

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4482 (Substitute H-2 as passed by the House)
Sponsor: Representative David Gubow
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 9-22-98

CONTENT

The bill would amend the Michigan Penal Code to prohibit and provide penalties for false or unauthorized legal process under several circumstances. The bill would not prohibit a person from being charged with, convicted of, or sentenced for any other violation of law that he or she committed while violating the bill. The bill specifies that it would “not prohibit individuals from assembling lawfully or lawful free expression of opinions or designation of group affiliation or association”. The bill includes an effective date of July 1, 1998.

Definitions

“Legal process” would mean a summons, complaint, pleading, writ, warrant, injunction, notice, subpoena, lien, order, or other document that was issued or entered by or on behalf of a court or lawful tribunal or was lawfully filed with or recorded by a governmental agency and that was used as a means of exercising or acquiring jurisdiction over a person or property, or to direct persons to take or refrain from an action.

“Lawful tribunal” would mean a tribunal created, established, authorized, or sanctioned by law, or a tribunal of a private organization, association, or entity to the extent that the private entity sought in a lawful manner to affect only the rights or property of persons who were members or associates of that entity.

“Unauthorized process” would mean either of the following:

- A document that simulated legal process and that was prepared or issued by or on behalf of an entity that purported or represented itself to be, but actually was not, a lawful tribunal or a court, public official, or other agency created, established, authorized, or sanctioned by law.
- A document that would otherwise be legal process except that it was not issued or entered by or on behalf of a court or lawful tribunal or lawfully filed with or recorded by a governmental agency, as required by law. (For purposes of the unauthorized process and hindrance prohibitions, however, this provision would not include a document that would otherwise be legal process except for one or more technical defects, including but not limited to errors involving names, spelling, addresses, or time of issue or filing or other defects that did not relate to the substance of the claim or action underlying the document.)

Impersonation

The bill would prohibit a person from impersonating, falsely representing himself or herself, or falsely acting as a public official or employee and preparing, issuing, serving, executing, or otherwise acting to further the operation of any legal process or unauthorized process that affected or purported to

affect persons or property.

A violation would be a misdemeanor, punishable by up to one year's imprisonment, a maximum fine of \$500, or both. A violation after a prior conviction would be a misdemeanor, punishable by up to two years' imprisonment, a maximum fine of \$1,000, or both. A violation after two or more prior convictions would be a felony, punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both.

Unauthorized Process

The Penal Code prohibits a person from serving or causing to be served upon a debtor a notice or demand of payment of money on behalf of a creditor that is not authorized by a Michigan statute or court and that simulates in form and substance legal process issued out of a Michigan court. That offense is a misdemeanor with no specified penalty. (Under Michigan law, a misdemeanor for which no other penalty is specified is punishable by up to 90 days' imprisonment, a maximum fine of \$100, or both.) The bill would prohibit, in addition, a person from preparing, issuing, serving, executing, or otherwise acting to further the operation of any unauthorized process.

A violation of either the current or proposed offense would be a misdemeanor, punishable by up to 93 days' imprisonment, a maximum fine of \$100, or both. A violation of the proposed offense after a prior conviction for either the current or the proposed offense would be a misdemeanor, punishable by up to one year's imprisonment, a maximum fine of \$1,000, or both. A violation of the proposed offense after two or more prior convictions for either the current or the proposed offense would be a felony, punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both.

The bill specifies that the current and the proposed prohibitions would not apply to a lien authorized under a Michigan statute.

Hindrance of Duties

The bill would prohibit a person from attempting to intimidate, hinder, or obstruct a public official or employee or a peace officer in the discharge of his or her official duties by a use of unauthorized process.

A violation would be a misdemeanor, punishable by up to two years' imprisonment, a maximum fine of \$1,000, or both. A violation after one or more prior convictions would be a felony, punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both.

The bill specifies that the proposed prohibition would not apply to a lien authorized under a Michigan statute.

MCL 750.368 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

There are no data to indicate how many people could be convicted of falsely acting as a public employee, serving false legal documents, or causing a notice to be served improperly. The graduated penalties for first, second, and subsequent offenses would increase costs for incarceration and/or fine revenues for local and State government based upon the number of times an offender had been convicted.

Fiscal Analyst: K. Firestone

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.