

Legislative Analysis



"FALSE PRETENSE" DEFINITION

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Senate Bill 1009 as passed by the Senate

Sponsor: Sen. Alan L. Cropsey

House Committee: Criminal Justice

Senate Committee: Judiciary

First Analysis (5-20-04)

BRIEF SUMMARY: The bill would amend the Michigan Penal Code to define "false pretense" and revise the prohibition against taking certain actions by false pretense.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on state and local government. There are no data to indicate whether the proposed revisions would have a impact on the number of offenders convicted. Local governments incur the cost of misdemeanor probation and the cost of incarceration in a local facility, both of which vary by county. 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:

Currently, it is against the law to commit certain actions by false pretense. The statute, however, only applies to representations regarding a past or existing fact or circumstance. A recent case highlighted the problem with the current definition of "false pretense". A man responding to an advertisement for a used car asked to test drive the car in order to take it to a service station and have it checked out, although he had no intention of doing so and intended instead to appropriate the car for his own use. The man was apprehended but when the prosecutor went to charge the man with using false pretenses to obtain control of the car, he was told it did not apply because the act of "taking the car to be checked out" was a future event and the statute did not apply to intentional misrepresentations about events that had not yet occurred. Therefore, legislation is being offered to correct what some see as a defect in the law.

THE CONTENT OF THE BILL:

The Michigan Penal Code prohibits a person from doing any of the following, "with intent to defraud or cheat and by color of a false token or writing, by a false or bogus check or other written, printed, or engraved instrument, by counterfeit coin or metal that is intended to simulate a coin, or by any other false pretense":

- Cause a person to grant, convey, assign, demise, lease, or mortgage land or an interest in land.
- Obtain a person's signature on a forged written instrument.

- Obtain from a person any money or personal property or the use of any instrument, facility, article, or other valuable thing or service.
- Obtain, by means of a false weight or measure, a larger amount or quantity of property than was bargained for.
- Sell or dispose of, by means of a false weight or measure, a smaller amount or quantity of property than was bargained for.

The bill, instead, would prohibit a person from making or using a false pretense to do any of those things, with the intent to defraud or cheat. "False pretense" would include a false or fraudulent representation, writing, communication, statement, or message, communicated by any means to another person, that the maker of the representation knew was false or fraudulent. The false pretense could be a representation regarding a past or existing fact or circumstance or a representation regarding the intention to perform a future event or to have a future event performed.

The bill would take effect on September 1, 2004.

MCL 750.218

HOUSE COMMITTEE ACTION:

The House Committee on Criminal Justice adopted no amendments; the bill was reported in the same form that it passed the Senate. Some information in this analysis is derived from the Senate Fiscal Agency analysis of the bill dated 4-22-04.

ARGUMENTS:

For:

The bill would close an existing loophole in state law. Currently, the prohibition on making false pretenses in order to defraud another does not apply to events that would happen in the future. According to prosecutors, many elderly in the state are subjected to frauds involving a false pretense to perform an event, such as a home repair, in the future. Therefore, the bill would give prosecutors an important tool with which to protect the citizens of the state and appropriately prosecute those who would deliberately cheat and defraud others for personal gain.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the bill. (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.