

AMENDED IN SENATE MAY 23, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2712

Introduced by Assembly Member Leno
(Coauthor: Assembly Member Parra)

February 24, 2006

An act to amend Section 1100 of the Harbors and Navigation Code, relating to bar pilots; Section 2079.10a of, and to add Section 2079.10b to, the Civil Code, and to amend Sections 290.46 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 2712, as amended, Leno. ~~Bar pilots; safety; environmental and property damage. Housing; sex offenders.~~

Existing law requires persons who have been convicted of specified sex offenses to register as a sex offender with the Department of Justice and local law enforcement agencies in which they reside. Existing law also requires the department to make certain information regarding registered sex offenders available on the department's Web site. Existing law further provides that a lease or rental agreement and every contract for sale of real property to a registered sex offender contain a notice, as specified.

Existing law generally provides that upon delivery of this notice to the lessee or transferee of real property, the lessor, seller, or broker is not required to provide any additional information other than that regarding proximity of sex offenders.

This bill would, instead, provide that upon delivery of this notice, the lessor of the real property is not required, and has no duty to provide a lessee or transferee of residential real property, any

additional information other than that regarding proximity of sex offenders.

This bill would also provide that no duty arising for a lessor solely for renting residential real property to a person who is required to register as a sex offender in this state or has been convicted as a sex offender in another jurisdiction.

Existing law provides that a person may use information obtained from the Department of Justice Sex Offender Web site only to protect a person at risk.

This bill would specify that this authorization is discretionary, and creates no duty to use the information.

This bill would declare the Legislature's intent with respect to the lessor's rights and obligations when property is rented or leased to registered sex offenders.

~~Existing law declares the policy of the Legislature to avoid damage to waters, ecosystems and property, of specified bays of the state and their tributaries, from vessel collision or damage, by providing trained and regulated pilots.~~

~~This bill would extend the Legislature's policy to include the avoidance of allision, the running of one ship upon another that is stationary.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the
2 following:

3 (a) Lessors have certain duties under existing law in
4 connection with tenants of residential real property. However,
5 current law needs to be clarified regarding a lessor's duties
6 related to the tenancy of an individual who is required to register
7 as a sex offender under Section 290 of the Penal Code.

8 (b) Therefore, it is the intent of the Legislature to clarify
9 landlord duties related to such tenancies by finding that the
10 following is declaratory of existing law:

11 (1) Subparagraph (1) of paragraph (l) of Section 290 of the
12 Penal Code does not impose a duty on lessors to use information
13 available on the Megan's Law Web site to make decisions about
14 housing accommodations.

1 (2) *Delivery of the notice to lessees or transferees of real*
2 *property contained in subdivision (a) Section 2079.10a of the*
3 *Civil Code is the only information that a lessor or transferor is*
4 *required to provide to a lessee or transferee of real property*
5 *regarding the proximity of a registered sex offender.*

6 (3) *No duty is created solely because a lessor rents or*
7 *continues to rent to a person who is registered or is required to*
8 *register under Section 290 of the Penal Code, or has been*
9 *convicted of a sex offense in another state or foreign jurisdiction.*

10 (c) *The Legislature further finds and declares that these*
11 *provisions do not enlarge or diminish other duties or rights that*
12 *a lessor may have under other laws.*

13 SEC. 2. *Section 2079.10a of the Civil Code is amended to*
14 *read:*

15 2079.10a. (a) Every lease or rental agreement for residential
16 real property entered into on or after July 1, 1999, and every
17 contract for the sale of residential real property comprised of one
18 to four dwelling units entered into on or after that date, shall
19 contain, in not less than 8-point type, a notice as specified in
20 paragraph (1), (2), or (3).

21 (1) A contract entered into by the parties on or after July 1,
22 1999, and before September 1, 2005, shall contain the following
23 notice:

24 Notice: The California Department of Justice, sheriff's
25 departments, police departments serving jurisdictions of 200,000
26 or more, and many other local law enforcement authorities
27 maintain for public access a database of the locations of persons
28 required to register pursuant to paragraph (1) of subdivision (a)
29 of Section 290.4 of the Penal Code. The database is updated on a
30 quarterly basis and is a source of information about the presence
31 of these individuals in any neighborhood. The Department of
32 Justice also maintains a Sex Offender Identification Line through
33 which inquiries about individuals may be made. This is a "900"
34 telephone service. Callers must have specific information about
35 individuals they are checking. Information regarding
36 neighborhoods is not available through the "900" telephone
37 service.

38 (2) A contract entered into by the parties on or after September
39 1, 2005, and before April 1, 2006, shall contain either the notice

1 specified in paragraph (1) or the notice specified in paragraph
2 (3).

3 (3) A contract entered into by the parties on or after April 1,
4 2006, shall contain the following notice:

5 Notice: Pursuant to Section 290.46 of the Penal Code,
6 information about specified registered sex offenders is made
7 available to the public via an Internet Web site maintained by the
8 Department of Justice at www.meganslaw.ca.gov. Depending on
9 an offender's criminal history, this information will include
10 either the address at which the offender resides or the community
11 of residence and ZIP Code in which he or she resides.

12 (b) Subject to subdivision (c), upon delivery of the notice to
13 the lessee or transferee of the real property, the lessor, ~~seller, or~~
14 ~~broker~~ is not required, *and has no duty in law*, to provide to a
15 *lessee or transferee of residential real property any* information
16 in addition to that contained in the notice regarding the proximity
17 of registered sex offenders. The information in the notice shall be
18 deemed to be adequate to inform the lessee or transferee about
19 the existence of a statewide database of the locations of
20 registered sex offenders and information from the database
21 regarding those locations. The information in the notice shall not
22 give rise to any cause of action against the disclosing party by a
23 registered sex offender.

24 (c) Notwithstanding subdivisions (a) and (b), nothing in this
25 section shall alter any existing duty of the lessor, seller, or broker
26 under any other statute or decisional law including, but not
27 limited to, the duties of a lessor, seller, or broker under this
28 article, or the duties of a seller or broker under Article 1.5
29 (commencing with Section 1102) of Chapter 2 of Title 4 of Part
30 4 of Division 2.

31 *SEC. 3. Section 2079.10b is added to the Civil Code, to read:*

32 *2079.10b. (a) No duty shall arise for a lessor solely for*
33 *renting residential real property to a person who is registered or*
34 *who is required to register under Section 290 of the Penal Code,*
35 *or who is a person who has been convicted as a sex offender in*
36 *another state or foreign jurisdiction.*

37 *(b) This section is not intended to enlarge or diminish any*
38 *other duty or right that a lessor may have under other laws with*
39 *respect to a tenant of residential real property.*

1 (c) For the purposes of this section, the word lessor shall
2 include an owner, landlord, seller, or broker of residential real
3 property, or his or her agent, or any agent of a transferor or
4 transferee of residential real property.

5 SEC. 4. Section 290.46 of the Penal Code is amended to
6 read:

7 290.46. (a) On or before the dates specified in this section,
8 the Department of Justice shall make available information
9 concerning persons who are required to register pursuant to
10 Section 290 to the public via an Internet Web site as specified in
11 this section. The department shall update the Internet Web site on
12 an ongoing basis. All information identifying the victim by name,
13 birth date, address, or relationship to the registrant shall be
14 excluded from the Internet Web site. The name or address of the
15 person's employer and the listed person's criminal history other
16 than the specific crimes for which the person is required to
17 register shall not be included on the Internet Web site. The
18 Internet Web site shall be translated into languages other than
19 English as determined by the department.

20 (b) (1) On or before July 1, 2005, with respect to a person
21 who has been convicted of the commission or the attempted
22 commission of any of the offenses listed in, or who is described
23 in, paragraph (2), the Department of Justice shall make available
24 to the public via the Internet Web site his or her name and known
25 aliases, a photograph, a physical description, including gender
26 and race, date of birth, criminal history, the address at which the
27 person resides, and any other information that the Department of
28 Justice deems relevant, but not the information excluded pursuant
29 to subdivision (a).

30 (2) This subdivision shall apply to the following offenses and
31 offenders:

32 (A) Section 207 committed with intent to violate Section 261,
33 286, 288, 288a, or 289.

34 (B) Section 209 committed with intent to violate Section 261,
35 286, 288, 288a, or 289.

36 (C) Paragraph (2) or (6) of subdivision (a) of Section 261.

37 (D) Section 264.1.

38 (E) Section 269.

39 (F) Subdivision (c) or (d) of Section 286.

1 (G) Subdivision (a), (b), or (c) of Section 288, provided that
2 the offense is a felony.

3 (H) Subdivision (c) or (d) of Section 288a.

4 (I) Section 288.5.

5 (J) Subdivision (a) or (j) of Section 289.

6 (K) Any person who has ever been adjudicated a sexually
7 violent predator as defined in Section 6600 of the Welfare and
8 Institutions Code.

9 (c) (1) On or before July 1, 2005, with respect to a person
10 who has been convicted of the commission or the attempted
11 commission of any of the offenses listed in paragraph (2), the
12 Department of Justice shall make available to the public via the
13 Internet Web site his or her name and known aliases, a
14 photograph, a physical description, including gender and race,
15 date of birth, criminal history, the community of residence and
16 ZIP Code in which the person resides or the county in which the
17 person is registered as a transient, and any other information that
18 the Department of Justice deems relevant, but not the information
19 excluded pursuant to subdivision (a). On or before July 1, 2006,
20 the Department of Justice shall determine whether any person
21 convicted of an offense listed in paragraph (2) also has one or
22 more prior or subsequent convictions of an offense listed in
23 paragraph (2) of subdivision (a) of Section 290, and, for those
24 persons, the Department of Justice shall make available to the
25 public via the Internet Web site the address at which the person
26 resides. However, the address at which the person resides shall
27 not be disclosed until a determination is made that the person is,
28 by virtue of his or her additional prior or subsequent conviction
29 of an offense listed in paragraph (2) of subdivision (a) of Section
30 290, subject to this subdivision.

31 (2) This subdivision shall apply to the following offenses:

32 (A) Section 220, except assault to commit mayhem.

33 (B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

34 (C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
35 (i), of Section 286.

36 (D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
37 (i), of Section 288a.

38 (E) Subdivision (b), (d), (e), or (i) of Section 289.

39 (d) (1) On or before July 1, 2005, with respect to a person
40 who has been convicted of the commission or the attempted

1 commission of any of the offenses listed in, or who is described
2 in, this subdivision, the Department of Justice shall make
3 available to the public via the Internet Web site his or her name
4 and known aliases, a photograph, a physical description,
5 including gender and race, date of birth, criminal history, the
6 community of residence and ZIP Code in which the person
7 resides or the county in which the person is registered as a
8 transient, and any other information that the Department of
9 Justice deems relevant, but not the information excluded pursuant
10 to subdivision (a) or the address at which the person resides.

11 (2) This subdivision shall apply to the following offenses and
12 offenders:

13 (A) Subdivision (a) of Section 243.4, provided that the offense
14 is a felony.

15 (B) Section 266, provided that the offense is a felony.

16 (C) Section 266c, provided that the offense is a felony.

17 (D) Section 266j.

18 (E) Section 267.

19 (F) Subdivision (c) of Section 288, provided that the offense is
20 a misdemeanor.

21 (G) Section 647.6.

22 (H) Any person required to register pursuant to Section 290
23 based upon an out-of-state conviction, unless that person is
24 excluded from the Internet Web site pursuant to subdivision (e).
25 However, if the Department of Justice has determined that the
26 out-of-state crime, if committed or attempted in this state, would
27 have been punishable in this state as a crime described in
28 subparagraph (A) of paragraph (2) of subdivision (a) of Section
29 290, the person shall be placed on the Internet Web site as
30 provided in subdivision (b) or (c), as applicable to the crime.

31 (e) (1) If a person has been convicted of the commission or
32 the attempted commission of any of the offenses listed in this
33 subdivision, and he or she has been convicted of no other offense
34 listed in subdivision (b), (c), or (d) other than those listed in this
35 subdivision, that person may file an application with the
36 Department of Justice, on a form approved by the department, for
37 exclusion from the Internet Web site. If the department
38 determines that the person meets the requirements of this
39 subdivision, the department shall grant the exclusion and no
40 information concerning the person shall be made available via

1 the Internet Web site described in this section. He or she bears
2 the burden of proving the facts that make him or her eligible for
3 exclusion from the Internet Web site. However, a person who has
4 filed for or been granted an exclusion from the Internet Web site
5 is not relieved of his or her duty to register as a sex offender
6 pursuant to Section 290 nor from any otherwise applicable
7 provision of law.

8 (2) This subdivision shall apply to the following offenses:

9 (A) A felony violation of subdivision (a) of Section 243.4.

10 (B) Section 647.6, provided the offense is a misdemeanor.

11 (C) (i) An offense for which the offender successfully
12 completed probation, provided that the offender submits to the
13 department a certified copy of a probation report, presentencing
14 report, report prepared pursuant to Section 288.1, or other official
15 court document that clearly demonstrates both of the following:

16 (I) The offender was the victim's parent, stepparent, sibling, or
17 grandparent.

18 (II) The crime did not involve either oral copulation or
19 penetration of the vagina or rectum of either the victim or the
20 offender by the penis of the other or by any foreign object.

21 (ii) An offense for which the offender is on probation at the
22 time of his or her application, provided that the offender submits
23 to the department a certified copy of a probation report,
24 presentencing report, report prepared pursuant to Section 288.1,
25 or other official court document that clearly demonstrates both of
26 the following:

27 (I) The offender was the victim's parent, stepparent, sibling, or
28 grandparent.

29 (II) The crime did not involve either oral copulation or
30 penetration of the vagina or rectum of either the victim or the
31 offender by the penis of the other or by any foreign object.

32 (iii) If, subsequent to his or her application, the offender
33 commits a violation of probation resulting in his or her
34 incarceration in county jail or state prison, his or her exclusion,
35 or application for exclusion, from the Internet Web site shall be
36 terminated.

37 (iv) For the purposes of this subparagraph, "successfully
38 completed probation" means that during the period of probation
39 the offender neither received additional county jail or state prison

1 time for a violation of probation nor was convicted of another
2 offense resulting in a sentence to county jail or state prison.

3 (f) The Department of Justice shall make a reasonable effort to
4 provide notification to persons who have been convicted of the
5 commission or attempted commission of an offense specified in
6 subdivision (b), (c), or (d), that on or before July 1, 2005, the
7 department is required to make information about specified sex
8 offenders available to the public via an Internet Web site as
9 specified in this section. The Department of Justice shall also
10 make a reasonable effort to provide notice that some offenders
11 are eligible to apply for exclusion from the Internet Web site.

12 (g) (1) A designated law enforcement entity, as defined in
13 subdivision (f) of Section 290.45, may make available
14 information concerning persons who are required to register
15 pursuant to Section 290 to the public via an Internet Web site as
16 specified in paragraph (2).

17 (2) The law enforcement entity may make available by way of
18 an Internet Web site the information described in subdivision (c)
19 if it determines that the public disclosure of the information
20 about a specific offender by way of the entity's Internet Web site
21 is necessary to ensure the public safety based upon information
22 available to the entity concerning that specific offender.

23 (3) The information that may be provided pursuant to this
24 subdivision may include the information specified in subdivision
25 (b) of Section 290.45. However, that offender's address may not
26 be disclosed unless he or she is a person whose address is on the
27 Department of Justice's Internet Web site pursuant to subdivision
28 (b) or (c).

29 (h) For purposes of this section, "offense" includes the
30 statutory predecessors of that offense, or any offense committed
31 in another jurisdiction that, if committed or attempted to be
32 committed in this state, would have been punishable in this state
33 as an offense listed in subparagraph (A) of paragraph (2) of
34 subdivision (a) of Section 290.

35 (i) Notwithstanding Section 6254.5 of the Government Code,
36 disclosure of information pursuant to this section is not a waiver
37 of exemptions under Chapter 3.5 (commencing with Section
38 6250) of Title 1 of Division 7 of the Government Code and does
39 not affect other statutory restrictions on disclosure in other
40 situations.

1 (j) (1) Any person who uses information disclosed pursuant to
2 this section to commit a misdemeanor shall be subject to, in
3 addition to any other penalty or fine imposed, a fine of not less
4 than ten thousand dollars (\$10,000) and not more than fifty
5 thousand dollars (\$50,000).

6 (2) Any person who uses information disclosed pursuant to
7 this section to commit a felony shall be punished, in addition and
8 consecutive to any other punishment, by a five-year term of
9 imprisonment in the state prison.

10 (k) Any person who is required to register pursuant to Section
11 290 who enters an Internet Web site established pursuant to this
12 section shall be punished by a fine not exceeding one thousand
13 dollars (\$1,000), imprisonment in a county jail for a period not to
14 exceed six months, or by both that fine and imprisonment.

15 (l) (1) A person is authorized to use information disclosed
16 pursuant to this section only to protect a person at risk. *However,*
17 *this authorization is discretionary and does not create a duty to*
18 *use the information.*

19 (2) Except as authorized under paragraph (1) or any other
20 provision of law, use of any information that is disclosed
21 pursuant to this section for purposes relating to any of the
22 following is prohibited:

23 (A) Health insurance.

24 (B) Insurance.

25 (C) Loans.

26 (D) Credit.

27 (E) Employment.

28 (F) Education, scholarships, or fellowships.

29 (G) Housing or accommodations.

30 (H) Benefits, privileges, or services provided by any business
31 establishment.

32 (3) This section shall not affect authorized access to, or use of,
33 information pursuant to, among other provisions, Sections 11105
34 and 11105.3, Section 8808 of the Family Code, Sections 777.5
35 and 14409.2 of the Financial Code, Sections 1522.01 and
36 1596.871 of the Health and Safety Code, and Section 432.7 of
37 the Labor Code.

38 (4) (A) Any use of information disclosed pursuant to this
39 section for purposes other than those provided by paragraph (1)
40 or in violation of paragraph (2) shall make the user liable for the

1 actual damages, and any amount that may be determined by a
2 jury or a court sitting without a jury, not exceeding three times
3 the amount of actual damage, and not less than two hundred fifty
4 dollars (\$250), and attorney's fees, exemplary damages, or a civil
5 penalty not exceeding twenty-five thousand dollars (\$25,000).

6 (B) Whenever there is reasonable cause to believe that any
7 person or group of persons is engaged in a pattern or practice of
8 misuse of the information available via an Internet Web site
9 established pursuant to this section in violation of paragraph (2),
10 the Attorney General, any district attorney, or city attorney, or
11 any person aggrieved by the misuse is authorized to bring a civil
12 action in the appropriate court requesting preventive relief,
13 including an application for a permanent or temporary injunction,
14 restraining order, or other order against the person or group of
15 persons responsible for the pattern or practice of misuse. The
16 foregoing remedies shall be independent of any other remedies or
17 procedures that may be available to an aggrieved party under
18 other provisions of law, including Part 2 (commencing with
19 Section 43) of Division 1 of the Civil Code.

20 (m) The public notification provisions of this section are
21 applicable to every person described in this section, without
22 regard to when his or her crimes were committed or his or her
23 duty to register pursuant to Section 290 arose, and to every
24 offense described in this section, regardless of when it was
25 committed.

26 (n) On or before July 1, 2006, and every year thereafter, the
27 Department of Justice shall make a report to the Legislature
28 concerning the operation of this section.

29 (o) A designated law enforcement entity and its employees
30 shall be immune from liability for good faith conduct under this
31 section.

32 ~~SECTION 1.—Section 1100 of the Harbors and Navigation~~
33 ~~Code is amended to read:~~

34 ~~1100. The Legislature finds and declares that it is the policy~~
35 ~~of the state to ensure the safety of persons, vessels, and property~~
36 ~~using Monterey Bay and the Bays of San Francisco, San Pablo,~~
37 ~~and Suisun, and the tributaries thereof, and to avoid damage to~~
38 ~~those waters and surrounding ecosystems as a result of vessel~~
39 ~~collision, allision, or damage, by providing competent, efficient,~~

- 1 ~~and regulated pilotage for vessels required by this division to~~
- 2 ~~secure pilotage services.~~

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