

SENATE BILL REPORT

SB 6199

As Reported by Senate Committee On:
Judiciary, February 1, 2012

Title: An act relating to modifying the penalty for false swearing by a beneficiary.

Brief Description: Modifying the penalty for false swearing by a beneficiary.

Sponsors: Senators Roach and Kline.

Brief History:

Committee Activity: Judiciary: 1/31/12, 2/01/12 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6199 be substituted therefor, and the substitute bill do pass.

Signed by Senators Harper, Vice Chair; Pflug, Ranking Minority Member; Hargrove, Kohl-Welles, Padden, Regala and Roach.

Staff: Aldo Melchiori (786-7439)

Background: A statutory deed of trust is a form of three-party mortgage. A borrower incurs a debt or other obligation to a beneficiary and, as security for that obligation, the grantor conveys an estate in land to a third-party trustee. The trustee has the power to foreclose by a judicial or nonjudicial sale if the obligor defaults. Nonjudicial foreclosure is usually preferable because it is speedy, efficient, and less expensive. Nonjudicial foreclosure is not available for agricultural land.

There are many statutory prerequisites that must be met before the trustee's sale may occur. One is that the beneficiary must declare, under the penalty of perjury, that he or she is that actual holder of the promissory note or other obligation secured by the deed of trust. The trustee is then entitled to rely on that declaration.

False representation concerning a title or claim to real or personal property is a gross misdemeanor. False swearing is committed when a person makes a false statement, known to be false, under an oath authorized by law.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill (Recommended Substitute): It is a class C felony for a beneficiary to falsely declare, under the penalty of perjury, that he or she is that actual holder of the promissory note or other obligation secured by a deed of trust.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute): Technical amendment to clarify when the offense is a felony.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: It should not be easy to take away someone's home. Foreclosure causes significant emotional trauma as well as financial loss. The declarations should not be assumed to be true. Foreclosures based on false declarations are unjust and should be severely punished. This is an emotional issue as well as a legal one.

Persons Testifying: PRO: Senator Roach, prime sponsor; Melissa Stone, Our WA; Daniel Fieuez, Shirley Newman, Shelley Erickson, Shawn Newman, Nancy Gibson, citizens.