

AMENDED IN SENATE JUNE 19, 2006

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 too *amend* 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. 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, *nor shall the delivery of the notice to the lessee or transferee of the real property create a special relationship between the lessor and the lessee or transferee.*

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.

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 (1) 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.

15 (2) Delivery of the notice to lessees or transferees of real
16 property contained in subdivision (a) Section 2079.10a of the
17 Civil Code is the only information that a lessor or transferor is
18 required to provide to a lessee or transferee of real property
19 regarding the proximity of a registered sex offender.

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

5 (c) The Legislature further finds and declares that these
6 provisions do not enlarge or diminish other duties or rights that a
7 lessor may have under other laws.

8 SEC. 2. Section 2079.10a of the Civil Code is amended to
9 read:

10 2079.10a. (a) Every lease or rental agreement for residential
11 real property entered into on or after July 1, 1999, and every
12 contract for the sale of residential real property comprised of one
13 to four dwelling units entered into on or after that date, shall
14 contain, in not less than 8-point type, a notice as specified in
15 paragraph (1), (2), or (3).

16 (1) A contract entered into by the parties on or after July 1,
17 1999, and before September 1, 2005, shall contain the following
18 notice:

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

33 (2) A contract entered into by the parties on or after September
34 1, 2005, and before April 1, 2006, shall contain either the notice
35 specified in paragraph (1) or the notice specified in paragraph
36 (3).

37 (3) A contract entered into by the parties on or after April 1,
38 2006, shall contain the following notice:

39 Notice: Pursuant to Section 290.46 of the Penal Code,
40 information about specified registered sex offenders is made

1 available to the public via an Internet Web site maintained by the
2 Department of Justice at www.meganslaw.ca.gov. Depending on
3 an offender's criminal history, this information will include
4 either the address at which the offender resides or the community
5 of residence and ZIP Code in which he or she resides.

6 (b) Subject to subdivision (c), upon delivery of the notice to
7 the lessee or transferee of the real property, the lessor is not
8 required, and has no duty in law, to provide to a lessee or
9 transferee of residential real property any information in addition
10 to that contained in the notice regarding the proximity of
11 registered sex offenders. The information in the notice shall be
12 deemed to be adequate to inform the lessee or transferee about
13 the existence of a statewide database of the locations of
14 registered sex offenders and information from the database
15 regarding those locations. The information in the notice shall not
16 give rise to any cause of action against the disclosing party by a
17 registered sex offender, *nor shall the delivery of the notice to the*
18 *lessee or transferee of the real property create a special*
19 *relationship between the lessor and the lessee or transferee.*

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

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

28 2079.10b. (a) No duty shall arise for a lessor solely for
29 renting residential real property to a person who is registered or
30 who is required to register under Section 290 of the Penal Code,
31 or who is a person who has been convicted as a sex offender in
32 another state or foreign jurisdiction.

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

36 (c) For the purposes of this section, the word lessor shall
37 include an owner, landlord, seller, or broker of residential real
38 property, or his or her agent, or any agent of a transferor or
39 transferee of residential real property.

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

1 290.46. (a) On or before the dates specified in this section,
2 the Department of Justice shall make available information
3 concerning persons who are required to register pursuant to
4 Section 290 to the public via an Internet Web site as specified in
5 this section. The department shall update the Internet Web site on
6 an ongoing basis. All information identifying the victim by name,
7 birth date, address, or relationship to the registrant shall be
8 excluded from the Internet Web site. The name or address of the
9 person's employer and the listed person's criminal history other
10 than the specific crimes for which the person is required to
11 register shall not be included on the Internet Web site. The
12 Internet Web site shall be translated into languages other than
13 English as determined by the department.

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

24 (2) This subdivision shall apply to the following offenses and
25 offenders:

26 (A) Section 207 committed with intent to violate Section 261,
27 286, 288, 288a, or 289.

28 (B) Section 209 committed with intent to violate Section 261,
29 286, 288, 288a, or 289.

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

31 (D) Section 264.1.

32 (E) Section 269.

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

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

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

37 (I) Section 288.5.

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

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

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

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

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

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

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

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

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

34 (d) (1) On or before July 1, 2005, with respect to a person
35 who has been convicted of the commission or the attempted
36 commission of any of the offenses listed in, or who is described
37 in, this subdivision, the Department of Justice shall make
38 available to the public via the Internet Web site his or her name
39 and known aliases, a photograph, a physical description,
40 including gender and race, date of birth, criminal history, the

1 community of residence and ZIP Code in which the person
2 resides or the county in which the person is registered as a
3 transient, and any other information that the Department of
4 Justice deems relevant, but not the information excluded pursuant
5 to subdivision (a) or the address at which the person resides.

6 (2) This subdivision shall apply to the following offenses and
7 offenders:

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

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

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

12 (D) Section 266j.

13 (E) Section 267.

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

16 (G) Section 647.6.

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

26 (e) (1) If a person has been convicted of the commission or
27 the attempted commission of any of the offenses listed in this
28 subdivision, and he or she has been convicted of no other offense
29 listed in subdivision (b), (c), or (d) other than those listed in this
30 subdivision, that person may file an application with the
31 Department of Justice, on a form approved by the department, for
32 exclusion from the Internet Web site. If the department
33 determines that the person meets the requirements of this
34 subdivision, the department shall grant the exclusion and no
35 information concerning the person shall be made available via
36 the Internet Web site described in this section. He or she bears
37 the burden of proving the facts that make him or her eligible for
38 exclusion from the Internet Web site. However, a person who has
39 filed for or been granted an exclusion from the Internet Web site
40 is not relieved of his or her duty to register as a sex offender

1 pursuant to Section 290 nor from any otherwise applicable
2 provision of law.

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

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

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

6 (C) (i) An offense for which the offender successfully
7 completed probation, provided that the offender submits to the
8 department a certified copy of a probation report, presentencing
9 report, report prepared pursuant to Section 288.1, or other official
10 court document that clearly demonstrates both of the following:

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

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

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

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

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

27 (iii) If, subsequent to his or her application, the offender
28 commits a violation of probation resulting in his or her
29 incarceration in county jail or state prison, his or her exclusion,
30 or application for exclusion, from the Internet Web site shall be
31 terminated.

32 (iv) For the purposes of this subparagraph, "successfully
33 completed probation" means that during the period of probation
34 the offender neither received additional county jail or state prison
35 time for a violation of probation nor was convicted of another
36 offense resulting in a sentence to county jail or state prison.

37 (f) The Department of Justice shall make a reasonable effort to
38 provide notification to persons who have been convicted of the
39 commission or attempted commission of an offense specified in
40 subdivision (b), (c), or (d), that on or before July 1, 2005, the

1 department is required to make information about specified sex
2 offenders available to the public via an Internet Web site as
3 specified in this section. The Department of Justice shall also
4 make a reasonable effort to provide notice that some offenders
5 are eligible to apply for exclusion from the Internet Web site.

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

11 (2) The law enforcement entity may make available by way of
12 an Internet Web site the information described in subdivision (c)
13 if it determines that the public disclosure of the information
14 about a specific offender by way of the entity's Internet Web site
15 is necessary to ensure the public safety based upon information
16 available to the entity concerning that specific offender.

17 (3) The information that may be provided pursuant to this
18 subdivision may include the information specified in subdivision
19 (b) of Section 290.45. However, that offender's address may not
20 be disclosed unless he or she is a person whose address is on the
21 Department of Justice's Internet Web site pursuant to subdivision
22 (b) or (c).

23 (h) For purposes of this section, "offense" includes the
24 statutory predecessors of that offense, or any offense committed
25 in another jurisdiction that, if committed or attempted to be
26 committed in this state, would have been punishable in this state
27 as an offense listed in subparagraph (A) of paragraph (2) of
28 subdivision (a) of Section 290.

29 (i) Notwithstanding Section 6254.5 of the Government Code,
30 disclosure of information pursuant to this section is not a waiver
31 of exemptions under Chapter 3.5 (commencing with Section
32 6250) of Title 1 of Division 7 of the Government Code and does
33 not affect other statutory restrictions on disclosure in other
34 situations.

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

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

5 (k) Any person who is required to register pursuant to Section
6 290 who enters an Internet Web site established pursuant to this
7 section shall be punished by a fine not exceeding one thousand
8 dollars (\$1,000), imprisonment in a county jail for a period not to
9 exceed six months, or by both that fine and imprisonment.

10 (l) (1) A person is authorized to use information disclosed
11 pursuant to this section only to protect a person at risk. However,
12 this authorization is discretionary and does not create a duty to
13 use the information.

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

18 (A) Health insurance.

19 (B) Insurance.

20 (C) Loans.

21 (D) Credit.

22 (E) Employment.

23 (F) Education, scholarships, or fellowships.

24 (G) Housing or accommodations.

25 (H) Benefits, privileges, or services provided by any business
26 establishment.

27 (3) This section shall not affect authorized access to, or use of,
28 information pursuant to, among other provisions, Sections 11105
29 and 11105.3, Section 8808 of the Family Code, Sections 777.5
30 and 14409.2 of the Financial Code, Sections 1522.01 and
31 1596.871 of the Health and Safety Code, and Section 432.7 of
32 the Labor Code.

33 (4) (A) Any use of information disclosed pursuant to this
34 section for purposes other than those provided by paragraph (1)
35 or in violation of paragraph (2) shall make the user liable for the
36 actual damages, and any amount that may be determined by a
37 jury or a court sitting without a jury, not exceeding three times
38 the amount of actual damage, and not less than two hundred fifty
39 dollars (\$250), and attorney's fees, exemplary damages, or a civil
40 penalty not exceeding twenty-five thousand dollars (\$25,000).

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

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

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

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