

Legislative Analysis



COUNTERFEIT IDENTIFICATION

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Senate Bill 912 as passed by the Senate
Sponsor: Sen. Alan Sanborn

Senate Bill 913 as passed by the Senate
Sponsor: Sen. Michelle A. McManus

House Committee: Criminal Justice
Senate Committee: Judiciary

First Analysis (5-20-04)

BRIEF SUMMARY: The bills would revise the penalties for counterfeiting, altering, forging, etc., an official state personal identification card and extend the penalties to include a photograph, image, or electronic data contained on a card.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on state and local government. There are no data available to indicate how many offenders would be convicted under the proposed changes. The state incurs the cost of felony probation at an average annual cost of \$1,800 and the cost of incarceration in a state facility at an average annual cost of \$28,000.

THE APPARENT PROBLEM:

Public Act 126 of 2002 amended the Michigan Vehicle Code to revise the prohibition against, and increase the penalties for, forging, counterfeiting, or altering a driver's license, a license photograph or image, or the electronic data contained on a driver's license, and for using, selling, or possessing a falsified license. The changes were made in response to concerns that fake driver's licenses were being used not only by minors to buy and drink alcohol or gain access to clubs and events restricted to people over 21 years of age, but also increasingly by others to commit identity theft or to hide the true identity of terrorists or other violent criminals.

While the 2002 legislation revised the prohibition in the code and increased the penalties pertaining to fraudulent driver's licenses, it did not address official state personal identification cards, which are regulated under a different statute. Some people believe that the penalties for forging or counterfeiting a state ID, and for using, selling, or possessing a false ID card, should be consistent with the penalties that now apply to forging or counterfeiting a Michigan driver's license.

THE CONTENT OF THE BILLS:

Senate Bill 912 would amend the Code of Criminal Procedure (MCL 777.11b) to revise the sentencing guidelines for forging a state identification card in order to commit a felony, and add to the guidelines felony offenses proposed by Senate Bill 913. Currently, the offense is a Class H felony against the public order with a statutory maximum sentence of four years' imprisonment. The bill would instead specify that counterfeiting or forging a state ID card or using a counterfeited or forged state ID card to commit a felony that is punishable by imprisonment for ten years or more would be a Class D felony against the public order with a maximum term of imprisonment of ten years.

Counterfeiting, forging, or using the altered ID to commit a crime punishable by more than 6 months but less than 10 years imprisonment would be a Class E felony against the public order with a maximum term of imprisonment of five years.

Selling or possessing a forged state ID with the intent to deliver, or possessing two or more counterfeited or forged state ID cards would be a Class E felony against the public order with a maximum term of imprisonment of five years.

The bill is tie-barred to Senate Bill 913 and would take effect September 1, 2004.

Senate Bill 913 would amend Public Act 222 of 1972 (MCL 28.295), which provides for official State personal ID cards, to revise the penalties for reproducing, altering, counterfeiting, forging, duplicating, or using an official state personal ID card; prescribe penalties for possessing an altered, counterfeited, forged, or duplicated card; and extend the penalties to violations involving a photograph, image, or electronic data contained on a card. The bill would take effect on September 1, 2004.

Under the act, intentionally reproducing, altering, counterfeiting, forging, or duplicating an official identification card or using such a card is a felony if the intent is to commit or aid in an offense punishable by imprisonment for one year or more. The felony is punishable by up to four years' imprisonment and/or a maximum fine of \$5,000. If the intent is to commit or aid in an offense punishable by up to one year's imprisonment, the violation is a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000.

The bill would revise the prohibition and the penalties. The bill would prohibit a person from intentionally reproducing, altering, counterfeiting, forging, or duplicating an official state personal ID card photograph or image, the negative of the photograph, an official state personal ID card, or the electronic data contained on a card or a part of a card, or using a card, image, or photograph that had been reproduced, altered, counterfeited, forged, or duplicated. A violation would be punishable as shown below.

- Committing or aiding in a felony punishable by 10 years or more would be a felony punishable by a maximum of 10 years imprisonment and/or a maximum \$20,000 fine.

- Committing or aiding in a felony punishable by less than 10 years or a misdemeanor punishable by 6 months or more would be a felony punishable by up to five years imprisonment and/or up to a \$10,000 fine.
- Committing or aiding in a misdemeanor punishable by less than 6 months would be a misdemeanor punishable by not more than one year imprisonment and/or a fine of not more than \$2,000.

The bill also would prohibit a person from selling, possessing, or possessing with intent to deliver to another person, a reproduced, altered, counterfeit, forged, or duplicated official state personal ID card photograph or image, negative of the photograph, official state personal ID card, or electronic data contained on a card or part of a card. A violation would be punishable as shown below:

- Possession would be a misdemeanor punishable by not more than one year imprisonment and/or a fine of not more than \$2,000.
- Sale, possession with intent to deliver, or possession of 2 or more of the prohibited cards would be a felony punishable by a maximum of five years imprisonment and/or a fine of not more than \$10,000.

The bill's felony offenses would not apply to a minor whose intent was to possess, purchase, or consume alcohol in violation of the Michigan Liquor Control Code. The offenses involving possession, sale, or possession with intent to deliver would not apply to a person who possessed one or more photocopies, reproductions, or duplications of an official state personal ID card or part of a card to document the person's identity for a legitimate business purpose.

HOUSE COMMITTEE ACTION:

The House Committee on Criminal Justice adopted no amendments; the bills were reported in the same form as they passed the Senate. Information in this analysis is derived from the Senate Fiscal Agency's analyses of the bills dated 4-15-04, and 4-20-04.

FISCAL INFORMATION:

ARGUMENTS:

For:

The State of Michigan reportedly issues about 2 million driver's licenses a year through its secretary of state branch offices. The secretary of state offices also issue approximately 100,000 official state personal ID cards annually. While criminals can falsify both forms of identification to commit identity theft or violent crimes, the increased penalties enacted in 2002 apply only to offenses involving driver's licenses.

Since state ID cards are similar in appearance to driver's licenses and can be used for the same types of identification purposes, counterfeiting a state ID card or using, selling, or possessing a false state ID card is as significant a danger to the public as is a violation that involves a fake driver's license. It stands to reason that the penalties for falsifying a state ID card, and for using, selling, or possessing a fake state ID card, should be identical to the penalties enacted in 2002 for a violation involving a driver's license, as the bills propose.

Against:

Senate Bill 913 would exclude minors using fake state IDs to buy alcohol from the increased penalties. Given the seriousness of underage drinking, shouldn't they face the same penalties?

Response:

The bill mirrors the provisions in the Michigan Vehicle Code that pertain to forging, counterfeiting, and altering driver's licenses. At the time of the vehicle code revisions, it was decided that the intent was not to overly punish young people making foolish choices. Besides, Public Act 63 of 2004 (enrolled Senate Bill 637) will increase the penalties for minors who violate the minors in possession (MIP) laws when the act takes effect September 1, 2004. Under that bill, a second or subsequent MIP violation can result in jail time if the terms and conditions of probation are violated.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the bills. (5-19-04)

A representative of the office of Secretary of State indicated support for the bills. (5-19-04)

Legislative Analyst: Susan Stutzky

■ 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.