

Legislative Analysis



FRAUDULENT CONVEYANCES

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House Bills 5598 (H-1) and 5599 as reported from committee
Sponsor: Rep. Tullio Liberati, Jr.
Committee: Local Government and Municipal Finance
Complete to 6-13-24

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Acts 154 and 155 of 2024)

SUMMARY:

House Bill 5598 would make updates to 1883 PA 98, an act pertaining to fraudulent land conveyances. House Bill 5599 is a companion bill that would make complementary changes to the Code of Criminal Procedure.

House Bill 5598 would amend 1883 PA 98 to prohibit the intentional filing of a fraudulent document with a register of deeds and to update language in the act. The act's title would also be amended to reflect the new language in the bill.

Currently under the act, a person who procures or places upon record a conveyance of real estate with the intent to deceive as to the identity of the grantor mentioned in the conveyance must be punished by up to three years' imprisonment at the state prison for hard labor or a fine of up to \$5,000, or both.

The bill would instead provide that a person that procures or places upon record a conveyance of real estate with the intent to deceive another person as to the veracity of the document is guilty of a felony, punishable by up to three years' imprisonment, a fine of up to \$5,000, or both.

Additionally, a person that knowingly and willfully drafts or submits a document to be filed and recorded with a register of deeds in Michigan with the intent to defraud the owner of real estate or the owner of an interest in real estate would be guilty of a felony, punishable by up to 10 years' imprisonment, a fine of up to \$5,000, or both. A register of deeds that believes a fraudulent document has been submitted could provide evidence of the violation to the appropriate county prosecutor.

MCL 565.371

House Bill 5599 would amend the sentencing guidelines chapter of the Code of Criminal Procedure to incorporate the proposed felony of drafting or submitting a fraudulent conveyance to be filed with a register of deeds. Under the bill, such an offense would be a Class D felony against property punishable by a statutory maximum term of imprisonment of 10 years.

The bill cannot go into effect unless HB 5598 is also enacted.

MCL 777.15b

BRIEF DISCUSSION:

According to committee testimony, bad actors are increasingly entering fraudulent deeds into registers of deeds' databases to steal a property from a homeowner, and it is a lengthy legal process to get a property back to its rightful owner once a fraudulent deed has been filed. Supporters of House Bills 5598 and 5598 believe that in order to protect landowners' property rights, it should be illegal to enter a forged document into a register of deeds' database, and there should be strong penalties for individuals who intentionally execute or record fraudulent documents. They argue that the bills would disincentivize property fraud, as once a register of deeds office receives a complaint, it could verify the chain of title to determine if the complaint is legitimate and then pass on complaints to a prosecutor for resolution.

Opponents of the bills as introduced raised concerns that notaries, title companies, and attorneys could be held responsible and prosecuted when a forged document is filed, even if they have no knowledge that fraud is occurring. They also argue that House Bill 5598 could require the contents of a deed or other document to be reviewed before filing, even though registers of deeds are solely responsible for making sure a document is in recordable form rather than verifying its contents. Reportedly, registers of deeds often lack the resources or time to properly verify a document before it is filed, so requiring registers to do so could result in valid documents being rejected when they otherwise should not be. Opponents suggest that a better solution would be to amend Chapter XLIII (Frauds and Cheats) of the Penal Code to prescribe penalties for those who file fraudulent documents.

The H-1 substitute adopted by the House Local Government committee for House Bill 5598 provides that the proposed felony charge and penalties for those who knowingly and willfully draft or submit a document to be filed with a register of deeds would only apply if a person drafts or submits the document *with the intent to defraud*, rather than if the person knowingly and willfully drafts or submits a fraudulent document. According to committee testimony, the substitute intends to address opponents' concerns and ensure that the bill only targets individuals who intentionally attempt to submit documents to a register of deeds with the goal of defrauding a property owner.

FISCAL IMPACT:

House Bill 5598 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions of the bill is not known. New felony convictions for individuals knowingly and willfully drafting or submitting fraudulent documents to be filed and recorded with registers of deeds would result in increased costs related to state prisons and state probation supervision. In fiscal year 2023, the average cost of prison incarceration in a state facility was roughly \$48,700 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,400 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on the number of new convictions and how they affect court caseloads and related administrative costs. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5599 is a companion bill to House Bill 5598 and would amend the sentencing guidelines chapter of the Code of Criminal Procedure to include the proposed new felony of drafting or submitting fraudulent documents to be filed with the register of deed as a Class D felony punishable by a statutory maximum of 10 years. The bill would not have a direct fiscal impact on the state or on local units of government.

POSITIONS:

Representatives of the following entities testified in support of the bills (5-15-24):

- Wayne County Register of Deeds
- Michigan Association of Registers of Deeds

The City of Detroit indicated support for the bills. (5-15-24)

A representative of the Real Property Law Section of the State Bar of Michigan testified in opposition to the bills. (5-15-24)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.