



**House
Legislative
Analysis
Section**

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VIDEO RENTAL PRIVACY: CIVIL REMEDY

House Bill 4694 with committee amendment
First Analysis (5-11-89)

RECEIVED

Sponsor: Rep. Gerald H. Law
Committee: Judiciary

JUN 06 1989

Mich. State Law Library

THE APPARENT PROBLEM:

Public Act 378 of 1988 generally prohibits disclosures of information on a customer's rental of books, videos, and sound recordings. Although violation of the act is a misdemeanor, there is no provision explicitly granting the right to collect damages for harm done when, for example, details on a person's video rentals are illegally disclosed. If the act provided for civil remedies, those harmed by illegal disclosures could obtain some recompense and the deterrent effect of the act would be less dependant on the threat of criminal conviction.

THE CONTENT OF THE BILL:

The bill would establish civil remedies for violation of the video rental privacy act, Public Act 378 of 1988. Regardless of any criminal prosecution for a violation, a person who violated the act would be liable for civil damages to the customer identified in the prohibited disclosure. The customer could recover the greater of \$5,000 or actual damages (including damages for emotional distress), plus costs and attorney fees.

MCL 445.1715

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill would have no fiscal implications. (5-10-89)

ARGUMENTS:

For:

By providing for civil remedies, the bill would strengthen the law protecting privacy in rentals of videos, recordings, and books. Someone harmed by an illegal disclosure could sue for damages and collect recompense directly from the violator regardless of whether a prosecution was brought or a conviction was obtained. Victims would be helped directly, and violators would be hit where it would hurt the most — in the pocketbook. Further, any deterrent effect that the act might have would be increased: punishment would no longer be dependent on prosecutor priorities and criminal standards of proof.

Against:

The bill would exact a high price for what might be an unwitting violation of the video privacy law. It would be fairer to condition civil damages on a "knowing" violation of the act.

POSITIONS:

The American Civil Liberties Union of Michigan supports the bill. (5-10-89)

The Michigan Retailers Association would not oppose the bill if it were amended to ensure that unknowing violations of the act were not penalized. (5-9-89)

H.B. 4694 (5-11-89)