

# Legislative Analysis

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## REGISTER OF DEEDS: SOCIAL SECURITY NUMBERS

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### Senate Bills 298 & 302 (Substitutes H-1)

Sponsor: Sen. Mark Jansen

### Senate Bill 299 (Substitute H-1)

Sponsor: Sen. Gerald Van Woerkom

### Senate Bill 301 (Substitute S-1)

Sponsor: Sen. John Pappageorge

### Senate Bill 300 (Substitute H-1)

Sponsor: Sen. Tony Stamas

### Senate Bill 303 (Substitute H-1)

Sponsor: Sen. Patricia L. Birkholz

House Committee: Intergovernmental, Urban, and Regional Affairs

Senate Committee: Local, Urban, and State Affairs

First Analysis (7-20-07)

**BRIEF SUMMARY:** The bills would require that all or at least the first five digits of a Social Security number used in public documents filed with the county register of deeds be redacted, in order to protect a consumer's privacy.

**FISCAL IMPACT:** This package of bills should not have a significant fiscal impact on state or local government entities.

### **THE APPARENT PROBLEM:**

Often the documents officially recorded by the county register of deeds contain the signatures and Social Security numbers of those who file them. For example, judgment liens list Social Security numbers. In addition, all mortgages filed in the 1970's and 1980's contain the Social Security numbers of buyers and sellers of property.

As electronic records have proliferated, and access to records made easier on the Internet, those people whose Social Security numbers are available on the Internet risk the theft of their identity by unscrupulous people who violate the law. According to committee testimony, there have been 7,000 cases of identify fraud in Michigan.

To protect citizens' identities and their right to privacy, legislation has been introduced that would allow registers of deeds to redact a portion of a citizen's Social Security number when it appears on the records that are recorded and filed in the offices of the county registers of deeds.

### **THE CONTENT OF THE BILLS:**

The bills would amend various statutes to require that part of a Social Security number used in public documents be redacted, in order to protect a consumer's privacy. A detailed explanation of each bill follows.

[The bills are similar to House Bills 4515 through 4520, which have passed the House. See the analysis of those bills dated 5-29-07.)

Senate 298 would amend Public Act 25 of 1836 (MCL 565.581) to specify that unless state or federal law, rule, regulation, or court order or rule required otherwise, if a register of deeds provided a copy of an instrument from a book of records that contained a Social Security number, then the register of deeds *may* obscure or remove all or at least the first 5 digits of the Social Security number from the copy.

Further, an individual whose Social Security number was contained in one or more instruments in a county's books of record could request that the register of deeds obscure or remove all or at least the first five digits of his or her Social Security number from copies made of those instruments, by recording an affidavit identifying the *liber* and page of those instruments. [As used in this act, "books" includes a computerized recording system for instruments relating to the title of land.]

Senate Bill 299 would amend Public Act 103 of 1937 (MCL 565.201), which concerns the executing of instruments in the office of the register of deeds, to specify that unless state or federal law, rule, regulation, or court order or rule required that all or more than four sequential digits of the Social Security number appear in an instrument, then beginning on one of the following dates the first five digits of any Social Security number appearing in or on an instrument will be obscured or removed: 1) the effective date of this legislation, or 2) April 1, 2008 for an instrument presented to the Register of Deeds by the Department of Treasury.

Senate Bill 300 would amend Public Act 20 of 1867 (MCL 565.491), which concerns recording deeds, mortgages, and instruments of record, to specify that unless state or federal law, rule, regulation, or court order or rule required that all or more than four sequential digits of the Social Security number appear in an instrument, then beginning on one of the following dates the first five digits of any Social Security number appearing in or on an instrument will be obscured or removed: 1) the effective date of this legislation, or 2) April 1, 2008 for an instrument presented to the Register of Deeds by the Department of Treasury.

Senate Bill 301 would amend Public Act 5 of 1873 (MCL 565.401), which concerns recording titles of real estate, to specify that unless state or federal law, rule, regulation, or court order or rule required that all or more than four sequential digits of the Social Security number appear in the judgment, then a register of deeds would not receive the judgment for recording unless the first five digits of any Social Security number appearing in or on the judgment were obscured or removed.

Senate Bill 302 would amend Public Act 123 of 1915 (MCL 565.452), which concerns the recording and use of affidavits affecting real property, to specify that unless state or federal law, rule, regulation, or court order or rule required that all or more than four sequential digits of the Social Security number appear in the affidavit, a register of deeds

would not receive an affidavit for recording unless the first five digits of any Social Security number appearing in or on the affidavit were obscured or removed.

House Bill 303 would amend Public Act 54 of 1875 (MCL 565.551), which concerns the inspection and reproduction of the records and files in the offices of the registers of deeds, to specify that unless state or federal law, rule, regulation, or court order or rule required that all or more than four sequential digits of the Social Security number appear in the record or file, if a record or file that contained a Social Security number was reproduced for or by an individual, the register of deeds could obscure or remove, or require that the individual obscure or remove, all or at least the first five digits of the Social Security number from the copy, before the individual removed the reproduction from the register of deed's office.

Further, an individual whose Social Security number was contained in one or more instruments in a county's books of record could request that the register of deeds obscure or remove all or at least the first five digits of his or her Social Security number from copies made of those instruments, by recording an affidavit identifying the *liber* and page of those instruments.

#### ***ARGUMENTS:***

##### ***For:***

The Registers of Deeds Association argues that in an era when identity theft is on the rise, this legislation authorizing Registers to redact Social Security numbers is terribly important since it ensures privacy—offering double protection to citizens. The bills give the Registers the authority to redact Social Security numbers both *before* a document is recorded, and also, in the case of older documents already on file, *after* a document is recorded. The Registers note that they already carefully review each document that is presented to them, in order to determine that it is properly signed and notarized. They say a review of each document to locate Social Security numbers—portions of which would then be redacted using a black marking pen, or 'white out'—would not slow their ability to process documents.

With regard to old documents already on file (many having in them Social Security numbers), the Registers point out that they use electronic software having a redaction feature to scan existing records. They also note that these bills do not require a Register to 'clean' records already on file of their Social Security numbers. The bills do not carry a mandate to review old records; if a Register chose to do so, he or she would be volunteering to take on that work. The bills would, however, require a Register to refuse documents having complete Social Security numbers after the effective date of the bill (assuming it is enacted into law). That, the Registers argue, would give citizens a greater sense of security, and help to slow the number of identity fraud cases in Michigan.

##### ***Against:***

The Real Property Section of the State Bar of Michigan argues that these bills, if adopted, would further slow the recording process for new documents, as well as delaying the

ability of members of the public to obtain copies of already recorded documents from the registers of deeds. They fear the delay will be caused by the Registers, since they will have to examine each document to determine if a Social Security number appears in it, or until the Social Security number is redacted.

A representative of the Real Property Section has noted that, for some time, the section has been concerned about Michigan's system for recording documents relating to real estate. In many cases, significant time elapses before a document appears as recorded in Register of Deeds records. In other cases, there are marked differences in the order in which documents submitted to Registers are actually recorded. The vagaries in the recording process have resulted in hardships for parties relying on the timeliness of the recording process to protect their real estate interests. State and U. S. bankruptcy court judges have, in a number of cases, been asked to rule on disputes involving the priority of recorded instruments. And a number of title companies are presently involved in litigation with the Wayne County Register of Deeds.

***POSITIONS:***

The Register of Deeds Association supports the bills. (7-18-07)

The Berrien County Register of Deeds supports the bills. (7-18-07)

The Department of Labor and Economic Growth supports the bills. (7-18-07)

The Real Property Law Section of the State Bar of Michigan opposes the bills. (7-18-07)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.