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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 4308

03/09/2020 Authored by Hertaus The bill was read for the first time and referred to the Property and Local Tax Division

1.1 A bill for an act
1.2 relating to taxes; property and local; clarifying provisions relating to mortgage
1.3 and deed recording or registration fees; repealing the mortgage registry tax and
1.4 the additional mortgage and deed taxes imposed by certain counties; amending
1.5 Minnesota Statutes 2018, section 40A.152, subdivision 1; repealing Minnesota
1.6 Statutes 2018, sections 287.01; 287.03; 287.035; 287.04; 287.05; 287.10; 287.11;
1.7 287.12; 287.13; 383A.80; 383B.80; Minnesota Statutes 2019 Supplement, section
1.8 287.08.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. Minnesota Statutes 2018, section 40A.152, subdivision 1, is amended to read:

1.11 Subdivision 1. Fee. A county that is a metropolitan county under section 473.121,
1.12 subdivision 4, that has allowed exclusive agricultural zones to be created under this chapter,
1.13 or has elected to become an agricultural land preservation pilot county, shall impose an
1.14 additional a fee of \$5 per transaction on the recording or registration of a any mortgage
1.15 subject to the tax under section 287.05 of real property located in this state and an additional
1.16 \$5 on the recording or registration of a deed subject to the tax under section 287.21 resulting
1.17 from a transfer of real property. One-half of the fee must be deposited in a special
1.18 conservation account to be created in the county general revenue fund and one-half must
1.19 be transferred to the commissioner of revenue for deposit in the state treasury pursuant to
1.20 section 40A.151, subdivision 1.

1.21 EFFECTIVE DATE. This section is effective for mortgages and deeds recorded on or
1.22 after July 1, 2020.

2.1 Sec. 2. **REPEALER.**

2.2 (a) Minnesota Statutes 2018, sections 287.01; 287.03; 287.035; 287.04; 287.05; 287.10;
2.3 287.11; 287.12; 287.13; 383A.80; and 383B.80, are repealed.

2.4 (b) Minnesota Statutes 2019 Supplement, section 287.08, is repealed.

2.5 **EFFECTIVE DATE.** This section is effective for mortgages recorded on or after July
2.6 1, 2020.

287.01 DEFINITIONS; MORTGAGE REGISTRY TAX.

Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of sections 287.01 to 287.13, have the meanings given them in this section.

Subd. 2. **Amendment.** "Amendment" means generally a document that alters an existing mortgage without securing a new debt, or increasing the amount of an existing debt; and, that does not, in the case of a multistate mortgage described in section 287.05, subdivision 1, paragraph (b), result in an increased percentage of the real property encumbered by the mortgage being located in this state. A document is an amendment if it meets the definition in this subdivision, including documents that do any one or more of the following:

- (i) extends the time for payment of the unpaid portion of the original debt;
- (ii) changes the rate of interest applicable to the unpaid portion of the original debt;
- (iii) adds additional real property as security for the unpaid portion of the original debt;
- (iv) releases some but not all of the real property serving as security for the unpaid portion of the debt;
- (v) replaces all the real property serving as security for the unpaid portion of the debt with other real property regardless of value;
- (vi) replaces a party previously bound by the mortgage with a new party who becomes bound by the same amended mortgage; or
- (vii) reduces the amount of the debt secured by real property located in this state, or in the case of a multistate mortgage described in section 287.05, subdivision 1, paragraph (b), reduces the percentage of real property encumbered by the mortgage that is located in this state.

Subd. 3. **Debt.** "Debt" means the principal amount of an obligation to pay money that is secured in whole or in part by a mortgage of an interest in real property.

Subd. 4. **Decree of marriage dissolution.** "Decree of marriage dissolution" includes a summary real estate disposition judgment or an instrument made under it.

Subd. 5. **Extension.** "Extension" means any document that alters an existing mortgage by extending the time for repayment without increasing the amount of debt secured by real property that is located in this state.

Subd. 6. **Mortgage.** "Mortgage" means any instrument, including a decree of marriage dissolution or an instrument made under it, creating or evidencing a lien of any kind on real property, given by an owner of real property as security for a debt, notwithstanding that the debt may also be secured in part by a lien upon personalty.

Subd. 7. **Multistate mortgage.** "Multistate mortgage" means a mortgage that encumbers real property located both in and outside of this state.

Subd. 8. **Person.** "Person" includes any individual, partner, officer, director, firm, partnership, joint venture, limited liability company, association, cooperative, social club, fraternal organization, municipal or private corporation, whether organized for profit or not, estate, trusts, business trusts, receiver, trustee, syndicate, the United States, a state, any political subdivision of a state, or any group or combination acting as a unit, and the plural as well as the singular. The term includes any agent of any individual or organization enumerated in this subdivision.

Subd. 9. **Real property, real estate, and land.** "Real property," "real estate," and "land" have the meanings contained in chapter 500, and include all interests in real property that can be conveyed by a document which may be recorded.

Subd. 10. **Record, recorded, and recording.** "Record," "recorded," and "recording" each mean that a document has been delivered to and filed in the office of the county recorder or registrar of titles, whichever office maintains the records for the real property described in the document.

287.03 INSTRUMENTS VALID SECURITY FOR DEBT.

No instrument, other than a decree of marriage dissolution or an instrument made pursuant to it, relating to real estate may be enforced as security for any debt, unless the fact that it is so intended is expressed in it. Except as provided in section 287.05, an instrument may not be enforced as security for a debt amount in excess of: (1) the initial known amount of the debt expressed in the

instrument if the instrument secures that entire debt amount; or (2) the portion of the initial known amount of the debt expressed in the instrument if the instrument secures only a portion of that debt amount.

287.035 IMPOSITION OF TAX.

A tax is imposed on the privilege of recording a mortgage. The tax rate is .0023 of the debt or portion of a debt that is secured by any recorded mortgage of real property located in this state. The person liable for the tax is the mortgagor. The tax is not imposed on the lawful interest amounts that may accrue with respect to a debt.

287.04 EXEMPTIONS.

The tax imposed by section 287.035 does not apply to:

- (a) A decree of marriage dissolution or an instrument made pursuant to it.
- (b) A mortgage given to correct a misdescription of the mortgaged property.
- (c) A mortgage or other instrument that adds additional security for the same debt for which mortgage registry tax has been paid.
- (d) A contract for the conveyance of any interest in real property, including a contract for deed.
- (e) A mortgage secured by real property subject to the minerals production tax of sections 298.24 to 298.28.
- (f) The principal amount of a mortgage loan made under a low and moderate income or other affordable housing program, if the mortgagee is a federal, state, or local government agency.
- (g) Mortgages granted by fraternal benefit societies subject to section 64B.24.
- (h) A mortgage amendment or extension, as defined in section 287.01.
- (i) An agricultural mortgage if the proceeds of the loan secured by the mortgage are used to acquire or improve real property classified under section 273.13, subdivision 23, paragraph (a) or (b).
- (j) A mortgage on an armory building as set forth in section 193.147.

287.05 DETERMINATION OF TAX IN SPECIAL SITUATIONS.

Subdivision 1. **Real property outside Minnesota.** (a) When a multistate mortgage is intended to secure only a portion of a debt amount recited or referred to in the mortgage, the mortgage may contain the following statement, or its equivalent, on the first page: "Notwithstanding anything to the contrary herein, enforcement of this mortgage in Minnesota is limited to a debt amount of \$..... under chapter 287 of Minnesota Statutes." In such case, the tax shall be imposed based only on the amount of debt so stated to be secured by real property located in this state; and, the effect of the mortgage, or any amendment or extension, as evidence in any court in this state, or as notice for any purpose in this state, shall be limited to the amount contained in the statement and for which the tax has been paid and additional amounts for accrued interest and advances not subject to tax under subdivision 4 or section 287.035.

(b) All multistate mortgages not taxed under paragraph (a) shall be taxed under sections 287.01 to 287.13 as if the real property identified in the mortgage secures payment of that portion of the maximum debt amount referred to, or incorporated by reference, in the mortgage that is equal to a fraction the numerator of which is the value of the real property described in the mortgage that is located in this state and the denominator of which is the value of all the real property described in the mortgage.

Subd. 1a. **Real property in this state secures portion of debt.** (a) When the real property identified in a mortgage is located entirely in this state and is intended to secure only a portion of a debt amount recited or referred to in the mortgage, the mortgage may contain the following statement, or its equivalent, on the first page: "Notwithstanding anything to the contrary herein, enforcement of this mortgage is limited to a debt amount of \$..... under chapter 287 of Minnesota Statutes." In such case, the tax shall be imposed based only on the amount of debt so stated to be secured by real property; and, the effect of the mortgage, or any amendment or extension, as evidence in any court in this state, or as notice for any purpose in this state, shall be limited to the amount contained in the statement and for which the tax has been paid and additional amounts for accrued interest and advances not subject to tax under subdivision 4 or section 287.035.

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(b) All mortgages that are not multistate mortgages and that are not taxed under paragraph (a) shall be taxed under sections 287.01 to 287.13 as if the real property identified in the mortgage secures payment of the maximum debt amount referred to, or incorporated by reference, in the mortgage.

Subd. 2. Supplemental mortgages. (a) Except for an amendment or a revision to a reverse mortgage as described under subdivision 6, any document that alters an existing mortgage by providing for an increase in the amount of debt secured by real property located in this state, or, in the case of a multistate mortgage described in subdivision 1, paragraph (b), an increase in the percentage of Minnesota real estate as compared to the total real estate that is encumbered by the mortgage, shall be taxed based upon the increase in the amount of the debt determined to be secured by real property located in this state under either subdivision 1 or 1a.

(b) Except as provided in subdivision 3, any document that alters an existing mortgage to secure debt that was (i) advanced, (ii) repaid in whole or in part, and (iii) then readvanced in whole or in part, shall be taxed based upon the new amounts advanced, even if the maximum debt previously secured by the mortgage is not exceeded.

Subd. 3. Revolving lines of credit. When a mortgage, including a reverse mortgage, secures a revolving line of credit under which advances, payments, and readvances may be made from time to time, the tax imposed under section 287.035 must be paid on the maximum amount of the line of credit that may be secured at any one time, as expressed in the mortgage, regardless of the time or amount of advances, payments, or readvances.

Subd. 4. Advances by mortgagee. No tax under section 287.035 shall be paid on the indeterminate amount that may be advanced by the mortgagee in protection of the mortgaged premises or the mortgage, including taxes, assessments, charges, claims, fines, impositions, and insurance premiums; the amounts due upon prior or superior mortgages and other prior or superior liens, encumbrances, and interests; and legal expenses and attorneys' fees.

Subd. 5. Indeterminate amounts. When a mortgage secures an indeterminate amount other than those described in subdivision 3, 4, or 6, no tax shall be paid at the time the mortgage is recorded, but the tax must be paid at the time of recording an affidavit or other document stating the amount and time of the actual advance.

Subd. 6. Reverse mortgages. If real property secures a reverse mortgage, the principal debt or obligation to which mortgage registry tax applies is the expected total disbursements or cash equivalent to be made under the terms of the loan. Interest accruing on the disbursements made is not subject to mortgage registry tax. In the case of periodic payments made for an indefinite length of time, the expected total disbursements must equal the product of the periodic payment amounts and the number of payments and, if applicable, the amount of cash distribution or its equivalent. The number of payments must be based upon the life expectancy assumption used in determining the payment amount. In the case of reverse mortgages made as part of the Housing and Community Development Act of 1987, section 255 of the National Housing Act, and administered by the Department of Housing and Urban Development (HUD), mortgage registry tax must not be assessed on Federal Housing Administration mortgage insurance premiums, monthly lender service fees, or payments to be distributed to the borrower by HUD.

Subd. 7. Mortgages to secure obligations to be issued. If a mortgage is made to a mortgagee in trust to secure the payment of bonds or other obligations yet to be issued, a statement may be incorporated in the mortgage stating the amount of the obligations already issued or yet to be issued, and the tax to be paid on filing the mortgage for recording must be computed upon the amount so stated. The statement must be binding and conclusive upon all persons claiming through or under the mortgage, and no such obligation issued in excess of the aggregate so fixed is valid for any purpose unless the additional tax is paid and received by the proper county treasurer.

Subd. 8. Amendments. An amendment may contain the following statement, or its equivalent, on its first page: "This is a mortgage amendment, as defined in Minnesota Statutes, section 287.01, subdivision 2, and as such it does not secure a new or an increased amount of debt." In such cases, the document will be treated as a mortgage amendment, as defined in section 287.01, subdivision 2, for all purposes and does not serve to secure a new or an increased amount of debt.

Subd. 9. Modification of mortgage. If a mortgage, or a document modifying a mortgage, contains more than one statement that purports to limit: the enforcement of the mortgage to a certain dollar amount; the tax imposed on the mortgage under this chapter; or the effect of a modifying document, including but not limited to the statements authorized in subdivisions 1, 1a, and 8, then the tax must be imposed based on the combined effect, if any, of all the statements.

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Subd. 10. **Hennepin and Ramsey Counties.** For properties located in Hennepin and Ramsey Counties, the county may impose an additional mortgage registry tax as defined in sections 383A.80 and 383B.80.

287.08 TAX, HOW PAYABLE; RECEIPTS.

(a) The tax imposed by sections 287.01 to 287.12 must be paid to the treasurer of any county in this state in which the real property or some part is located at or before the time of filing the mortgage for record. The treasurer shall endorse receipt on the mortgage and the receipt is conclusive proof that the tax has been paid in the amount stated and authorizes any county recorder or registrar of titles to record the mortgage. Its form, in substance, shall be "registration tax hereon of dollars paid." If the mortgage is exempt from taxation the endorsement shall, in substance, be "exempt from registration tax." In either case the receipt must be signed by the treasurer. In case the treasurer is unable to determine whether a claim of exemption should be allowed, the tax must be paid as in the case of a taxable mortgage. For documents submitted electronically, the endorsements and tax amount shall be affixed electronically and no signature by the treasurer will be required. The actual payment method must be arranged in advance between the submitter and the receiving county.

(b) The county treasurer may refund in whole or in part any mortgage registry tax overpayment if a written application by the taxpayer is submitted to the county treasurer within 3-1/2 years from the date of the overpayment. If the county has not issued a denial of the application, the taxpayer may bring an action in Tax Court in the county in which the tax was paid at any time after the expiration of six months from the time that the application was submitted. A denial of refund may be appealed within 60 days from the date of the denial by bringing an action in Tax Court in the county in which the tax was paid. The action is commenced by the serving of a petition for relief on the county treasurer, and by filing a copy with the court. The county attorney shall defend the action. The county treasurer shall notify the treasurer of each county that has or would receive a portion of the tax as paid.

(c) If the county treasurer determines a refund should be paid, or if a refund is ordered by the court, the county treasurer of each county that actually received a portion of the tax shall immediately pay a proportionate share of three percent of the refund using any available county funds. The county treasurer of each county that received, or would have received, a portion of the tax shall also pay their county's proportionate share of the remaining 97 percent of the court-ordered refund on or before the 20th day of the following month using solely the mortgage registry tax funds that would be paid to the commissioner of revenue on that date under section 287.12. If the funds on hand under this procedure are insufficient to fully fund 97 percent of the court-ordered refund, the county treasurer of the county in which the action was brought shall file a claim with the commissioner of revenue under section 16A.48 for the remaining portion of 97 percent of the refund, and shall pay over the remaining portion upon receipt of a payment from the state issued pursuant to the claim.

(d) When any mortgage covers real property located in more than one county in this state the total tax must be paid to the treasurer of the county where the mortgage is first presented for recording, and the payment must be receipted as provided in paragraph (a). If the principal debt or obligation secured by such a multiple county mortgage exceeds \$10,000,000, the nonstate portion of the tax must be remitted by the county treasurer receiving the tax to the commissioner of revenue with the state tax due under section 287.12. The commissioner shall determine the nonstate portion of the tax owed to each county in the ratio that the estimated market value of the real property covered by the mortgage in each county bears to the estimated market value of all the real property in this state described in the mortgage. The commissioner shall pay each county within 60 days of receiving the tax from the county that collected the tax. In making the division and payment the commissioner of revenue shall send a statement giving the description of the real property described in the mortgage and the estimated market value of the part located in each county. For this purpose, the commissioner of revenue may require the treasurer of any county to certify to the former the estimated market value of any tract of real property in any mortgage in the county.

(e) The mortgagor must pay the tax imposed by sections 287.01 to 287.12. The mortgagee may undertake to collect and remit the tax on behalf of the mortgagor. If the mortgagee collects money from the mortgagor to remit the tax on behalf of the mortgagor, the mortgagee has a fiduciary duty to remit the tax on behalf of the mortgagor as to the amount of the tax collected for that purpose and the mortgagor is relieved of any further obligation to pay the tax as to the amount collected by the mortgagee for this purpose.

287.10 PREPAYMENT OF TAX; EVIDENCE; NOTICE.

A mortgage, or documents relating to its foreclosure, assignment, or satisfaction, must not be recorded unless the tax has been paid. Except as provided in section 582.25, a document or any record of the mortgage may not be received in evidence in any court, and is not valid notice, unless the tax has been paid. If the tax is paid, an error in computation or ascertainment of the amount does not affect the validity of the mortgage or the record or foreclosure. This section does not apply to a mortgage that is exempt from the tax imposed under section 287.035.

287.11 MORTGAGES RECORDED OR REGISTERED PRIOR TO PASSAGE OF SECTIONS 287.01 TO 287.12.

All mortgages of real property recorded prior to the passage of sections 287.01 to 287.12 are taxable under the provisions of law existing prior to the enactment of sections 287.01 to 287.12; provided, that the holder of any such mortgage may pay to the treasurer of the proper county the tax based upon the amount of the debt secured by the mortgage at the time of the payment as stated by the affidavit of the owner of the mortgage. The affidavit may be filed with the county treasurer, in which case the treasurer's receipt must be endorsed on it. The county recorder or registrar of titles, on presentation of the receipt, shall make a record of the date and amount of the payment. Thereafter the mortgage lien shall not be otherwise taxable.

287.12 TAXES, HOW APPORTIONED.

(a) All taxes paid to the county treasurer under the provisions of sections 287.01 to 287.12 must be apportioned, 97 percent to the general fund of the state, and three percent to the county revenue fund.

(b) On or before the 20th day of each month the county treasurer shall determine and pay to the commissioner of revenue for deposit in the state treasury and credit to the general fund the state's portion of the receipts from the mortgage registry tax during the preceding month subject to the electronic payment requirements of section 270C.42. The county treasurer shall provide any related reports requested by the commissioner of revenue.

(c) Counties must remit the state's portion of the June receipts collected through June 25 and the estimated state's portion of the receipts to be collected during the remainder of the month to the commissioner of revenue two business days before June 30 of each year. The remaining amount of the June receipts is due on August 20.

287.13 VIOLATIONS; CIVIL PENALTIES.

Subdivision 1. **Failure to pay full amount.** Any person liable for the tax imposed by section 287.035 who fails to pay the full amount of mortgage registry tax imposed under this chapter, unless the failure is shown to be due to reasonable cause, is liable for a civil penalty of \$250 or 100 percent of the tax for each such failure, whichever is less.

Subd. 2. **Additional penalty.** Any person who willfully attempts to evade or defeat the tax imposed under sections 287.01 to 287.12, or the payment thereof, shall, in addition to the penalty provided in subdivision 1, be liable for a penalty of 50 percent of the total amount of the underpayment of the tax.

Subd. 3. **Payment to mortgagee.** If a mortgagee undertakes to collect from the mortgagor the amount of the tax due under sections 287.01 to 287.12 as provided in section 287.08, paragraph (e), the mortgagor is not subject to the penalties under this section and the mortgagee is subject to the provisions of this section.

383A.80 RAMSEY COUNTY DEED AND MORTGAGE TAX.

Subdivision 1. **Authority to impose; rate.** (a) The governing body of Ramsey County may impose a mortgage registry and deed tax.

(b) The rate of the mortgage registry tax equals .0001 of the principal.

(c) The rate of the deed tax equals .0001 of the amount.

Subd. 2. **General law provisions apply.** The taxes under this section apply to the same base and must be imposed, collected, administered, and enforced in the same manner as provided under chapter 287 for the state mortgage registry and deed taxes. All the provisions of chapter 287 apply to these taxes, except the rate is as specified in subdivision 1, the term "Ramsey County" must be substituted for "the state," and the revenue must be deposited as provided in subdivision 3.

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Subd. 3. **Deposit of revenues.** All revenues from the tax are for the use of the Ramsey County Board of Commissioners and must be deposited in the county's environmental response fund under section 383A.81.

Subd. 4. **Expiration.** The authority to impose the tax under this section expires January 1, 2028.

383B.80 HENNEPIN COUNTY DEED AND MORTGAGE TAX.

Subdivision 1. **Authority to impose; rate.** (a) The governing body of Hennepin County may impose a mortgage registry and deed tax.

(b) The rate of the mortgage registry tax equals .0001 of the principal.

(c) The rate of the deed tax equals .0001 of the amount.

Subd. 2. **General law provisions apply.** The taxes under this section apply to the same base and must be imposed, collected, administered, and enforced in the same manner as provided under chapter 287 for the state mortgage registry and deed taxes. All the provisions of chapter 287 apply to these taxes, except the rate is as specified in subdivision 1, the term "Hennepin County" must be substituted for the "state," and the revenue must be deposited as provided in subdivision 3.

Subd. 3. **Deposit of revenues.** All revenues from the tax are for the use of the Hennepin County Board of Commissioners and must be deposited in the county's environmental response fund under section 383B.81.

Subd. 4. **Expiration.** The authority to impose the tax under this section expires January 1, 2028.