

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 4591 (Substitute S-1 as passed by the Senate)
House Bill 5014 (Substitute S-1 as passed by the Senate)
Sponsor: Representative Patricia Birkholz (House Bill 4591)
Representative Mary Ann Middaugh (House Bill 5014)
House Committee: Regulatory Reform
Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 2-18-00

RATIONALE

The Sex Offender Registration Act requires individuals convicted of certain offenses to register information about their identity, address, and conviction. Public Act 494 of 1996 amended the Sex Offenders Registration Act to provide for public access to information on registered sex offenders. Since the information in the sex offender registry was made available to the public, some people became concerned that a home buyer could sue his or her realtor for failing to inform the buyer that a registered sex offender lived near the home or previously lived at the residence being sold. Rather than place real estate agents in a position in which they could be considered responsible for providing sex offender registry information to prospective buyers, Public Act 437 of 1998 amended the Occupational Code to prohibit a legal action against a real estate broker or salesperson for failing to disclose any information from the compilation provided or made available to the public under the Sex Offenders Registration Act. There remains some concern, however, that prospective buyers should be made aware that the sex offenders registry exists and that it is open to public scrutiny. Consequently, it has been suggested that language be included in a seller's disclosure statement about the existence of the sex offender registry and that information in it can be obtained from a local law enforcement agency. Under the Seller Disclosure Act, sellers of residential property must complete a disclosure statement to provide a prospective buyer with information about the condition of the property. A seller is required to give the statement to his or her real estate agent, or to a prospective buyer or his or her agent prior to the execution of a binding purchase agreement on the property.

In addition, the Michigan Association of Realtors reportedly has been soliciting suggestions from its members for changes to the disclosure statement to alleviate misunderstandings that have occurred between sellers and buyers. A task force composed

of real estate agents as well as property buyers and sellers recommended a number of changes to the statement, including revising information pertaining to the value of the property being sold and other property tax information pertaining to the residence. In particular, the seller's disclosure statement must indicate the most recent State equalized valuation (SEV) of the property. Previously, this gave prospective buyers a good idea of the amount of property taxes they could expect to pay. Due to changes brought about by the approval of Proposal A in 1994, however, property assessments are limited to an increase of 5% per year or the rate of inflation, whichever is lower. When property is transferred, it is reassessed at the current market value and the property tax is adjusted accordingly. This means that listing the property's current SEV can confuse prospective buyers about their potential tax liability. Some people believe that the disclosure statement should be revised to reflect the realtors' suggestions.

CONTENT

House Bills 4591 (S-1) and 5014 (S-1) would amend the Seller Disclosure Act to require that a seller's disclosure statement advise buyers that certain information compiled pursuant to the Sex Offenders Registration Act is available to the public, and that buyers seeking this information should contact the appropriate local law enforcement agency or sheriff's department directly. In addition, House Bill 5014 (S-1) would require that a seller's disclosure statement contain specific language concerning property taxation; require a statement to include information about outstanding assessments, pending litigation, flood insurance, and mineral rights; and revise the information that must be in a statement regarding appliances.

Each bill also provides that a disclosure statement printed before the bill's effective date that complied with the Act could be used and would be considered in compliance until 90 days after the bill's effective date.

A more detailed description of House Bill 5014 (S-1) follows.

The bill would delete a requirement that the seller's disclosure statement indicate the amount of the most recent State equalized valuation of the property provided by the local taxing unit. Under the bill, the statement would have to advise the buyer that, "...the state equalized value of the property, homestead exemption information, and other real property tax information is available from the appropriate local assessor's office. Buyer should not assume that buyer's future tax bills on the property will be the same as the seller's present tax bills. Under Michigan law, real property tax obligations can change significantly when property is transferred."

The seller's disclosure statement must contain specific disclosures on a form set forth in the Act. Under the form's categories of "Property conditions, improvements, and additional information" and "Other items", the seller is required to check "unknown", "yes", or "no" in response to certain questions. In the category of "Other items", the bill would add the following:

- "Any outstanding utility assessments or fees, including any natural gas main extension surcharge?"
- "Any outstanding municipal assessments or fees?"
- "Any pending litigation that could affect the property or the seller's right to convey the property?"

In the category regarding property conditions, the bill would add the following:

- "Flood insurance: Do you have flood insurance on the property?"
- "Mineral rights: Do you own the mineral rights?"

Currently, this category includes, "Basement: Has there been evidence of water?" The bill would amend this to "Basement/crawl space: Has there been evidence of water?"

Under the category of "Appliances/systems/services", the form states, "The items below are in working order:", and the seller is required to check "yes", "no", "unknown", or "N/A" (nonapplicable). Under the bill, the statement also would have to specify, "(The items below are

included in the sale of the property only if the purchase agreement so provides)". In addition, the bill would do the following:

- Refer to "not available", instead of "N/A".
- Include "washer" and "dryer" in the listed items.
- Refer to "wall furnace", instead of "furnace".

Currently, the form states, "The seller has owned the property since _____ (date) and makes representation only since that date." The bill would remove, "and makes representation only since that date". The form also states, "The seller has indicated the history and condition of all the items based on that information known to the seller." The bill would delete reference to the items' history.

MCL 565.957

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

Under Public Act 437 of 1998, legal action cannot be taken against a real estate broker for failing to disclose any information from the sex offender registry. Consequently, a prospective buyer, and not a real estate broker, is responsible for determining whether a person listed in the sex offender registry lives in the neighborhood where residential property is being sold. Prospective buyers, however, may not know about the existence of the registry. By requiring information about the registry to be included on a disclosure statement, the bills would ensure that prospective buyers were informed that a registry has been compiled and is available at local law enforcement agencies for their review.

Supporting Argument

Apparently, there have been problems between sellers and buyers because a seller's disclosure statement did not include certain information about the property, and the information already requested on the statement was unclear. House Bill 5014 (S-1) would require additional information and provide clarification. For example, buyers would be advised that the amount of property taxes that the seller was paying would not necessarily be the same as the taxes that buyer would be assessed. The bill would not only alert buyers to this fact, but also direct them to the local assessor's office where they could obtain further property tax information. The amended form also would make it clear that appliances would not be included in a sale unless the purchase agreement so provided. By revising the disclosure statement,

as recommended by a realtors' task force, the bill would help buyers make more informed decisions when purchasing residential property.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: B. Baker (H.B. 4591)
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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.