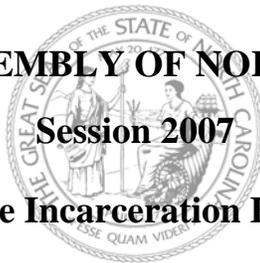


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 817 (Second Edition)

SHORT TITLE: Residential Mortgage Fraud Act.

SPONSOR(S): Representative Blue

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND					
Correction	Possible significant impact. Exact amount cannot be determined.				
Judicial	Possible significant impact. Exact amount cannot be determined.				
TOTAL EXPENDITURES:	Amount cannot be determined.				
ADDITIONAL PRISON BEDS: (cumulative)*	Amount cannot be determined.				
POSITIONS: (cumulative)	Amount cannot be determined.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch.				
EFFECTIVE DATE:	December 1, 2007.				
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

BILL SUMMARY: Enacts new Article 20A, "Residential Mortgage Fraud Act," within Chapter 14 of the General Statutes.

New G.S. 14-118.11 establishes definitions for the act (e.g. mortgage loan, mortgage lending process, pattern of residential mortgage fraud, person, and residential real property). A "pattern of residential mortgage fraud" is defined as residential mortgage fraud that involves two or more

mortgage loans, and which is interrelated by distinguishing characteristics – similar intents, results, accomplices, victims, or methods of commission.

New G.S. 14-118.12(a) makes it unlawful for any person, for financial gain and with the intent to defraud, to do any of the following:

- 1 Knowingly make or attempt to make any misstatement, misrepresentation, or omission during the mortgage lending process with the intention that a mortgage lender, mortgage broker, borrower, or any other person or entity that is involved in the mortgage lending process rely on it.
- 2 Knowingly use or facilitate or attempt to use or facilitate the use of any misstatement, misrepresentation, or omission during the mortgage lending process with the intention that a mortgage lender, borrower, or any other person or entity that is involved in the mortgage lending process rely on it.
- 3 Receive or attempt to receive proceeds or any other funds in connection with a residential mortgage closing that the person knew resulted from a violation of subdivision (1) or (2) of this subsection.
- 4 Conspire or solicit another to violate any of the provisions of subdivision (1), (2), or (3) of the subsection.

G.S. 14-118.12(b) provides that it is unnecessary for the prosecution to demonstrate financial harm from a transaction, or another's reliance on a deliberate misstatement, misrepresentation, or omission.

New G.S. 14-118.13 establishes venue in: 1) the county where residential real property for which a mortgage loan is sought is located; 2) any county where an act was performed in furtherance of the offense; 3) any county where a person alleged to have violated the Act had control or possession of proceeds of the violation; 4) any county where a closing occurred for a property transaction involving a violation of the act; or, 5) any county where a document containing a deliberate misstatement, misrepresentation, or omission is filed with the register of deeds.

New G.S. 14-118.14 authorizes the appropriate district attorney to institute criminal proceedings under the Article upon its own investigation, or upon referral by the Office of the Commissioner of Banks, the North Carolina Real Estate Commission, the Attorney General, the North Carolina Appraisal Board, or other parties.

New G.S. 14-118.15 provides for the following criminal punishments: 1) an offense involving a single mortgage loan as a Class H felony; and 2) an offense involving a "pattern of residential mortgage fraud" is a Class C felony. Also designates that each residential loan and property transaction involving fraudulent activity constitutes a separate offense that does not merge with other crimes.

New G.S. 14-118.16 provides for forfeiture to the state of real and personal property used or derived from a violation of the Act. Also makes forfeiture subordinate to good faith security interest or interest of an owner who made a bona fide purchase without the knowledge of fraud.

New G.S. 14-118.17 exempts from civil liability a person who, in the absence of fraud, bad faith, or malice, reports suspected residential mortgage fraud.

Effective December 1, 2007, for offenses committed on or after that date.

Source: Bill Digest H.B. 817 (03/14/0200).

ASSUMPTIONS AND METHODOLOGY:

General

Presently, those who commit crimes involving conduct similar to that addressed by this bill may be convicted under G.S. 14-100, "Obtaining property by false pretenses." However, this current offense does not encompass all of the elements of the proposed offenses. *Thus, to the extent that the proposed offenses result in new charges and convictions, some additional fiscal impact is expected for the Courts and Corrections.*

Because these offenses are new, there is no historical data from which to accurately project future charge and conviction rates. Anecdotal assessment provided by the North Carolina Banking Commission indicates that approximately two or three mortgage fraud cases are investigated by the Banking Commission and N.C. Real Estate Commission monthly, resulting in an average of one charge per month. Offenders charged under current law are charged with "Obtaining property by false pretenses," and most cases are disposed at the federal level.

Based on this information, the Fiscal Research division does not anticipate a substantial fiscal impact due to this proposal. However, the actual number of charges, potential convictions, and venue of case disposition may vary upon implementation. .

Department of Correction – Division of Prisons

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Accordingly, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill. Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond.* Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

G.S. 14-118.15 makes an offense involving a single mortgage loan a Class H felony, and an offense involving a "pattern of residential mortgage fraud" is a Class C felony. Because these are new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill.

Violators of subsection (a)(3) may currently be convicted under G.S. 14-100, "Obtaining property by false pretenses." Violation is a Class H felony if the value of the property taken is less than \$100,000, a Class C felony if the value of the property taken is \$100,000 or more. In FY 2005/06, there were 1,520 convictions under G.S. 14-100 (including 5 Class C convictions). It is not known if any of these convictions were for conduct covered under the proposed bill.

In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2005-06, the average estimated time served for an offender convicted of a Class C offense was 95 months. If, for example, there was one Class C conviction for this offense per year, this bill would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

Assuming these thresholds and inmate assignment to medium custody, the construction of six additional prison beds within a new, stand alone facility could cost the State \$408,240 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately \$252,720. These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$174,586 by FY 2009-10.

Department of Correction – Division of Community Corrections

In FY 2005-06, 66% of Class H felony convictions resulted in either intermediate or community punishments, predominately special, intensive, or general supervision probation. *Thus, assuming that future Class H convictions for the proposed offense were to occur, the Division of Community Corrections could assume some additional costs for offenders placed under its supervision.* It is not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long. Nor is it known how many additional Class C felony offenders will require post-release supervision.

Presently, general supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program. However, the daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction. Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day. On average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

There is no historical data from which to estimate the number of charges that might occur for the proposed offenses. However, the Administrative Office of the Courts expects that any additional caseload will increase court-time requirements and the associated costs of case disposal. Presently, the estimated costs per Class H felony trial and plea are \$7,345 and \$325, respectively; the estimated costs per Class C felony trial and plea are \$13,049 and \$657, respectively.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: None

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