

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 79

(Delegates Stifler and Niemann)

Environmental Matters

Judicial Proceedings

Real Property - Mortgage Fraud - Creation of Fraudulent Documents

This bill expands the definition of “mortgage fraud” under the Maryland Mortgage Fraud Protection Act. The bill prohibits the intentional creation or production of a document used during the lending process that contains a misstatement, misrepresentation, or omission which would be relied upon by a mortgage lender, borrower, or other party to the lending process.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill’s imposition of existing penalty provisions.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill’s imposition of existing penalty provisions.

Small Business Effect: None.

Analysis

Current Law/Background: Chapters 3 and 4 of 2008 created the comprehensive Maryland Mortgage Fraud Protection Act. The Act defines “mortgage fraud” as any action by a person made with the intent to defraud that involves:

- knowingly making, using, or facilitating the use of any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that it will be relied upon by a mortgage lender, borrower, or any other party to the lending process;

- receiving any proceeds or any other funds in connection with a mortgage closing that the person knows resulted from the aforementioned actions;
- conspiring to violate either of the preceding provisions;
- filing or causing to be filed in the land records in the county where a residential real property is located any document relating to a mortgage loan that the person knows to contain a deliberate misstatement, misrepresentation, or omission.

Under the Act, mortgage fraud is a felony, with maximum penalties of 10 years imprisonment and/or a \$5,000 fine. If the victim is a vulnerable adult, the maximum penalties increase to 15 years imprisonment and/or a \$15,000 fine. If a violation involves a pattern of mortgage fraud or a conspiracy to engage in a pattern of mortgage fraud, the maximum penalties are 20 years imprisonment and/or a \$100,000 fine. In addition to criminal penalties, a convicted person must pay restitution to any person damaged by the violation.

Finally, victims of mortgage fraud may bring private actions seeking damages and attorney's fees from alleged violators. If the court finds the defendant has violated the provisions of the Act, the court may award damages of up to three times the amount of actual damages. (*See* Real Property Article § 7-407.)

State Expenditures: Potential minimal increase in general fund expenditures as a result of incarceration penalties to the extent that more people are committed to Division of Correction (DOC) facilities and increased payments are made to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2010 are estimated to range from \$23 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are

generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Potential minimal revenue increase as a result of monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures may increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$46 to \$141 per inmate in fiscal 2010.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s):Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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