



**House
Legislative
Analysis
Section**

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

**House Bill 4037 (Substitute H-2)
Sponsor: Rep. Jennifer Faunce**

**House Bill 5041 (Substitute H-2)
Sponsor: Rep. Jerry O. Kooiman**

**First Analysis 10-10-01
Committee: Criminal Justice**

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 person’s 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.

Quite often, it is a forged, altered, or counterfeit driver’s license that is used to open bank accounts or secure bank loans. In a nutshell, an identity thief typically uses his or her own photograph on a driver’s license containing someone else’s personal information. Testimony offered before the House Criminal Justice Committee cited driver’s licenses confiscated from a man who used them to purchase several cars financed by bank loans in other people’s names. To thwart efforts of would-be forgers, the current Michigan driver’s license contains several security features, such as the state seal which can only be seen with a blacklight, and other information that can only be seen with a device called a “loop.” In addition, the Office of 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 even to duplicate a person’s Michigan driver’s license number (which is based on a complicated code known as the Soundex System) with only the person’s name and birth date.

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 should be increased. 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,

House Bills 4037 and 5041 (10-10-01)

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 1, 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.
- 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 more than 92 days, 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.
- 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 93 days, 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.

- 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.

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 felony punishable by imprisonment for 10 or more years would be a Class D felony against the public order with a maximum sentence of 10 years imprisonment; forging a driver license with the intent to commit a felony punishable by imprisonment for less than 10 years or a misdemeanor punishable by imprisonment for more than 92 days would be a Class E felony against the public order with a maximum sentence of five years imprisonment; and selling a forged driver license or possessing a forged driver license with the intent to deliver would be a Class E felony punishable by a maximum sentence of five years imprisonment.

FISCAL IMPLICATIONS:

Fiscal information is not available.

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. 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, facing 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, the Wayne County Sheriff's Department has discovered at least \$500,000 in losses due to identity fraud in the past six months.

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.

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 the making, selling, and using of fraudulent and counterfeit IDs for crimes related to identity theft, 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 use 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 a person who sells a fake ID to another would be guilty of a felony 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 for an offense classified as a

misdeemeanor that is punishable by imprisonment for more than 92 days would also be a felony offense under House Bill 4037. Therefore, a person who sold a fake ID to a minor and a minor using a fake ID to buy beer could face felony charges punishable by up to five years in prison or a \$10,000 fine, or both. The increased penalties for violations of the laws prohibiting underage drinking should act as a strong deterrent and should have a positive impact on minors acting more responsibly.

Response:

The provision of House Bill 4037 that would bump underage alcohol purchases and furnishing a minor with a fraudulent ID to a felony offense seems overly harsh. A person who is just months away from his or her twenty-first birthday should not have to face such stiff penalties 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 using a fake ID to buy alcohol or a person furnishing a minor with a fake ID could be charged under either statute depending on the factors of the case. Also, it is common in criminal cases to be charged with more than one offense arising from the same transaction. 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.

POSITIONS:

The Department of State Police has taken a position of neutrality on House Bill 4037. (10-9-01)

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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.