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PROHIBIT CERTAIN ABUSES OF PROCESS

House Bill 4482 (Substitute H-2) First Analysis (3-31-98)

Sponsor: Rep. David Gubow
Committee: Judiciary

THE APPARENT PROBLEM:

According to many reports, an increasing number of anti-government groups and individuals are fraudulently using the legal system in an attempt to challenge or undermine the authority of the state and federal legal system. These groups create their own "common law courts" wherein they use fraudulent documents purporting to be judgments or liens issued by these courts to harass, threaten, and intimidate anyone who is deemed to have wronged them. These groups justify and defend their actions based on a variety of unusual interpretations of history and law. For example, some assert that the federal government suspended the Constitution in 1933 and all laws passed since then are invalid. Others claim they are answerable only to God and are immune from federal or state jurisdiction. Supporters of a Michigan common law court allegedly cite the Northwest Ordinance of 1787 as the basis for the establishment of their court. Although the "Freemen" of Montana and the "Republic of Texas" are prominent examples of these groups, other groups, including the Ku Klux Klan, militias, so-called Christian identity groups, tax protest groups, and a wide variety of other anti-government groups engage in this activity, and many run courses and distribute information on how a person or group can engage in this sort of "paper terrorism."

So far, the primary victims of this sort of "paper terrorism" have been local officials, such as judges and county clerks. One of the methods used by these groups has been to issue and file fake multi-million dollar liens against public officials who have angered the group. Removal of such a lien is costly and time consuming, and until it is removed the lien can damage the person's credit and make it difficult, if not impossible, to sell property that is subject to the lien. Another tactic used by these groups is to issue "court" orders directing public officials to carry out the group's version of the law, serve fraudulent documents, or refrain from performing their legitimate governmental duties. Often these orders include

veiled threats, or warnings of severe sanctions, such as the death penalty, for failure to comply. If the public official fails to comply, the "court" will hold a trial and issue a judgment, often including a severe sanction.

THE CONTENT OF THE BILL:

House Bill 4482 would amend the Michigan Penal Code to prohibit and establish punishments for impersonating or interfering with public officials and for the fraudulent use of process. The bill would also specify a penalty for the existing crime of serving a notice or demand of payment that simulates legal process. The bill would uniformly define "lawful tribunal," "legal process" and "unauthorized process" for each of the crimes. "Lawful tribunal" would mean a tribunal created, authorized, or sanctioned by law; or a private entity's tribunal to the extent that it lawfully sought only to affect the rights or property of its members or associates. "Legal process" would mean any document used as a means of exercising or acquiring jurisdiction over a person or property, to assert or give notice of a legal claim against a person or property, or to direct persons to take or refrain from an action that is issued or entered by a lawful tribunal or lawfully filed with or recorded by a governmental agency. "Unauthorized process" would mean either a document that was prepared or issued by or on behalf of an entity that is not a lawful tribunal and that falsely purports to be legal process; or a document that would otherwise be legal process except that it was not issued or entered by or on behalf of a lawful tribunal or lawfully filed with or recorded by a governmental agency as required by law.

The bill would specify that its provisions would not prohibit lawful assembly or lawful free expression of opinions or designation of a group affiliation or association. Nor would the bill bar a person who had violated the bill's provisions from being charged with, convicted of, or sentenced for a violation of any other

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crime committed during the violation of the bill's provisions.

Impersonation of public officials. A person who represented himself or herself as, or falsely acted as, a public official or employee and also prepared, served, or otherwise acted to further the operation of any legal process or unauthorized process would be guilty of a misdemeanor and could be punished by imprisonment for not more than one year, a fine of not more than \$500, or both. A second conviction would be a misdemeanor punishable by no more than two years and/or a fine of not more than \$1,000. A third or further conviction would be a felony punishable by no less than four years imprisonment and/or a fine of no more than \$2,000.

Fraudulent process. Current law prohibits using a faked court document to demand payment from a debtor. The bill would expand this to prohibit a person from preparing, issuing, serving, executing, or otherwise acting to further the operation of any unauthorized process. The first violation of these prohibitions would be a misdemeanor punishable by not more than 93 days imprisonment, a fine of not more than \$100, or both. The second offense would be a misdemeanor punishable by imprisonment for no more than one year and/or a fine of no more than \$1,000. A third or further conviction would be a felony punishable by imprisonment for no less than four years and/or a fine of no less than \$2,000.

Interference with public officials. The bill would prohibit the use of unauthorized process to attempt to intimidate, hinder, or obstruct a public official or employee or a peace officer in the discharge of his or her official duties. Violation of this provision would be a misdemeanor and would be punishable by not more than two years in prison, a fine of not more than \$1,000, or both. A second or further conviction would be a felony punishable by imprisonment for no less than four years and/or a fine of no less than \$2,000.

MCL 750.217b et al.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The organized abuse of process by anti-government groups must be stopped. According to the Anti-Defamation League, there are an estimated 130 "common law courts" in about 35 states, including Michigan. As people have caught on to their tactics they have begun to threaten and in some cases harm local officials who have refused to process their bogus documents. While legitimate protest is protected by the constitution, this sort of "paper terrorism" and the ensuing threats and violence are not. In order to deal with this behavior, a comprehensive law is needed. The bill does not violate the constitution and specifically guarantees the protection of individual rights to free speech and association. Nor does the bill ban other valid activities, such as the manner in which legitimate forums or groups may deal with their own members. The bill also increases the ease with which law enforcement and prosecuting attorneys may deal with these activities.

The proliferation of disgruntled individuals who are unable to work successfully within society has led to an increase of membership in groups that are unwilling to attempt make changes within the legitimate framework of our democracy. These groups have right to express dissatisfaction with the legal system; however, when they indulge in harassment, intimidation, or incitement to violence, laws are needed to protect the rest of society from this sort of activity.

Against:

The bill is unnecessary. The behaviors that it would prohibit are already prohibited under other laws - fraud, assault, and the recording requirement for registers of deeds (MCL 565.25) for example - and could be dealt with and punished in that fashion. Furthermore, it is or should be the responsibility of the local officials who record such documents to determine whether the paperwork is legitimate. In particular, the filing of a fraudulent lien would not be a concern if the people responsible for processing the paperwork took the time to make certain that documents they recorded were not fraudulent.

Response:

It is not the responsibility of those employees who process such paperwork to carefully examine and

make legal determinations about every item that people attempt to file. Further, some of those who have refused to process these sorts of illegitimate documents have been threatened and even harmed for their actions. Allegedly, some local officials in other states have required around-the-clock police protection after such confrontations.

POSITIONS:

The State Bar of Michigan supports the bill. (3-25-98)

The Anti-Defamation League supports the bill. (3-25-98)

The Prosecuting Attorneys Association of Michigan supports the bill. (3-25-98)

The Michigan Ecumenical Forum supports the bill. (3-25-98)

The Michigan Court Administrators Association supports the bill. (3-25-98)

Analyst: W. Flory

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