



**House
Legislative
Analysis
Section**

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**PENALTIES FOR MAKING OR USING
A FAKE DRIVER'S LICENSE**

**House Bill 4037 as enrolled
Public Act 126 of 2002
Sponsor: Rep. Jennifer Faunce**

**House Bill 5041 as enrolled
Public Act 127 of 2002
Sponsor: Rep. Jerry O. Kooiman**

**House Committee: Criminal Justice
Senate Committee: Transportation and
Tourism**

Second Analysis (4-1-02)

THE APPARENT PROBLEM:

The use of forged or counterfeited driver's licenses, or "fake IDs", is generally associated with underaged drinkers or minors trying to gain access to clubs and events restricted to persons over 21 years of age. However, in recent years, fake IDs have increasingly been used to steal the identities of other people for criminal purposes such as credit card fraud. According to testimony on identity theft offered by Charles Harwood, a regional director for the Federal Trade Commission (FTC), before the Washington State Senate, practices of identity theft (approximately 750,000 cases a year) can range from making unauthorized charges on another person's credit card, writing fraudulent checks using another's name and account number, and opening telephone or cell phone service accounts in another's name, to more insidious practices such as opening a bank account, obtaining multiple credit cards, purchasing a car, securing a home mortgage, and even working under another person's name. In one case, Mr. Harwood told of a man who had had his wallet stolen in 1992. Seven years later, the man was arrested on an outstanding warrant for a crime that had been committed in 1993 by the identity thief.

Often an identity thief uses a forged, altered, or counterfeit driver's license to open bank accounts or secure bank loans in another person's name. In a nutshell, an identity thief typically uses his or her own photograph on a driver's license that contains someone else's personal information. Personal information can be obtained in many ways; many thieves obtain information from documents that have been thrown out in the trash (from individuals as well

as by businesses) and information can also be ordered from legitimate, commercial online data brokers (which collect and then sell personal information). Testimony offered before the House Criminal Justice Committee cited an example in which fraudulent driver's licenses were confiscated from a man who had used them to purchase several cars financed by bank loans that the man had secured with the other people's names. In March of 2002, a fake ID ring operating in Missouri was broken up. According to news reports, for \$126, an FBI informant was able to obtain a set of false identification that included a Social Security card and an Immigration and Naturalization Service resident alien card. An article in the *New York Times* (March 28, 2002) reported that a detective said that "customers buying the fake IDs probably used the false documents to get legitimate identifications, such as Missouri driver's licenses." The article went on to report that the informant was also able to obtain an additional 25 sets of fake IDs; ten of those sets were for suspected terrorists, murderers, and rapists whose names and photographs had been taken from a list of some of the FBI's most wanted criminals. In light of the September 11th attacks on the Pentagon and World Trade Centers, the ease with which terrorists could use fake IDs to obtain legitimate legal documents and identifications is particularly troubling.

To thwart efforts of would-be forgers, the current Michigan driver's license contains several security features, such as the state seal that can only be seen with a blacklight, and other information that can only be seen with a device called a "loop." In addition,

House Bills 4037 and 5041 (4-1-02)

the Office of the Secretary of State conducts educational seminars to train retailers, law enforcement personnel, and persons working in the banking and financial services industries to recognize fake or forged IDs.

Unfortunately, computer and color printer technology have made it easier for people to make realistic-looking fake driver's licenses. Templates to make or alter driver's licenses (and other government documents such as birth certificates and Social Security cards) can be found on the Internet, and some people make a living from providing others with false identification cards. Some computer programs are sophisticated enough to reproduce bar codes (along with encoded information imprinted on the magnetic strip of credit cards and ATM cards), and can even duplicate a person's Michigan driver's license number (which is based on a complicated code known as the Soundex System) with knowing only the person's name and birth date.

According to an article in the *Lansing State Journal* (12-25-01), based on information gathered by the Federal Trade Commission, Michigan ranks sixth in the nation in the number of identity thefts. The rise in crimes involving the use of fake driver's licenses has led some to believe that penalties for making and using such licenses are too mild to provide much of a deterrent. Currently, forging, counterfeiting, or altering a driver's license is a misdemeanor offense, even though the fine or term of imprisonment imposed is generally characteristic of those imposed for felony offenses. For example, if a person forges, counterfeits, or alters a driver's license, license photo, or electronic data on a license with the intent to commit a crime that is a misdemeanor, the penalty is a misdemeanor punishable by imprisonment for not more than one year. However, if the intent is to commit a more serious crime, the penalty is still a misdemeanor, but the punishment would be imprisonment for a period of time equal to that for the offense intended to be committed. Legislation has been offered to increase the amount of fines and increase the maximum sentence for forging, counterfeiting, or altering, or using a forged, counterfeited, or altered driver's license.

THE CONTENT OF THE BILLS:

House Bills 4037 and 5041 would amend the Michigan Vehicle Code and Code of Criminal Procedure, respectively, to increase the penalties for counterfeiting or forging a driver's license. House Bill 5041 is tie-barred to House Bill 4037. The bills would take effect April 22, 2002. Specifically, the bills would make the following changes:

House Bill 4037 would amend the Michigan Vehicle Code (MCL 257.310) to increase and establish graduated penalties for forging, counterfeiting, or altering a driver's license, the license photo, or electronic data contained on a license. Under the bill, a person who intentionally reproduced, altered, counterfeited, forged, or duplicated a driver's license photograph, the negative of the photograph, an image, a license, or the electronic data contained on a license (or a part of a license), or who used a license, an image, or photograph that had been reproduced, altered, counterfeited, forged, or duplicated would be subject to one of the following:

- If the intent of the reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense that is a felony punishable by imprisonment for 10 or more years, then the person would be guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$20,000, or both. This provision would not apply to a minor whose intent it was to violate Section 703 of the Michigan Liquor Control Code, MCL 436.1703. (Section 703 prohibits a minor from using a fake ID to purchase alcohol. A violation is a misdemeanor punishable by imprisonment for up to 93 days, a fine of not more than \$100, or both.)
- If the intent of the reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense that is a felony punishable by imprisonment for less than 10 years or a misdemeanor punishable by imprisonment for six months or more, the person would be guilty of felony punishable by imprisonment for not more than five years or a fine of not more than \$10,000, or both. This provision would not apply to a minor whose intent it was to violate Section 703 (using a fake ID to purchase alcohol) of the Michigan Liquor Control Code, MCL 436.1703.
- If the intent of the reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense that is a misdemeanor punishable by imprisonment for less than six months, the person would be guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$2,000, or both.
- A person who sold, or who possessed with the intent to deliver to another, a reproduced, altered, counterfeited, forged, or duplicated license photograph, negative of the photograph, image, license, or electronic data contained on a license or part of a license would be guilty of a felony punishable by imprisonment for not more than five

years or a fine of not more than \$10,000, or both. This provision would not apply to a minor whose intent it was to violate Section 703 (using a fake ID to purchase alcohol) of the Michigan Liquor Control Code, MCL 436.1703.

- A person who possessed a reproduced, altered, counterfeited, forged, or duplicated license photograph, negative of the photograph, image, license, or electronic data contained on a license or part of a license would be guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$2,000, or both.

- A person who possessed two or more reproduced, altered, counterfeited, forged, or duplicated license photographs, negatives of the photographs, images, licenses, or electronic data contained on a license or part of a license would be guilty of a felony punishable by imprisonment for not more than five years or a fine of not more than \$10,000, or both. This provision would not apply to a minor whose intent it was to violate Section 703 (using a fake ID to purchase alcohol) of the Michigan Liquor Control Code, MCL 436.1703.

House Bill 5041 would amend the Code of Criminal Procedure (MCL 777.12) to place the new felony sentences contained in House Bill 4037 within the sentencing guidelines. The bill would specify that forging a driver license with the intent to commit a crime punishable by 10 years or more imprisonment would be a Class D felony against the public order with a maximum sentence of 10 years imprisonment. Each of the following offenses would be a Class E felony against the public order with a maximum sentence of five years imprisonment: forging a driver license with the intent to commit a crime punishable by 6 months or more but less than 10 years imprisonment; selling or possessing a forged driver license with the intent to deliver; and possession of two or more forged driver licenses.

BACKGROUND INFORMATION::

To report an identity theft to the Federal Trade Commission, call 877-ID-THEFT (877-438-4338). An online complaint can be filed with the Michigan attorney general's office at www.ag.state.mi.us.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, there are no data to indicate how many people would be convicted under the bill of reproducing or altering a driver's license or possessing one or more reproduced or altered driver's licenses. (Data on convictions and sentences are not available because the current

offense is a misdemeanor.) Offenders convicted of a misdemeanor would serve time in a local facility. Local units would incur the costs, which vary by county from \$27 to \$65 per day. Offenders convicted of a felony would receive probation or incarceration in a state facility. The state would incur the costs of felony probation, estimated at \$4.38 per day, and incarceration at an annual cost of \$25,000 per person. If one additional offender were convicted of the most serious crime and received the longest minimum sentence, it would cost the state \$165,000. (2-21-02)

ARGUMENTS:

For:

Though teenagers still try to use fake IDs to purchase alcohol or gain admittance to age-restricted clubs and events, the primary use of fake IDs today is for identity theft. According to the Federal Trade Commission, based on information gathered from November 1999 to June 2001, Michigan ranks sixth in the nation for the number of reported identity thefts. With the help of computers and color printers, and with templates for many states' driver's licenses readily available on the Internet, do-it-yourself fakes and altered licenses are fairly easy to make. For a price, more sophisticated forged or counterfeited driver's licenses are available, such as ones with bar codes containing encrypted personal information or with another person's assigned driver's license number that is based on the Soundex System. In other cases, a person may obtain a fraudulent driver's license from the secretary of state, which is an authentic state driver's license but in another person's name.

These fake IDs are then used to open bank or charge accounts in the other person's name, make purchases on an existing charge account, secure loans for cars and other higher end purchases, and even obtain home mortgages. The practice of identity theft hurts the person whose name and personal information was stolen by ruining their credit, running up debts that they may be liable for, and for some, having to face criminal charges for crimes committed by the identity thief. However, all consumers are affected when retailers and financial institutions must raise prices or interest rates to recover losses incurred by identity thieves. Reportedly, over 750,000 people are victims of identity theft each year. According to news reports, Michigan ranks sixth in the nation for identity thefts, the Wayne County Sheriff's Department has discovered over \$500,000 in losses due to identity fraud in the past year, and Detroit has the fifth highest number of resident identity thieves.

Even though consumer protection laws at the state and federal level give some relief to consumers and some enforcement tools for law enforcement officials, it is time that the penalties for the forging, altering, reproducing, counterfeiting, and so forth, of driver's licenses be stiffened. House Bill 4037 would increase both the amount of fines that could be imposed and the years that an offender could be sentenced to prison. It is important to give law enforcement agencies and the courts laws with enough teeth in them to deter criminals and criminal activities.

Response:

A big part of the problem of identity theft is the carelessness of consumers who give too much information to phone solicitors and over the Internet. Also, many police departments and retailers do not provide the blacklights or loops to their officers and employees that would make the detection of fake IDs easier. Perhaps more effort should be focused on educating those who should be checking IDs more closely.

Rebuttal:

Many in law enforcement and retail sales are already addressing the issue at this level by securing blacklights and loops and by educating their employees in better detection of fake IDs. However, as technology increases and becomes more accessible by the average person, the ability of government agencies to make fake-proof documents decreases. The point of the legislation is to make the production of fake IDs, as well as selling or using them, much more painful to those who are caught. As police officers, bartenders, store clerks, and so on become more adept at identifying fake driver's licenses, it is important to have significant penalties in force to put these identity thieves out of circulation and to deter others from even trying.

For:

In the sting against a fake ID ring in Missouri, an FBI informant was able to obtain Social Security cards and green cards for aliens using the names and photographs of ten of the FBI's most wanted criminals, including some known terrorists. A criminal or terrorist could have used those realistic-looking IDs to obtain legitimate identification documents such as driver's licenses and passports. Documentation using a criminal's or terrorist's photograph but someone else's name could be used to avoid suspicion or detection in instances that require proof of identification, such as when crossing borders or buying airline tickets. Therefore, the state must do all it can to discourage and shut down fake ID operations.

Against:

It would seem that the increased maximum sentences for violations could significantly raise costs for incarcerating people for a longer period of years. At a time when prisons are so overcrowded and so expensive to run, can the state afford to increase jail time for this non-violent crime?

Response:

The state and taxpayers are already paying a high cost to cover losses incurred by retailers, bankers, and others from fraudulent loans, credit card charges, and emptied bank accounts in a similar way that stores must raise prices to cover losses due to shoplifting. For the consumer who is the victim of identity theft, the price can be financially and emotionally devastating. People are denied credit, have been denied employment, and to some extent have been financially liable for debts incurred by identity thieves. If over 750,000 people fall victim to identity thieves each year, and if each case represented a financial loss of \$1,000, then $\frac{3}{4}$ of a billion dollars would be lost each year. Since most cases involve amounts far greater than that, it could be assumed that identity theft costs consumers in excess of several billion dollars a year. Reportedly, according to the Federal Trade Commission, Detroit is one of the five leading cities in the United States for people stealing other persons' identities. Perhaps the question should be rephrased as "can Michigan afford not to increase penalties for making, selling, and using fake driver's licenses?"

For:

Though the focus of the bill seems to be on increasing penalties for making, selling, and using fraudulent and counterfeit IDs to commit crimes related to identity theft or terrorism, it would also establish tougher penalties for those who furnish minors with fake IDs for the purpose of buying alcohol and for those minors who possess a fake ID or who make a fake ID to buy alcohol. Currently, under the Michigan Liquor Control Code, a person who furnishes fraudulent identification to a minor or a minor who uses fraudulent identification to buy alcohol is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100, or both.

However, House Bill 4037 specifies that selling a fake ID to another would be a felony offense punishable by up to five years in prison or a fine of not more than \$10,000, or both. Also, making or using a fake ID to commit or aid in the commission of an offense classified as a misdemeanor punishable by imprisonment for less than six months (which would include furnishing a minor with a fake ID to buy alcohol and a minor using a fake ID to buy

alcohol) would be a misdemeanor offense with up to one year imprisonment or a maximum fine of \$2,000, or both. Possessing a single fake ID would carry the same penalty. These penalties are significantly harsher than the current punishment under the liquor code as mentioned above and could act as a strong deterrent to reduce underage drinking; thus, the bill should have a positive impact.

Response:

The provision of House Bill 4037 that would bump selling a fraudulent ID to a minor to a felony offense seems overly harsh. Also, a person who is just months away from his or her twenty-first birthday should not have to face such stiff penalties as a year in jail and/or a \$2,000 fine just for using a fake ID to buy a drink.

Rebuttal:

The problems associated with underage drinking are well documented. People who begin to drink at a young age are at more risk for developing alcohol addictions. At least half of all crimes are committed by persons under the influence of drugs or alcohol. Approximately half of all traffic accidents by 16- to 21-year-olds involve the use of alcohol. In the past few years, several college students died from alcohol poisoning or accidents related to alcohol use. The problem of underage drinking is very serious, and perhaps it is time to stop thinking about kids and beer being a rite of passage. Besides, some feel that the wording of the provisions in House Bill 4037 would give prosecutors discretion in how to charge an individual. A minor possessing or using a fake ID to buy alcohol or a person making or selling a fake ID to a minor with the intent that the minor would use it to buy alcohol could be charged under either the bill or the liquor code depending on the facts of the case. What is important is to give prosecutors and judges laws with teeth in them to deter criminal actions and to punish adequately those who violate laws.

Analyst: S. 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.