



**House
Legislative
Analysis
Section**

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PRIVACY: SALES, RENTALS OF VIDEOS, ETC.

House Bill 5601 (Substitute H-1)
First Analysis (6-15-88)

RECEIVED

Sponsor: Rep. Gerald H. Law
Committee: Judiciary

AUG 04 1988

Mich. State Law Library

THE APPARENT PROBLEM:

During the period when Congressional confirmation hearings were being held on the nomination of Robert Bork to the Supreme Court, a Washington weekly obtained and published a list of videotapes rented under Bork's wife's account. Many found this to be an unwarranted invasion of privacy, and the incident prompted the introduction in Congress of a bill to protect the privacy of those who rent or buy videotapes. Many in Michigan also believe that one's choice in videos, records, and books is nobody's business but one's own, and suggest the enactment of a statute to explicitly protect a consumer's privacy in buying and borrowing such items.

THE CONTENT OF THE BILL:

The bill would create a new public act to preserve personal privacy with respect to the purchase, rental, or borrowing of written materials, sound recordings, and video recordings. Except as otherwise provided by law, a retailer, lender, or renter of such items could not disclose information—such as selections made—on a particular customer to any person other than that customer. Such information could be disclosed with the customer's written permission, under a court order, or to the extent reasonably necessary to collect past-due payment.

Violation of the bill would be a misdemeanor. A violator also would be subject to civil damages in the amount of actual damages (including damages for emotional distress) or \$10,000, whichever was greater, plus costs and attorney fees.

FISCAL IMPLICATIONS:

Fiscal information is not available at present. (6-14-88)

ARGUMENTS:

For:

The bill would recognize that a person's choice in reading, music, and video entertainment is a private matter, and not a fit subject for consideration by gossipy publications, employers, clubs, or anyone else, for that matter. The bill would complement the Library Privacy Act, which exempts library records on a person from disclosure under the Freedom of Information Act and prohibits disclosure absent a court order or the individual's consent.

Response: The bill, while laudable in its aims, may be unnecessary for libraries, which already are subject to civil penalties for violating the Library Privacy Act.

Against:

The bill's civil penalties are fairly severe, and because of that the bill should apply those penalties when a person "knowingly" violated the bill, rather than when a person simply violated the bill.

Response: A "knowing" standard would be unnecessary and would make recovery for harm done more difficult to achieve.

POSITIONS:

The American Civil Liberties Union of Michigan supports the bill. (6-13-88)

The Video Software Dealers Association has not yet seen House Bill 5601 and does not have a formal position on it at this time. (6-13-88)

The Michigan Citizens Lobby has not yet reviewed the substitute bill, but supports the concept of it. (6-13-88)

H.B. 5601 (6-15-88)