



Senate Fiscal Agency  
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BILL ANALYSIS

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Senate Bill 1009 (as enrolled)  
Sponsor: Senator Alan L. Cropsey  
Senate Committee: Judiciary  
House Committee: Criminal Justice

**PUBLIC ACT 154 of 2004**

Date Completed: 3-3-05

**RATIONALE**

Under the Michigan Penal Code, it is a crime to use a false pretense in order to obtain something of value. Essentially, the offender must knowingly make a false representation with the intent to deceive, resulting in the victim's detrimental reliance on the false representation. Since at least 1878, the Michigan Supreme Court held that the false representation had to relate to a present or existing fact, or a past fact or event. As the Court stated in 1981, "...false statements of promise or intention may not form the basis for a conviction of false pretenses" (*People v Cage*, 410 Mich 401). In 1997, the Michigan Court of Appeals reiterated that the false pretense may not be a misrepresentation concerning a future event (*People v Reigle*, 223 Mich App 34). This interpretation made it difficult, or impossible, to prosecute individuals whose misrepresentation involved a false promise to do something in the future. It was suggested that the offense should be extended to misrepresentations of a person's present mental state about future events or conduct.

**CONTENT**

**The bill amended the Michigan Penal Code to revise the prohibition against using a false pretense to obtain money or property (or take certain other actions), and specify that the false pretense may 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 prohibits a person from making or using a false pretense to do any of the following, with the intent to defraud or cheat:

- 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.

Previously, the Code prohibited a person from taking those actions "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".

The bill states that "false pretense" includes, but is not limited to, a false or fraudulent representation, writing, communication, statement, or message, communicated by

any means to another person, that the maker of the representation, writing, communication, statement, or message knows is false or fraudulent. As noted above, the false pretense may 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 took effect on September 1, 2004.

MCL 750.218

## **BACKGROUND**

### Michigan Case Law

#### *People v Cage*

The defendant in this case admitted that he went to an automobile dealership and obtained possession of a used car by telling the salesperson that he would buy the vehicle if he liked it after test driving the car and having it checked out at a local service station. The defendant admitted that he had no such intention and made the statements in order to get possession of the car so he could convert it to his own use. Although the Michigan Court of Appeals affirmed the conviction, the Michigan Supreme Court reversed because the defendant's misrepresentation related to future events.

The Court stated, "[T]he pretense relied on to establish the offense must be a misrepresentation as to a present or existing fact, or a past fact or event, and may not be as to some event to take place in the future...We hold that the adoption of a rule construing false pretenses to incorporate misrepresentation of present mental state is at odds with Michigan law." The Court cited case law since 1878 to support this interpretation, and indicated that its holding was in line with the majority of other jurisdictions. The Court also stated, "Although there may be valid arguments supporting an amendment of the false pretenses statute to incorporate misrepresentation of present mental state..., we are convinced that it should be done by legislative enactment."

#### *People v Reigle*

This case involved funeral directors who arranged funerals in which individuals requested and paid for \$860 waterproof, asphalt-coated cemetery vaults. The individuals actually received substantially less expensive vaults that were not coated and were neither waterproof nor water-resistant. The circuit court dismissed the charges of obtaining money by false pretenses, and the prosecution appealed. The Michigan Court of Appeals cited the *Cage* decision, stating that the pretense relied on to establish the offense must be a misrepresentation concerning a present or existing fact, or a past fact or event.

In this case, the defendants' statements were a false promise to deliver asphalt-coated, waterproof vaults. According to the Court, even if the defendants had never intended to deliver such vaults, these statements were not sufficient for false pretenses. The Court also found, however, that the defendants implicitly represented that the individuals received a vault that was waterproof by burying the deceased in an uncoated vault. The Court held that a false pretense does not have to be expressed in words, but may be accomplished by an act. The Court ordered the charges against the defendants reinstated, and the Michigan Supreme Court denied appeal.

### False Pretenses Penalties

As shown in the following table, the penalties for false pretense offenses depend on the value of the land, property, use, or amount obtained or sold, and whether the offender has prior convictions. The maximum fine is either the amount shown in the table or three times the value, whichever is greater. The offenses punishable by 93 days' or one year's imprisonment are misdemeanors; the remainder are felonies.

Value	Prior Conviction	Maximum Imprisonment	Maximum Fine
< \$200	NA <sup>a)</sup>	93 days	\$500
< \$200	1 or more	1 year	\$2,000
\$200 or more but < \$1,000	NA	1 year	\$2,000
\$200 or more but < \$1,000	1 or more	5 years	\$10,000
\$1,000 or more but < \$20,000	NA	5 years	\$10,000
\$1,000 or more but < \$20,000	2 or more <sup>b)</sup>	10 years	\$15,000
\$20,000 or more	NA	10 years	\$15,000
<sup>a)</sup> Not applicable.			
<sup>b)</sup> Not including offenses involving a value under \$200.			

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

In many cases, offenders perpetrate acts of fraud by taking money and promising to do something in the future, with no intent to follow through. This practice commonly victimizes the elderly, who may make a down payment to have work performed on their homes, for example, and never receive the work promised. Because these cases involve misrepresentations concerning a future event, they typically could not be prosecuted under the false pretenses statute, according to Michigan case law. As the Supreme Court pointed out over 20 years ago in *Cage*, however, some other jurisdictions include "promissory fraud" in their false pretenses statutes, and "...there does appear to be a modern trend in this direction". The bill brings Michigan in line with that trend, by making it clear that false pretenses include misrepresentations of present mental states regarding future acts or events.

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

The bill will have an indeterminate fiscal impact on State and local government.

According to the Department of Corrections Statistical Report, in 2002 there were 275 offenders convicted of violating the false pretense prohibition. Of those, 91 received a prison term, 39 received a jail term, and the rest received probation and/or fines. There are no data to indicate whether the amendments will have an 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.

Fiscal Analyst: Bethany Wicksall

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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.