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REAL ESTATE TRANSACTION NONDISCLOSURE

House Bill 5938

Sponsor: Rep. James M. Middaugh
Committee: Commerce

Complete to 6-12-98

A SUMMARY OF HOUSE BILL 5938 AS INTRODUCED 6-11-98

House Bill 5938 would amend the Occupational Code to expand the list of circumstances under which an action could not be brought against a real estate broker, associate, or salesperson. The bill specifies that an action could not be brought for failure to disclose any information from the compilation of offenders that is provided by the Sex Offenders Registration Act.

Under current law, an action cannot be brought for failure to disclose that a former occupant has or is suspected of having a disability when such a disclosure would constitute unlawful discrimination; or, that the property was or was suspected to have been the site of a homicide, suicide, or other occurrences that have no material effect on the condition of the property.

[In 1994, the legislature created the Sex Offenders Registration Act, Public Act 295 of 1994. Beginning October 1, 1995, the act required people convicted of listed offenses (see below) to register and comply with the act for 25 years after the date of initial registration, or for life if convicted of a second offense. A registration includes a recent photograph; the person's name, Social Security number, and address or expected address; a brief summary of the individual's convictions for listed offenses, including where the offenses occurred and the original charge, if the conviction was for a lesser offense; a complete physical description of the person; and the individual's blood type and whether a DNA identification profile of the person is available.

(Under the act, listed offenses means accosting, enticing, or soliciting a child for immoral purposes; involvement in child sexually abusive activity or material; a third or subsequent violation of any combination of the following: engaging in indecent or obscene conduct in a public place, indecent expose, or a local ordinance substantially corresponding to either of these offenses; criminal sexual conduct in the first, second, third, or fourth degree; assault with intent to commit criminal sexual conduct; an attempt or conspiracy to commit an offense enumerated above; or, any offense substantially similar to a listed offense under the laws of the United States, any other state, or any country.)

As originally written, a registration under the act was confidential and was not open to inspection, except for law enforcement purposes, and the registration and all included materials were exempt from disclosure under the Freedom of Information Act. However, in 1996 the legislature enacted Public Act 494 which took effect on April 1, 1997. The current law requires the Department of State Police to maintain a computerized data base of registered individuals, indexed by zip code area, and containing the name, aliases, address, physical description, birth

date, and listed offenses of each individual residing within a zip code area. The department must make the compilation available to state police posts, local law enforcement agencies, and sheriffs' departments (via the Law Enforcement Information Network [LEIN], or in printed form), and the local police agencies, together with the Department, also must make the information available in print or electronic form for public inspection. Under Public Act 494, if a court determines that the public availability of any information concerning registered individuals violates the U.S. or state constitution, the department must revise the compilation to remove that information.

Under the original sex offender registration law passed in 1994, any individual whose registration was revealed in violation of the act had a civil cause of action against the responsible party for treble damages. Further, a willful violation of the act by a registrant was a felony, punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both. A person other than a registrant who knew of a registration and divulged, used, or published information about the registration was guilty of a misdemeanor punishable by up to 90 days' imprisonment, a maximum fine of \$500, or both. The current law, Public Act 494 of 1996, specifies that these penalty provisions do not apply to the compilation or to any information from the compilation that is provided or made available under the act.]

MCL 339.2518

House Bill 5938 (6-12-98)

Analyst: J. Hunault

■ 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.