

Legislative Analysis



COUNTERFEIT DEED: COURT TO ORDER COPY TO BE RECORDED BY REGISTER OF DEEDS

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House Bill 5534 (Substitute H-1)
Sponsor: Rep. Steve Tobocman
Committee: Judiciary

Complete to 6-26-08

A SUMMARY OF HOUSE BILL 5532 AS REPORTED BY COMMITTEE 6-25-08

Michigan law currently prohibits making, altering, forging, or counterfeiting numerous 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.

House Bill 5534 would amend the Michigan Penal Code (MCL 750.248 and 750.249) to require in a situation in which a person was convicted of 1) making, altering, forging, or counterfeiting a deed, discharge of mortgage, or other real estate document, or 2) uttering or publishing a false, forged, altered, or counterfeit deed, discharge of mortgage, or other real estate document, (or for any lesser included offense) that the court enter an order indicating the document is invalid and that a copy of the invalid document and a certified copy of the court order be recorded in the office of Register of Deeds of any county in which the subject property (lands or real estate) was located.

In addition, if the invalid document had been previously recorded, the prosecutor would have to provide the court with the liber and page number or other unique identifying reference number of the invalid document, which would have to be included in the order. 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 under this subsection would have to be paid as ordered by the court.

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:

There would be no fiscal impact to state or local government. The increased administrative time to record the files would be negligible, and any filing fees would be paid by the defendant to the proceeding as ordered by the court.

BACKGROUND INFORMATION:

Identity thieves can, and have, forged names on deeds and other property-related documents and then sold, or taken loans out on, the property. Upon conviction, a homeowner holding the original deed must go through a civil process to reestablish clear title to the property. Meanwhile, the identity thief retains title until the civil action is completed.

According to the State Bar of Michigan, the bill would close this loophole by allowing the court to "set aside the fraudulent title and permit the victim to once again hold clear title." The fraudulent title would be removed when the court order was filed with the registered of deeds.

POSITIONS:

The State Bar of Michigan supports the bill. (6-25-08)

A representative of the Wayne County Prosecutor's Office testified in support of the bill. (4-23-08)

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■ 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.