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BILL



ANALYSIS

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Senate Bill 490 (as enacted)
Sponsor: Senator Tonya Schuitmaker
Senate Committee: Commerce
House Committee: Commerce and Trade

PUBLIC ACT 92 of 2016

Date Completed: 3-20-17

CONTENT

The bill amended the video rental privacy law to do the following:

- **Prohibit a person subject to the law from knowingly disclosing information that personally identifies a customer as having purchased, leased, rented, or borrowed certain materials.**
- **Specify that the prohibition against disclosure does not apply to information aggregated in a manner designed to prevent its association with an identifiable person.**
- **Allow disclosure of certain customer information under a warrant; to any person if the disclosure is incident to the ordinary course of business of the person disclosing the information; or if disclosure is for the purpose of marketing goods and services to customers.**
- **Require a person disclosing information for marketing purposes to give the customer written notice that the customer may remove his or her name at any time in the manner described by the bill.**
- **Prescribe the methods of notice that satisfy the written notice requirement.**
- **Allow a customer to provide notice that he or she does not want his or her name disclosed for marketing purposes, and prohibit a person from knowingly disclosing the name for marketing purposes beginning 30 days after the person receives the notice.**
- **Allow a customer who suffers actual damages as a result of a violation of the law to bring a civil action; and specify the remedies for the 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 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 bill took effect on July 31, 2016.

Disclosure of Information & Notice Requirements

The law previously specified that, except as otherwise provided, a person, or an employee or agent of the person, engaged in the business of selling, renting, or lending books or other written material, sound recordings, or videos could not disclose to any person other than the

customer a record or information concerning the purchase, lease, rental, or borrowing of those materials by a customer that indicated the customer's identity. The bill prohibits a person from knowingly disclosing to any person other than the customer a record or information that personally identifies the customer as having purchased, leased, rented, or borrowed those materials from the person engaged in the business. This does not apply to the disclosure of a record or information that has been aggregated or processed in a manner designed to prevent its association with an identifiable person.

Under the law, as amended by the bill, 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, d) pursuant to a search warrant issued by a State or Federal court or a grand jury subpoena, e) pursuant to a warrant, and f) to any person if the disclosure is incident to the ordinary course of business of the person that is disclosing the record or information, with respect to a record or information that is created or obtained after the bill's effective date. The bill added the last two conditions under which disclosure is allowed.

The law also previously allowed disclosure for the exclusive purpose of marketing goods and services directly to the consumer, if the person disclosing the information informed the customer in writing that he or she could remove his or her name by written notice. The bill instead allows disclosure for the purpose of marketing goods and services to customers. The person disclosing the information must inform the customer by written notice that the customer may remove his or her name at any time, and must specify the manner or manners by which the customer may do so. Unless the person's method of communication with customers is by electronic means, the written notice must include a nonelectronic method that the customer may use to opt out of disclosure.

Any of the following methods of notice will 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 orders 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 is included and clearly and conspicuously disclosed in an online privacy policy or similar communication that is posted on the internet, is maintained by the person disclosing the information, and is available to customers or the general public.

A customer may provide notice to a person disclosing the information for marketing purposes that he or she does not want his or her name disclosed. Beginning 30 days after receiving the notice, the person may not disclose the customer's name to any other person for marketing goods and services.

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.) Under the bill, regardless of any criminal prosecution for a violation of the law, a customer who suffers actual damages as a result of a violation may bring a civil action against the person who violated the law, and may recover his or her actual damages, including damages for emotional distress, as well as reasonable costs and attorney fees. Formerly, a customer could bring a civil action against a person who violated the law and could recover both of the following: a) actual damages, including damages for emotional distress, or \$5,000, whichever was greater, and b) costs and reasonable attorney fees.

The bill states that no liability may result from the lawful disclosure of a record or information that is permitted under the law.

MCL 445.1711-445.1715

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill will 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.