



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 490 (as introduced 9-10-15)
Sponsor: Senator Tonya Schuitmaker
Committee: Commerce

Date Completed: 12-1-15

CONTENT

The bill would amend the video rental privacy law to do the following:

- **Allow disclosure of certain customer information to any person if the disclosure were incident to the ordinary course of business of the person that was disclosing the information.**
- **Require a person disclosing information for marketing purposes to inform the customer by written notice that the customer could remove his or her name at any time in the manner described by the bill.**
- **Prescribe the methods of notice that would satisfy the written notice requirement.**
- **Specify that a customer could provide written notice that he or she did not want his or her name disclosed for marketing purposes, and prohibit disclosure 30 days after the person received the notice.**
- **Provide that a customer who suffered actual injury as a result of a violation of the law could bring a civil action; and specify the remedies for such a violation.**

The bill states, "This amendatory act is curative and intended to clarify that the prohibitions on disclosing information contained in 1988 PA 378... [the video rental privacy law] 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 the consumer, when written notice is provided."

The bill would take effect 90 days after its enactment.

Disclosure of Information & Notice Requirements

The law specifies that a record or information concerning the purchase, lease, rental, or borrowing of written materials, sound recordings, or video recordings may be disclosed only in one or more of the following circumstances: a) with the written permission of the customer, b) pursuant to a court order, c) to the extent reasonably necessary to collect payment for the materials or their rental if the customer has received written notice that payment is due and has failed to pay, or d) pursuant to a search warrant issued by a State or Federal court or a grand jury subpoena.

The bill would allow disclosure of the above information to any person if the disclosure were incident to the ordinary course of business of the person that was disclosing the information.

The law also allows disclosure of such a record or information if the disclosure is for the purpose of marketing goods and services to the consumer. The person disclosing the

information must inform the customer by written notice that the customer may remove his or her name at any time by written notice to the person disclosing the information. Under the bill, the person that was disclosing the information would have to inform the customer by written notice that the customer could remove his or her name at any time in the manner described below.

Any of the following methods of notice would satisfy the written notice requirements: a) written notice included in or with any materials sold, rented, or lent to the customer; b) written notice provided to the customer at the time he or she ordered any of the materials described above or otherwise provided to the customer in connection with the transaction between the person and customer for the sale, rental, or loan of the materials to the customer; or c) notice that was included in an online privacy policy that was posted on the internet and maintained by the person that was disclosing the information and was available to the general public.

A customer could provide written notice to a person that was disclosing the information for marketing purposes that he or she did not want his or her name disclosed. Beginning 30 days after the person received the notice, the person could not disclose the customer's name to any other person.

Civil Action & Remedies

A person who violates the video rental privacy law is guilty of a misdemeanor. (Under the Michigan Penal Code, a misdemeanor for which a penalty is not specified is punishable by up to 90 days' imprisonment and/or a maximum fine of \$500.) Regardless of any criminal prosecution for a violation, a person who violates the Act may be liable in a civil action for damages to a customer. The customer may bring a civil action against the person and may recover both of the following: a) actual damages, including damages for emotional distress, or \$5,000, whichever is greater, and b) costs and reasonable attorney fees.

Under the bill, instead, a customer who suffered actual injury as a result of a violation could bring a civil action against the person who violated the law, and could recover one of the following, whichever was greater: the customer's actual damages, including damages for emotional distress, or if the violation were the disclosure of the customer's information after he or she provided written notice to the person under the bill, \$5,000. The customer also could recover costs and reasonable attorney fees.

MCL 445.1711 et al.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

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

Fiscal Analyst: Ryan Bergan

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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.