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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 958 (as enrolled)

Sponsor: Senator Norman D. Shinkle

Senate Committee: Regulatory Affairs

House Committee: State Affairs

Date Completed: 7-30-90

PUBLIC ACT 164 of 1990

RECEIVED

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RATIONALE

Currently, under the Occupational Code, a real estate broker or salesperson is prohibited from using a plan or scheme involving a lottery, contest, game, prize, or drawing for the sale or promotion of a sale of real estate. The practice of using games and prizes for promotional purposes has long been prohibited in real estate marketing, primarily to eliminate unfair competition between real estate companies. A large real estate company, for example, could offer expensive prizes for attendance at an open house held at a specific property it wished to sell, while a small company might not be able to afford to promote a single piece of property in this way. It has been pointed out that the prohibition against using promotional games and prizes, however, also can hinder brokers or agents when they attempt to promote the sale of real estate in general. For instance, a common sales promotion seen at trade shows involves inviting potential customers to put their business cards in a bowl on the chance that a customer's card will be drawn later and he or she will be awarded a prize. While other businesses can use business cards to generate mailing lists, real estate brokers and agents cannot because the promotion is considered a lottery or contest. It has been suggested that real estate brokers and agents should be allowed to use some prizes and games for real estate promotion, as long as the promotion is not directed at the sale of a specific property.

CONTENT

The bill would amend the Occupational Code to allow a real estate broker or salesperson to use,

for any purpose other than the direct promotion of a specific piece of real estate, a "game promotion" as defined in, and in compliance with, Section 372a of the Michigan Penal Code.

Section 372a defines "game promotion" as any game or contest in which elements of chance and prizes are present, but in which the element of consideration is not present. Section 372a prohibits the forcing or coercing of a lessee, agent, or franchise dealer to purchase game promotions; prohibits a person from conducting a game promotion that predetermines the identity of any individual entitled to receive a prize; and provides that any person who conducts a game promotion must disclose to participants the geographic area or number of outlets in which the game is proposed to be conducted, a description of each type of prize, the minimum number and amount of cash prizes to be made available, and the minimum number of each other type of prize to be made available.

MCL 339.2511

FISCAL IMPACT

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

ARGUMENTSSupporting Argument

The bill would allow those in the real estate business to promote their businesses and the industry in general through the use of games

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and prizes, while keeping the prohibition against using such methods to sell individual properties. The bill would enable real estate companies to make use, among other things, of a practice commonly used by other types of businesses. While other businesses are permitted to use the methods traditionally employed to attract customers at trade shows--for example, the holding of drawings for prizes--a real estate broker may not. Trade shows, especially building trade shows, attract exactly the type of customer real estate companies would like to add to their mailing lists.

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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.