

Legislative Analysis



RENTAL/PURCHASE PRIVACY ACT

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Senate Bill 490 (H-1, as reported from House committee)

Sponsor: Sen. Tonya Schuitmaker

House Committee: Commerce and Trade

Senate Committee: Commerce

Complete to 2-3-16

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

SUMMARY:

The bill would amend the Public Act 378 of 1988, sometimes referred to as the Video Rental Privacy Act, although it applies to written materials and sound recordings as well. The bill states in an enacting section:

"This amendatory act is curative and intended to clarify that the prohibitions on disclosing information contained in 1988 PA 378... do not prohibit disclosing information if it is incident to the ordinary course of business of the person disclosing the information, including marketing goods and services to customers or potential customers when written notice is provided, and that a civil action for a violation of those prohibitions may only be brought by a customer who has suffered actual damages as a result of the violation."

The act applies to a person, or an employee or agent of the person, engaged in the business of selling at retail, renting, or lending books or other written materials, sound recordings, or video recordings.

The bill would rewrite the act to do the following:

- Prohibit a business (or agent or employee) subject to the law from knowingly disclosing information that personally identified the customer as having purchased, leased, rented, or borrowed certain materials. The underlined word would be newly added.
- Specify that the prohibition against disclosure does not apply to disclosure of information aggregated in a manner designed to prevent its association with an identifiable person. This would be a new provision in the act.
- Allow disclosure of certain customer information (1) under a warrant or court order; (2) to collect payment after a customer has been sent notice payment is due, as is the case now; (3) to any person if the disclosure is incident to the ordinary course of business of the person disclosing the information (a new provision); or (4) if disclosure is for the purpose of marketing goods and services to customers or potential customers. Currently, this fourth reason says, for the "exclusive" purpose of marketing goods and services "to the consumer."

- Specify that no liability could result from the lawful disclosure of information (a new provision).
- Require a business disclosing information for marketing purposes to inform customers by written notice that they could remove their names at any time and specify the manner in which customers can remove their names. Unless the business's method of communication with customers is by electronic means, the written notice must include a non-electronic method for the customer to use to opt out.
- Any of the following methods of notice would be sufficient: (1) providing written notice in or with the materials sold, rented, or lent; (2) providing written notice to a customer at the time the materials are ordered or otherwise provided in connection with the transaction between the person and the customer; or (3) providing a notice that is included in an online privacy policy or similar communication that is posted on the internet, is maintained by the business disclosing the information, and is available to customers or the general public.
- Allow customers to provide notice that they do not want their names disclosed, and prohibit a business from knowingly disclosing a name for marketing purposes beginning 30 days after receiving such notice.
- Provide that a customer who suffers actual damages as a result of a violation of the law could bring a civil action, and could recover actual damages, including damages for emotional distress, and reasonable costs and attorney fees. Currently, the act allows recovery of actual damages or \$5,000, whichever is greater. That language would be struck.

The bill would take effect 90 days after its enactment.

FISCAL IMPACT:

The bill does not appear to have a significant fiscal impact on state or local government.

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