged to him or her. (Pursuant to Public Act 35 of 1988, adverse possession claims cannot be made against the State, although a party may seek other equitable relief.) Under Michigan law, 15 years is the period required for adverse possession claims. In a sense, obtaining title by adverse possession amounts to the application of a statute of limitations, since it limits the time during which a person may bring an action to assert his or her legal rights to property. Many people consider the doctrine to be antiquated, however, and believe that it unfairly allows people to take land that rightfully belongs to someone else. It has been suggested that the doctrine be eliminated.

CONTENT

Senate Bills 631 and 632 would amend the Revised Judicature Act and Public Act 200 of 1945 (which provides for marketable record title to an interest in land), respectively, to abolish the doctrine of adverse possession.

The bills are tie-barred to each other.

Senate Bill 631

The bill provides that, beginning on its effective date, the doctrine of securing title to real property by adverse possession would be abolished in this State.

Currently, the Revised Judicature Act provides that, in every action for the recovery or possession of real estate, the person establishing the legal title to the property is presumed to have been in possession of it within the time limited by law for bringing the action, unless it appears that the property has been possessed adversely to the legal title by the defendant or those from or under whom he or she claims. The bill would delete that exception concerning adverse possession.

Senate Bill 632

Under Public Act 200 of 1945, if a person has the legal capacity to own land in this State and has an unbroken chain of title of record to any interest in land for 40 years, at the end of that period the person generally must be considered to have marketable record title to that interest. A person may not be considered to have marketable record title, however, if the land has been in the hostile possession of another. The bill would delete that provision concerning hostile possession.

MCL 600.5867 et al. (S.B. 631)
 565.101 (S.B. 632)

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

Adverse possession provides a means by which one person can virtually steal the property of another. This can be particularly unfair when the property owner has had the goodwill to allow someone else, such as a neighbor, to use his or her property, and then the owner finds himself or herself subject to a lawsuit to establish title to the

property in the other person's name. Undoubtedly, most people who have not been to law school have never heard of the doctrine of adverse possession, and would be very surprised and disturbed to learn that legal title to their land could be given to someone else who had been using the property for a period of time. The doctrine is not only unfair but also antiquated, particularly in view of modern surveying techniques and title standards.

Opposing Argument

Recent cases involving adverse possession demonstrate that the doctrine is still a viable and useful method of establishing clear legal title to land, encouraging the timely assertion of rights, and ensuring the marketability of title. Each and every one of the doctrine's elements must be met before an adverse possession claim will be upheld, and a judge must decide whether the facts of the individual case support the claim--for example, whether the party having legal title actually gave the other person permission to use the property (which would defeat the adverse possession claim) or in fact said nothing for at least 15 years, and whether the person claiming adverse possession legitimately believed that the land belonged to him or her and openly used the property for the required period of time.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bills would have an indeterminate fiscal impact depending on the reduction in the numbers of claims made for title to real property by adverse possession. The bills eventually would decrease the amount of court time involved in handling these types of cases.

Fiscal Analyst: M. Ortiz

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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.