

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 5938 (as reported without amendment)
Sponsor: Representative James M. Middaugh
First House Committee: Commerce
Second House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 11-20-98

RATIONALE

In 1996, the Sex Offenders Registration Act was amended to provide for public availability of information about registered sex offenders. Some are concerned that these recent changes could create a possible duty on the part of real estate agents to disclose to a prospective home buyer whether a registered sex offender lived in the neighborhood or had previously lived in the property being sold. Since the Occupational Code already bars legal actions against a real estate agent for failure to disclose certain information to a purchaser, it has been suggested that this provision could be extended to sex offender information.

As originally enacted, the Sex Offenders Registration Act provided that a registration under it was confidential and was not open to inspection, except for law enforcement purposes, and that the registration and all included materials were exempt from disclosure under the Freedom of Information Act. In 1996, however, the Legislature adopted Public Act 494, which 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 registered sex offender residing within a zip code area. The Department must make the compilation available to State Police posts, local law enforcement agencies, and sheriffs' departments, and the local police agencies, together with the Department, must make the compilation available in print or electronic form for public inspection. Confusion seems to exist regarding dissemination of the information in the registry compilation, however, because the Act also contains provisions making the disclosure of information contained in the registry a misdemeanor and granting an individual whose

registration is revealed a cause of action against the responsible party for treble damages.

Given the position of real estate agents and the expectation that they will make available to prospective buyers certain information about properties they are attempting to sell, there reportedly is a concern that some buyers might expect an agent to provide them with information regarding any registered sex offenders living nearby. Since the information in the sex offender registry is publicly available and there is some confusion over whether information from the list may be merely inspected by the public or divulged or published, it is possible that a home buyer could sue his or her realtor for failing to inform the buyer that a registered sex offender lived near the home or previously lived at the residence being sold. Rather than place real estate agents in a position in which they may be considered responsible for providing sex offender registry information to prospective buyers, some believe that it should be made clear in the Occupational Code that agents would not be required to disseminate that information and that lawsuits for failing to do so would be barred.

CONTENT

The bill would amend the Occupational Code to prohibit a legal action against a real estate broker, an associate broker, or a real estate salesperson for failure to disclose any information from the compilation provided or made available to the public under the Sex Offenders Registration Act.

The Code currently prohibits actions against those people for failure to disclose to a purchaser or lessee of real property that a former occupant had

or was suspected of having a disability or that the property was or was suspected to have been the site of a homicide, suicide, or other crime that had no material effect on the condition of the property or improvements located on it. The bill would add failure to disclose sex offender registration information to that list of nondisclosures for which a real estate professional is not liable.

MCL 339.2518

BACKGROUND

The Sex Offenders Registration Act applies to individuals convicted of a "listed offense", juveniles for whom the juvenile court enters a disposition for a listed offense, and persons placed on youthful trainee status for a listed offense. Offenders must comply with the registration requirement for 25 years after the initial registration, and someone convicted of a second or subsequent offense must register for life. Within 10 days after moving, being paroled, or being released from the jurisdiction of the Department of Corrections, a person required to register must notify the local law enforcement agency, the State Police, or the sheriff's department of his or her new address. The entity that registers an individual or receives a change-of-address notice must forward the registration or notice to the Department of State Police.

"Listed offense" means any of the following:

- 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 exposure, or a local ordinance substantially corresponding to either of those offenses.
- Criminal sexual conduct (CSC) in the first, second, third, or fourth degree.
- Assault with intent to commit CSC.
- An attempt or conspiracy to commit an offense described above.
- An offense substantially similar to a listed offense under the laws of the United States, any other state, or any country.

Under the Sex Offenders Registration Act, any individual whose registration is revealed in violation of the Act has a civil cause of action against the responsible party for treble damages. A person, other than a registrant, who knows of a registration

and divulges, uses, or publishes information about the registration is guilty of a misdemeanor punishable by up to 90 days' imprisonment, a maximum fine of \$500, or both. The Act, as amended by Public Act 494 of 1996, however, 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 1996 amendments to the Sex Offenders Registration Act.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Michigan law should clearly indicate that a real estate agent is not required to provide prospective home buyers with information from the sex offender registry and cannot be held liable for failing to do so. Information indicating whether someone listed on the registry lived nearby, or had previously lived in the property being sold, is not a physical feature of the property and, in fact, may be inaccurate and therefore not relevant to the buyer's decision. In addition, it would be unreasonable to expect a real estate agent to provide sex offender registry information, since that would require the agent to attempt to determine the extent to which a purchaser's decision would be based on the fact that a sex offender lived near a particular property. For example, would a realtor be expected to provide information that a listed offender lived next door, on the same block, in the same neighborhood, or even within a certain number of miles? If real estate agents were held liable for failing to provide this information, it would be difficult to say where the risk of liability would end because some people might feel that the prospect of living within a five-mile radius of a convicted sex offender would be unacceptable, while others might only be concerned about living next door, and still others might feel that it was not relevant because the offender had already served his or her punishment. Rather than expect a real estate agent to provide this information, it would be more reasonable, given that the information is now available to the public, to place the responsibility for seeking it out on those home buyers who feel that they need to know whether any persons on the sex offender registry lived nearby before buying a particular piece of property.

Opposing Argument

The bill may be unnecessary. The Sex Offenders

Registration Act prohibits publishing or disclosing information from the registry, except as specifically allowed for the compilation and public inspection of it, and provides both criminal penalties and a civil cause of action for improper disclosure of the information. Surely, real estate agents are not expected to provide information when its disclosure would expose them to criminal and civil liability.

Response: Even if an action against a real estate agent for failing to disclose sex offender registry information could be successfully defended, there is a reasonable concern that those lawsuits might be pursued. Defending a legal action can be costly, and even if won, can create damaging publicity and increased insurance costs. Even if the Sex Offenders Registration Act's confusing disclosure provisions are interpreted to prohibit the dissemination of sex offender registry information by real estate agents, it would be wiser to protect those engaged in the business of selling real estate from potential lawsuits by eliminating the threat of legal action.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.