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REVISE SELLER DISCLOSURE ACT

House Bill 4591 (Substitute H-1) First Analysis (12-2-99)

Sponsor: Rep. Patricia Birkholz
Committee: Regulatory Reform

THE APPARENT PROBLEM:

Current laws require home sellers to disclose certain information about a property being sold. Failure to provide required information can result in liability for the real estate agent. Because of this, there was a concern that buyers may expect real estate agents to provide information as to whether or not a person registered under the Sex Offender Registry Act lived in the area. As originally written, though, a registration under the Sex Offenders Registration Act was confidential and was not open to inspection, except for law enforcement purposes, and the registration and all included materials were exempt from disclosure under the Freedom of Information Act.

However, in 1996 the legislature enacted Public Act 494 which took effect on April 1, 1997. The current law requires the Department of State Police to maintain a computerized data base of registered individuals, indexed by zip code area, and containing the name, aliases, address, physical description, birth date, and listed offenses of each individual residing within a zip code area. The department must make the compilation available to state police posts, local law enforcement agencies, and sheriffs' departments (via the Law Enforcement Information Network [LEIN], or in printed form), and the local police agencies, together with the department, also must make the information available in print or electronic form for public inspection. The act also contains provisions making the disclosure of information contained in the registry a misdemeanor and allowing an individual whose registration is revealed a cause of action against the responsible party for treble damages.

To offset the concern that real estate agents could be at risk for lawsuits at the hands of buyers for failing to disclose information contained in the Sex Offender Registry, the legislature enacted Public Act 437 of 1998. PA 437 amended the Occupational Code to specify that an action could not be brought against a real estate broker, associate, or salesperson who failed to disclose any information from the compilation of offenders that is provided by the Sex Offenders Registration Act.

However, PA 437 did not alleviate the concern that prospective buyers should be made aware that the Sex Offenders Registry does exist and that it is open to public scrutiny. It has been suggested that information be included in the written disclosure that is required to be given to prospective buyers that information compiled under the Sex Offenders Registration Act is available to the public and can be accessed by contacting the appropriate local law enforcement agency.

THE CONTENT OF THE BILL:

The Seller Disclosure Act (Public Act 92 of 1993) requires the sellers of residential property to make certain written disclosures about the property to prospective buyers. The bill would make the following additions to the information already required to be listed on the seller disclosure statement form:

- Language would be added to specify that a buyer should obtain professional advice and inspections of the property to more fully determine the condition of the property. In addition, buyers would be advised that certain information compiled under the Sex Offenders Registration Act was available to the public and could be accessed by directly contacting the appropriate local law enforcement agency or sheriff's department.
- A buyer could terminate a purchase agreement if the seller failed to provide a signed disclosure statement.
- Unless otherwise agreed upon, all household appliances would be sold in working order except as noted on the disclosure form, and would be without warranty beyond the date of closing.

MCL 565.957

FISCAL IMPLICATIONS:

Fiscal information is not available.

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ARGUMENTS:

For:

At the time that House Bill 5938 (which became Public Act 437 of 1998) was being deliberated, it was pointed out that it was more reasonable to place the responsibility on a prospective buyer to seek out whether or not a person listed on the Sex Offenders Registry lived in the neighborhood than to expect real estate agents to provide such information. Therefore, it makes sense to amend the Seller Disclosure Act to place information regarding the registry and how to access it within the Seller's Disclosure Statement form. The bill would simply inform prospective buyers that the registry existed and that certain information was available to the public by contacting their local law enforcement agency.

POSITIONS:

The Michigan Association of Realtors indicated support for the bill. (11-30-99)

Analyst: S. Stutzky

■ 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.