

AMENDED IN SENATE AUGUST 8, 2006

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 ~~to~~ to 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

1 required to provide to a lessee or transferee of real property
2 regarding the proximity of a registered sex offender.

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

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

10 SEC. 2. Section 2079.10a of the Civil Code is amended to
11 read:

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

18 (1) A contract entered into by the parties on or after July 1,
19 1999, and before September 1, 2005, shall contain the following
20 notice:

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

35 (2) A contract entered into by the parties on or after September
36 1, 2005, and before April 1, 2006, shall contain either the notice
37 specified in paragraph (1) or the notice specified in paragraph
38 (3).

39 (3) A contract entered into by the parties on or after April 1,
40 2006, shall contain the following notice:

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

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

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

29 (d) (1) *For purposes of this section, "lessor" includes all of*
30 *the following:*

31 (A) *An owner, landlord, seller, or broker of residential*
32 *property, or his or her agent, or any agent of the transferor or*
33 *transferee of residential property.*

34 (B) *An owner or landlord of a mobilehome park or*
35 *manufactured housing community, or his or her agent.*

36 (2) *For purposes of this section, "lessee" includes all persons*
37 *who hire dwelling units located within this state, as provided in*
38 *Section 1940, and all persons who hire a site or lot within a*
39 *mobile home park or manufactured housing community.*

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

1 2079.10b. (a) No duty shall arise for a lessor solely for
2 renting residential real property to a person who is registered or
3 who is required to register under Section 290 of the Penal Code,
4 or who is a person who has been convicted as a sex offender in
5 another state or foreign jurisdiction.

6 (b) This section is not intended to enlarge or diminish any
7 other duty or right that a lessor may have under other laws with
8 respect to a tenant of residential real property *or a mobilehome*
9 *park or manufactured housing community*.

10 ~~(c) For the purposes of this section, the word lessor shall~~
11 ~~include an owner, landlord, seller, or broker of residential real~~
12 ~~property, or his or her agent, or any agent of a transferor or~~
13 ~~transferee of residential real property.~~

14 (c) (1) For purposes of this section, “lessor” includes all of
15 the following:

16 (A) An owner, landlord, seller, or broker of residential
17 property, or his or her agent, or any agent of the transferor or
18 transferee of residential property.

19 (B) An owner or landlord of a mobilehome park or
20 manufactured housing community, or his or her agent.

21 (2) For purposes of this section, “lessee” includes all persons
22 who hire dwelling units located within this state, as provided in
23 Section 1940, and all persons who hire a site or lot within a
24 mobile home park or manufactured housing community.

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

26 290.46. (a) On or before the dates specified in this section,
27 the Department of Justice shall make available information
28 concerning persons who are required to register pursuant to
29 Section 290 to the public via an Internet Web site as specified in
30 this section. The department shall update the Internet Web site on
31 an ongoing basis. All information identifying the victim by name,
32 birth date, address, or relationship to the registrant shall be
33 excluded from the Internet Web site. The name or address of the
34 person’s employer and the listed person’s criminal history other
35 than the specific crimes for which the person is required to
36 register shall not be included on the Internet Web site. The
37 Internet Web site shall be translated into languages other than
38 English as determined by the department.

39 (b) (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, paragraph (2), the Department of Justice shall make available
3 to the public via the Internet Web site his or her name and known
4 aliases, a photograph, a physical description, including gender
5 and race, date of birth, criminal history, the address at which the
6 person resides, and any other information that the Department of
7 Justice deems relevant, but not the information excluded pursuant
8 to subdivision (a).

9 (2) This subdivision shall apply to the following offenses and
10 offenders:

11 (A) Section 207 committed with intent to violate Section 261,
12 286, 288, 288a, or 289.

13 (B) Section 209 committed with intent to violate Section 261,
14 286, 288, 288a, or 289.

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

16 (D) Section 264.1.

17 (E) Section 269.

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

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

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

22 (I) Section 288.5.

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

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

27 (c) (1) On or before July 1, 2005, with respect to a person
28 who has been convicted of the commission or the attempted
29 commission of any of the offenses listed in paragraph (2), the
30 Department of Justice shall make available to the public via the
31 Internet Web site his or her name and known aliases, a
32 photograph, a physical description, including gender and race,
33 date of birth, criminal history, the community of residence and
34 ZIP Code in which the person resides or the county in which the
35 person is registered as a transient, and any other information that
36 the Department of Justice deems relevant, but not the information
37 excluded pursuant to subdivision (a). On or before July 1, 2006,
38 the Department of Justice shall determine whether any person
39 convicted of an offense listed in paragraph (2) also has one or
40 more prior or subsequent convictions of an offense listed in

1 paragraph (2) of subdivision (a) of Section 290, and, for those
2 persons, the Department of Justice shall make available to the
3 public via the Internet Web site the address at which the person
4 resides. However, the address at which the person resides shall
5 not be disclosed until a determination is made that the person is,
6 by virtue of his or her additional prior or subsequent conviction
7 of an offense listed in paragraph (2) of subdivision (a) of Section
8 290, subject to this subdivision.

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

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

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

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

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

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

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

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

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

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

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

35 (D) Section 266j.

36 (E) Section 267.

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

39 (G) Section 647.6.

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

(e) (1) If a person has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision, and he or she has been convicted of no other offense listed in subdivision (b), (c), or (d) other than those listed in this subdivision, that person may file an application with the Department of Justice, on a form approved by the department, for exclusion from the Internet Web site. If the department determines that the person meets the requirements of this subdivision, the department shall grant the exclusion and no information concerning the person shall be made available via the Internet Web site described in this section. He or she bears the burden of proving the facts that make him or her eligible for exclusion from the Internet Web site. However, a person who has filed for or been granted an exclusion from the Internet Web site is not relieved of his or her duty to register as a sex offender pursuant to Section 290 nor from any otherwise applicable provision of law.

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

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

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

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

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

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

1 (ii) An offense for which the offender is on probation at the
2 time of his or her application, provided that the offender submits
3 to the department a certified copy of a probation report,
4 presentencing report, report prepared pursuant to Section 288.1,
5 or other official court document that clearly demonstrates both of
6 the following:

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

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

12 (iii) If, subsequent to his or her application, the offender
13 commits a violation of probation resulting in his or her
14 incarceration in county jail or state prison, his or her exclusion,
15 or application for exclusion, from the Internet Web site shall be
16 terminated.

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

22 (f) The Department of Justice shall make a reasonable effort to
23 provide notification to persons who have been convicted of the
24 commission or attempted commission of an offense specified in
25 subdivision (b), (c), or (d), that on or before July 1, 2005, the
26 department is required to make information about specified sex
27 offenders available to the public via an Internet Web site as
28 specified in this section. The Department of Justice shall also
29 make a reasonable effort to provide notice that some offenders
30 are eligible to apply for exclusion from the Internet Web site.

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

36 (2) The law enforcement entity may make available by way of
37 an Internet Web site the information described in subdivision (c)
38 if it determines that the public disclosure of the information
39 about a specific offender by way of the entity's Internet Web site

1 is necessary to ensure the public safety based upon information
2 available to the entity concerning that specific offender.

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

9 (h) For purposes of this section, "offense" includes the
10 statutory predecessors of that offense, or any offense committed
11 in another jurisdiction that, if committed or attempted to be
12 committed in this state, would have been punishable in this state
13 as an offense listed in subparagraph (A) of paragraph (2) of
14 subdivision (a) of Section 290.

15 (i) Notwithstanding Section 6254.5 of the Government Code,
16 disclosure of information pursuant to this section is not a waiver
17 of exemptions under Chapter 3.5 (commencing with Section
18 6250) of Title 1 of Division 7 of the Government Code and does
19 not affect other statutory restrictions on disclosure in other
20 situations.

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

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

30 (k) Any person who is required to register pursuant to Section
31 290 who enters an Internet Web site established pursuant to this
32 section shall be punished by a fine not exceeding one thousand
33 dollars (\$1,000), imprisonment in a county jail for a period not to
34 exceed six months, or by both that fine and imprisonment.

35 (l) (1) A person is authorized to use information disclosed
36 pursuant to this section only to protect a person at risk. However,
37 this authorization is discretionary and does not create a duty to
38 use the information.

39 (2) Except as authorized under paragraph (1) or any other
40 provision of law, use of any information that is disclosed

1 pursuant to this section for purposes relating to any of the
2 following is prohibited:

- 3 (A) Health insurance.
- 4 (B) Insurance.
- 5 (C) Loans.
- 6 (D) Credit.
- 7 (E) Employment.
- 8 (F) Education, scholarships, or fellowships.
- 9 (G) Housing or accommodations.
- 10 (H) Benefits, privileges, or services provided by any business
11 establishment.

12 (3) This section shall not affect authorized access to, or use of,
13 information pursuant to, among other provisions, Sections 11105
14 and 11105.3, Section 8808 of the Family Code, Sections 777.5
15 and 14409.2 of the Financial Code, Sections 1522.01 and
16 1596.871 of the Health and Safety Code, and Section 432.7 of
17 the Labor Code.

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

26 (B) Whenever there is reasonable cause to believe that any
27 person or group of persons is engaged in a pattern or practice of
28 misuse of the information available via an Internet Web site
29 established pursuant to this section in violation of paragraph (2),
30 the Attorney General, any district attorney, or city attorney, or
31 any person aggrieved by the misuse is authorized to bring a civil
32 action in the appropriate court requesting preventive relief,
33 including an application for a permanent or temporary injunction,
34 restraining order, or other order against the person or group of
35 persons responsible for the pattern or practice of misuse. The
36 foregoing remedies shall be independent of any other remedies or
37 procedures that may be available to an aggrieved party under
38 other provisions of law, including Part 2 (commencing with
39 Section 43) of Division 1 of the Civil Code.

1 (m) The public notification provisions of this section are
2 applicable to every person described in this section, without
3 regard to when his or her crimes were committed or his or her
4 duty to register pursuant to Section 290 arose, and to every
5 offense described in this section, regardless of when it was
6 committed.

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

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