



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 366 (as enrolled)
Sponsor: Senator Curtis Hertel, Jr.
Senate Committee: Commerce
House Committee: Commerce and Trade

Date Completed: 3-28-16

RATIONALE

Under the Revised Judicature Act, a register of deeds may charge a fee of \$1 per page for a copy of a record, including a deed. Records held by a register of deeds can be obtained in a variety of ways. For example, the Ingham County Register of Deeds allows a person to search for and copy a record in person or electronically, or to request a record by mail or telephone. Apparently, some companies solicit Michigan residents to purchase copies of property deeds. These solicitations reportedly include language that represents that the recipient has a legal obligation to purchase a deed, and the companies sometimes charge \$80 to \$100 for a document that can be obtained from a register of deeds for a few dollars. Some believe that these practices are deceptive and harmful to the public. To address this concern, it has been suggested that the solicitations be required to include certain information and conform to certain standards.

CONTENT

The bill would create the "Solicitation of Deeds Act" to do the following:

- **Require a document used to solicit a fee for a copy of a deed to state certain information.**
- **Prohibit a solicitation document from using deadline dates or other language that would appear to impose a legal duty on the person being solicited.**
- **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.**
- **Require a person soliciting a fee for a copy of a deed to give a copy of the solicitation document to the register of deeds.**
- **Authorize the Department of Attorney General to investigate violations of the proposed Act and bring an action against a person who violated it.**
- **Allow the Attorney General, if he or she had probable cause, to bring an action to enjoin a defendant from engaging in a prohibited practice.**
- **Allow a court, if it found probable cause to believe that a person had violated the proposed Act, to issue a subpoena compelling an individual to appear before the Attorney General and answer questions under oath or to produce documentary materials relating to the alleged violation.**
- **Specify that documentary material obtained by the Attorney General would be considered confidential records.**
- **Specify that the Act would not apply to a title insurance company authorized to do business in this State; a licensed mortgage loan originator, mortgage broker, or lender; or a licensed real estate broker or salesperson.**

The bill would take effect 90 days after its enactment.

Solicitation of Fee for a Deed

A person soliciting a fee for providing a copy of a deed or a free copy of a deed in connection with the solicitation for any other service or product would have to state on the top of the document used for the solicitation, in at least 24-point type, the following: a) that the solicitation was not from a public body, b) that no action was legally required by the person being solicited, c) the statutory fee for, or cost of, obtaining a copy of the public record from the public body that had custody of the record, d) contact information for the public body that had custody of the record, and e) the name and physical address of the person soliciting the fee.

The document used for a solicitation 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 appeared to impose a legal duty on the person being solicited. The Department could promulgate rules specifying the contents and form of the solicitation document.

A person who solicited a fee for providing a copy of a deed could not charge more than four times the statutory fee charged by the public body that had custody of the deed for a copy.

A person who solicited a fee from property owners for providing a copy of a deed would have to furnish a copy of the solicitation document to the office of the register of deeds of each county where the solicitation would be distributed at least 15 days before distributing it.

"Deed" would mean a written instrument entitled to be recorded in the office of the register of deeds that purports to convey or transfer title to a freehold interest in any lands, tenements, or other realty in this State by way of grant or bargain and sale from the named grantor to the named grantee. A leasehold interest for 99 years or more or a proprietary lease of a cooperative unit and any assignment of a proprietary lease of a cooperative unit would have to be treated as a "freehold". "Deed" would not include instruments providing for any of the following: a) common driveways; b) exchanges or easements or rights-of-way; c) revocable licenses to use, adjust, or clear defects of or clouds on title; d) utility service lines such as drainage, sewerage, water, electric, telephone, or other such service lines; or e) quitclaim of possible outstanding interests.

"Person" would mean an individual, partnership, corporation, association, governmental entity, or other legal entity. "Solicit" would mean to advertise or to market to a person with whom the solicitor has no preexisting business relationship.

"Public body" would be defined as that term is defined in Section 2 of the Freedom of Information Act: a) a State officer, employee, agency, department, or other body in the executive branch of the State government (but not the Governor or Lieutenant Governor, the executive office of the Governor or Lieutenant Governor, or employees of those offices); b) an agency, board, commission, or council in the legislative branch of the State government; c) a county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency of such an entity; or d) any other body that is created by State or local authority or primarily funded by or through State or local authority.

Civil Action & Equitable Relief

The Department could investigate violations of the proposed Act, and could request the Attorney General to bring an action against any person who violated it. The court could order a person who violated the Act to refund all of the money paid to the violator and, for a first violation, to forfeit a maximum of \$100 for each solicited document distributed in violation of the Act. For subsequent violations, a court could order the violator to forfeit a maximum of \$200 for each solicited document distributed in violation of the Act. The fine would be paid to the clerk of court, and distributed to public libraries in the same manner as provided for penal fines under Public Act 59 of 1964.

If the Attorney General had probable cause to believe that a person had engaged, was engaging, or was about to engage in a method, act, or practice that was unlawful under the proposed Act,

and gave notice as provided below, the Attorney General could bring an action to restrain the defendant by temporary or permanent injunction from engaging in the practice. The action could be brought in the circuit court of the county where the defendant was established or conducted business or, if the defendant were not established in the State, in the Ingham County Circuit Court.

Unless the court waived notice on good cause shown at least 10 days before an action was commenced, the Attorney General would have to notify the person of the intended action, and give the person an opportunity to cease and desist from the alleged unlawful practice or to confer with the Attorney General in person, by counsel, or by other representative as to the proposed action before the proposed filing date. The notice could be given to the person by mail, postage prepaid, to his or her usual place of business, or if the person did not have a usual place of business, to his or her last known address. If the person were a corporation, the notice could be given only to a resident agent who was designated to receive service of process or to an officer of the corporation.

A person who knowingly violated the terms of an injunction, order, decree, or judgment issued under the proposed Act would have to pay a maximum civil fine of \$5,000 for each violation.

For these purposes, the court issuing an injunction, order, decree, or judgment would have to retain jurisdiction, the cause would have to be continued, and the Attorney General could petition for recovery of a civil fine.

Subpoena

On the ex parte application of the Attorney General to the circuit court in the county where the defendant was established or conducted business or, if the defendant were not established in this State, in Ingham County, the circuit court, if it found probable cause to believe that a person had engaged, was engaging, or was about to engage in an unlawful practice under the proposed Act, and after an ex parte hearing, could issue a subpoena compelling a person to appear before the Attorney General and answer questions under oath relating to an alleged violation of the Act. A person served with a subpoena could be accompanied by counsel when he or she appeared before the Attorney General.

The subpoena could compel a person to produce the books, records, papers, documents, or things relating to the alleged violation. During an examination of documentary material under the subpoena, the court could require a person who had knowledge of the material or the matters contained in it to attend and give testimony under oath or acknowledgement.

The subpoena would have to be served in the manner provided and subject to the provisions that apply to service of process on a defendant in a civil action commenced in the circuit court.

The subpoena would have to include notice of the time, place, and cause for the taking of testimony, the examination, or the attendance and would have to allow at least 10 days before the date of the taking of testimony or examination, unless the court shortened that time for good cause. The subpoena would have to include the name and address of the person to be examined. If the name were not known, the subpoena would have to give a general description sufficient to identify the person or particular class or group to which the person belonged. The subpoena also would have to do the following:

- State a reference to the proposed Act and the general subject matter under investigation.
- Describe the documentary material to be produced with reasonable specificity as to indicate fairly the material demanded.
- Prescribe a return date within which any documentary material would have to be produced.
- Identify the members of the Attorney General's staff to whom the documentary material would have to be made available for inspection and copying.

At any time before the date specified in the subpoena, on motion for good cause shown, the court could extend the reporting date, or modify or set aside the subpoena.

Documentary Material, Confidentiality

Documentary material or other information obtained by the Attorney General under an investigation would be confidential records of the Office of the Attorney General and would not be available for public inspection or copying and could not be divulged to any person except as follows: a) to other law enforcement officials, b) in connection with an enforcement action brought under the proposed Act, or c) on order of the court, to a party in a private action brought under the Act. A person who disclosed information designated confidential by the Act, except as otherwise permitted or under court order, would be guilty of a misdemeanor and could be imprisoned for a maximum of one year or fined up to \$2,500, or both.

Applicability of Proposed Act

The proposed Act would not apply to any of the following: a) a title insurance company authorized to do business in the State, or its authorized agent; b) a licensed mortgage loan originator, mortgage broker, lender, or servicer, or a depository financial institution authorized under State and Federal law to originate or service mortgage loans; or c) a real estate broker or salesperson licensed under Article 25 of the Occupational Code.

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

Some companies send solicitations to residents to purchase copies of their property deeds. These solicitations often imply that the recipient is under a legal obligation to possess a copy of his or her deed. Some solicitations include deadlines or use language, such as "final notice", to imply that there could be adverse consequences if the recipient does not acquire a deed, or that there will not be any further opportunities to get the deed. On occasion, solicitations are specifically targeted toward the elderly and include details about an individual's property to appear personalized. The fees charged by these companies for obtaining a copy of the deed through them can exceed \$80, and many people ultimately never receive the deed once requested. Meanwhile, there is no legal obligation for an individual to have a copy of his or her deed. If a deed is needed, an individual can obtain a copy from the register of deeds for a few dollars, or less.

The bill would protect consumers by ensuring that people who receive these solicitations know what is being sold. It would require companies that make such solicitations to indicate that no action is required, state that the solicitation is not from a public body, and specify the fee for obtaining a copy of the deed. The bill also would set a maximum fee that could be charged and would provide for civil fines and enforcement.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the Department of Attorney General. Potential costs associated with the promulgation of rules as well as the investigation of violations of the proposed Act are indeterminate and dependent on the number of actual cases investigated. Also, the Attorney General could bring an action against anyone who violated the proposed Act. Again, the potential costs are indeterminate and dependent on the number of actions brought. Depending on the number of violations, the costs to the Department could be absorbable within current annual appropriations; however, if the number of cases were substantial, additional appropriations could become necessary. According to the Department, depending on the number of actual cases that would require an investigation and litigation, it could be necessary for the Department to hire one additional attorney to perform those duties. The estimated annual cost to hire one attorney for the Attorney General's office is \$160,000.

Additionally, a court could require a violator to forfeit up to \$100 for each illegal solicitation document distributed for a first offense and up to \$200 per illegal solicitation document distributed for a second or subsequent violation. This revenue would have to be distributed to public libraries. A court also could impose a civil fine of up to \$5,000 for the knowing violation of an injunction, order, decree, or judgment. It is not clear where this revenue would be deposited.

Fiscal Analyst: Joe Carrasco

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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.