

Legislative Analysis



REAL ESTATE DOCUMENTS: CRIMES OF FORGERY OR UTTERING & PUBLISHING

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House Bill 4462

Sponsor: Rep. Marty Knollenberg

House Bill 4478

Sponsor: Rep. Lisa Posthumus Lyons

1st House Committee: Judiciary

2nd House Committee: Banking and Financial Services

Complete to 9-12-11

A SUMMARY OF HOUSE BILLS 4462 AND 4478 AS INTRODUCED 3-22-11

Michigan law prohibits making, altering, forging, or counterfeiting numerous kinds of records, both private and public, with the intent to injure or defraud another person. It is also against the law to utter or publish as true, a false, forged, altered, or counterfeit record, deed, instrument, or other writing with intent to injure or defraud. Doing so is a felony with a maximum term of imprisonment of 14 years.

House Bill 4462 would revise the provisions relating to **real estate documents**, and House Bill 4478 would amend the corresponding section of the sentencing guidelines to specify that both the forgery of real estate documents and the uttering and publishing of forged real estate documents would be Class C felonies involving property with a maximum term of imprisonment of 14 years.

House Bill 4462 would amend the Michigan Penal Code (MCL 750.248 et al.) to replace the current provisions pertaining to a situation in which a person is convicted of falsifying or forging **documents related to real property**. The bill, instead, would create two new sections of law specific to these crimes:

- Falsely making, altering, forging, or counterfeiting a deed, a discharge of mortgage, or a power or letter of attorney or other document affecting an interest in real property with intent to injure or defraud.
- Uttering and publishing as true a false, forged, altered, or counterfeit deed or other document listed above knowing it to be false, forged, altered, or counterfeited with intent to injure or defraud.

Both of these would be felonies punishable by imprisonment for up to 14 years. Similar to other forgery prosecutions, the venue could be in a county where the forgery was performed; a county where the false, altered, forged, or counterfeit document is uttered and published; or the county where the rightful property owner resides.

In proceedings that result in a conviction for either of those offenses, the following would be required:

- The circuit court would enter an order stating that the false, forged, altered, or counterfeit document is invalid.
- A certified copy of the court order with the invalid document, if not previously recorded, would be attached and recorded in the office of the register of deeds of the county where the property or part of the property is located. If the invalid document had been previously recorded, the prosecutor would have to provide the circuit court with the liber and page number or unique identifying reference number of the invalid document, which would be recorded in the liber. The register of deeds would have to make reference to the liber and page number or unique identifying reference number of the invalid document in the index of the recorded documents.

Any recording fees incurred with recording a copy of the invalid document or court order would be paid as ordered by the court. Further, the bill would specify that these provisions would not apply to a scrivener's error.

FISCAL IMPACT:

By moving certain crimes related to forged real estate documents from Class E to Class C felonies, the bills could increase the minimum sentences for those convicted of these crimes. Thus, the bills could increase the length of time incarcerated and thereby increase state and local correctional costs. To the extent that violators were sentenced to prison for longer durations, the average appropriated cost of prison incarceration is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. Costs of parole and probation supervision, exclusive of the cost of electronic tether, average about \$2,100 per supervised offender per year. To the extent that violators were sentenced to local jails for longer durations, local correctional costs would increase. Average local costs vary by jurisdiction. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

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