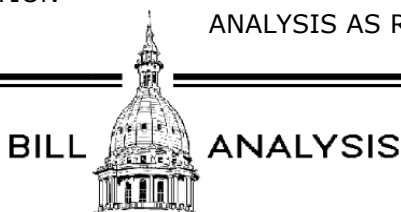




Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 896 (as reported without amendment)
Sponsor: Senator Steven Bieda
Committee: Judiciary

Date Completed: 5-18-16

RATIONALE

The Michigan Penal Code prohibits a man and woman who are not married to each other from lewdly and lasciviously associating and living together. It is unclear, however, when this prohibition was last used to charge and convict someone of a crime. Even though the prohibition is essentially unenforced, its continuation in law has some tax implications. Under Federal law, a dependent exemption generally is available for a "qualifying relative", which refers to a member of a person's household who meets certain income and support criteria. A person is not considered a member of a taxpayer's household, however, if the relationship between the person and the taxpayer is in violation of local law. Michigan's proscription against unmarried partners living together, then, precludes one partner from claiming the other as a dependent, even if the standards for dependency are otherwise met. Therefore, it has been suggested that the prohibition be eliminated.

CONTENT

The bill would amend the Michigan Penal Code to delete a provision that prohibits a man and woman, who are not married to each other, from lewdly and lasciviously associating and cohabitating together. The bill would retain a provision that prohibits any man or woman, married or unmarried, from engaging in open and gross lewdness and lascivious behavior.

Each offense is a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000. A prosecution of either offense may not be commenced after one year from the time of the violation.

MCL 750.335

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Michigan Penal Code's prohibition against an unmarried man and woman lewdly and lasciviously associating and cohabitating essentially criminalizes sex between unmarried individuals who live together. The prohibition is antiquated, likely unconstitutional, and not enforced. Reportedly, only two states (Michigan and Mississippi) still have laws that prohibit fornication and cohabitation by unmarried couples. These factors, alone, suggest that the cohabitation prohibition should be removed from Michigan statute, but there also are negative tax consequences of having this proscription in State law.

Under the Internal Revenue Code (26 USC 152), a taxpayer may claim a "qualifying relative" as a dependent when filing tax returns. A qualifying relative includes an individual (other than the taxpayer's spouse or child) who has the same principal place of abode as the taxpayer and is a member of the taxpayer's household, if the person's gross income is less than the amount of an

exemption and the taxpayer provides over half of the person's support. The Internal Revenue Code also provides, however, that a person may not be treated as a member of the taxpayer's household if the relationship between the person and the taxpayer is in violation of local law. Therefore, a Michigan resident is prohibited from claiming a dependent exemption for an unmarried sexual partner with whom he or she lives and for whom he or she provides at least 50% of support simply because cohabitation remains illegal under the Michigan Penal Code. Even though the Michigan law is not enforced, taxpayers and tax preparers are obligated to obey the Federal tax law as written and otherwise-eligible taxpayers cannot legally claim the dependent exemption. Removing the cohabitation provision from the Penal Code would eliminate an unfair Federal tax penalty on some Michigan residents, and place Michigan taxpayers on equal footing with those in 48 other states.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill likely would have no fiscal impact on State or local government. A decrease in misdemeanor arrests and convictions could lead to decreased demands on local court systems, law enforcement, and jails, as well as decreased fine revenue dedicated to public libraries; however, the last time a person was charged under this section of the Code is not known.

Fiscal Analyst: Ryan Bergan

A1516\sb896a

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.