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## BILL ANALYSIS



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Senate Bill 490 (Substitute S-1)  
Sponsor: Senator Tonya Schuitmaker  
Committee: Commerce

Date Completed: 12-8-15

**CONTENT**

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

- **Prohibit a person subject to the law from knowingly disclosing information that personally identified the customer as having purchased, leased, rented, or borrowed certain materials.**
- **Specify that the prohibition against disclosure would 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 were incident to the ordinary course of business of the person disclosing the information; or if disclosure were for the purpose of marketing goods and services to customers or potential customers.**
- **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 notice that he or she did 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 received the notice.**
- **Allow a customer who suffered actual injury 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 would take effect 90 days after its enactment.

**Disclosure of Information & Notice Requirements**

The law specifies 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 must not disclose to any person other than the customer

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

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 also would allow disclosure of the above information pursuant to a warrant, and 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 for the exclusive purpose of marketing goods and services directly to the consumer, if the person disclosing the information informs the customers in writing that he or she may remove his or her name by written notice. The bill instead would allow disclosure for the purpose of marketing goods and services to customers or potential customers. The person 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 or similar communication that was posted on the internet, was maintained by the person disclosing the information, and was available to customers or the general public.

A customer could provide notice to a person disclosing the information for marketing purposes that he or she did not want his or her name disclosed. If the person provided a prominently disclosed and easy-to-use mechanism or address for submission of such a request, the customer would have to submit the notice in that manner for the notice to be valid. Beginning 30 days after the person received the notice, the person could 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.) 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 his or her actual

damages, including damages for emotional distress, as well as reasonable costs and attorney fees.

No liability could result from the lawful disclosure of a record or information that was permitted under the law.

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.