



**House
Legislative
Analysis
Section**

Manufacturer's Bank Building, 12th Floor
Lansing, Michigan 48909
Phone: 517-373-6466

PRIVATE DETECTIVE LICENSURE

House Bill 5196 as introduced
First Analysis (11-27-89)

RECEIVED

Sponsor: Rep. Thomas L. Hickner
Committee: State Affairs

MAR 05 1990

Mich. State Law Library

THE APPARENT PROBLEM:

Homeowners who financed their homes with mortgages insured by the Federal Housing Administration (FHA) are sometimes eligible to receive an insurance premium refund, a distributive share payment, or both, when FHA insurance is terminated without default. People who paid a one-time mortgage insurance premium may be eligible to receive a refund of the unused portion of the premium if the insurance is terminated before the mortgage note matures. Mortgage insurance premiums go into the FHA's Mutual Mortgage Insurance Fund, which is used to finance the insurance program. When the earnings of the fund exceed program needs, the surplus is paid as "distributive shares" to homeowners when their insurance is terminated. Thus, a homeowner may be eligible for a distributive share payment if there is a surplus in the insurance fund at the time FHA insurance is terminated.

It is not uncommon for a person to be unaware that he or she has money due from the FHA, if, for instance, he or she has moved and does not receive the notice sent by the FHA. As a means of getting the unclaimed funds to the "missing" homeowners, the federal Department of Housing and Urban Development (HUD) allows people to act as "third party tracers" to locate the homeowners. A would-be tracer can fill out an order form and pay a fee to receive from HUD a list of names and last-known addresses. Lists are issued state-by-state; a Michigan list costs \$40.

Using various methods (such as checking telephone directories, motor vehicle records, county deed records), a tracer may locate a homeowner. The approach to a homeowner may vary, but typically the tracer contacts the homeowner by letter or telephone, sets up a meeting, and tells the homeowner that he or she is due money in the possession of the U.S. government. The tracer then contracts with the homeowner to provide the refund for a fee.

While federal law apparently sets no qualifications for people who wish to act as tracers, in Michigan such people must be licensed as private detectives. Under the Private Detective License Act, someone who for a fee makes an investigation regarding the whereabouts or transactions of any person must be licensed by the state police as a private detective. However, unlike private detectives in general, tracers are not conducting their investigations on behalf of a client, do not engage in surveillance, and do not investigate crimes or civil offenses. Many believe that a tracer's work is sufficiently unlike usual private detective work to make formal licensure unnecessary.

THE CONTENT OF THE BILL:

The bill would amend the Private Detective License Act to exempt from the act someone who made an investigation for the purpose of obtaining or furnishing information regarding the location of real or personal property in the possession of or under the control of an office or political subdivision of a state or the federal government.

MCL 338.824

FISCAL IMPLICATIONS:

Fiscal information is not available at present. (11-27-89)

ARGUMENTS:

For:

The work that a third party tracer does is not private detective work in the usual sense; he or she is simply trying to locate someone due a refund from the FHA, and hoping to be able to collect a fee from the homeowner for his or her efforts. The consumer protection afforded by a licensure requirement is unnecessary, because the tracer's investigations are on his or her own behalf, not a client's, and because the government check cannot be cashed by the tracer, but rather only by the homeowner.

Michigan is one of only a handful of states requiring licensure of third party tracers. Due to a recent cable television promotion, the state police office responsible for private detective licensure has been fielding around a dozen inquiries per day from would-be tracers, few of whom would qualify for private detective licensure. Dealing with the many inquiries is time-consuming and puts an unnecessary burden on the office's resources. Given that licensure of third party tracers is of dubious value, that the current license requirement strains department resources, and that many tracers no doubt do not know of or heed the license requirement, the state would do better to excuse third party tracers from having to be licensed as private detectives.

Against:

Third-party tracers should have to be licensed as private detectives, as the state has an interest in preventing the unscrupulous from being able to victimize or harass people. And, reports are that people are getting harassed by third party tracers; sometimes it is a single tracer that calls at inconvenient times, sometimes it is a succession of many tracers. While a tracer may undertake his or her efforts on the tracer's own behalf, in the end there is a client in the form of a homeowner who pays the tracer a substantial fee (30 percent is common) to obtain money that the homeowner can obtain himself or herself by contacting the appropriate federal office. The opportunity for misrepresentation or fraud is great, and the licensure requirement serves as a useful supplement to antifraud laws in limiting unscrupulous behavior.

The bill would affect not only those who would be tracers for FHA refunds, but also those who would attempt to locate the rightful owners of property in state escheats. The breadth of the bill makes it all the more necessary that there be some means of ensuring that those who conduct investigations meet certain minimum standards of character and education. The bill would make it easier for, say, someone with a burglary record to obtain personal information or gain entrance to a person's home.

Against:

The recent interest in third party tracers is undoubtedly due to promotional programs recently airing on cable television. In those programs, viewers are urged to buy a

H.B. 5196 (11-27-89)

book explaining how they can "make \$1,000 cash every day." That book details how a person can become a third party tracer to locate people owed FHA refunds, provides sample form letters, suggests approaches to be used with homeowners, and recommends a "processing fee" of 30 percent of the refund. Unfortunately, it is not as easy to make money as a third party tracer as the book suggests. So many people have become third party tracers it is not uncommon for a relatively easy-to-find homeowner to be contacted by several dozen tracers. Moreover, refunds are rarely over \$1200, at least in Michigan, and most are in the \$500 to \$1,000 range. A single successful transaction would not net a windfall. In a way, the bill would make it easier for unsophisticated people to be taken in by a questionable scheme for making money.

Response: The cable promotion in question is not as questionable as some people might think. A person willing to undertake the necessary tedious efforts can make money as a third-party tracer. The book sold to viewers offers useful information to someone interested in becoming a tracer, and emphasizes the importance of maintaining good records and operating within the law. It would be overly protective of the state to use private detective licensure as a means of discouraging people from becoming third-party tracers. If anything, the state should remove that hurdle so that would-be tracers are relieved from the additional time and expense required to obtain a license.

POSITIONS:

The Department of State Police supports the bill. (11-20-89)

The Michigan Council of Private Detectives is reviewing the bill and does not have a formal position at this time. (11-22-89)