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Senate Bill 56 (as passed by the Senate)
Sponsor: Senator Stephanie Chang
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 6-2-23

RATIONALE

The Michigan Penal Code prohibits a man and woman who are not married to each other from lewdly and lasciviously associating and living together. It is unclear, however, when this prohibition was last used to charge and convict someone of a crime. Even though the prohibition is essentially unenforced, its continuation in law has tax implications. Under Federal law, a dependent exemption generally is available for a "qualifying relative", which refers to a member of a person's household who meets certain income and support criteria. A person is not considered a member of a taxpayer's household, however, if the relationship between the person and the taxpayer is in violation of State law. Michigan's prohibition against unmarried partners living together, then, precludes one partner from claiming the other as a dependent, even if the standards for dependency are otherwise met. Accordingly, it has been suggested that the prohibition be deleted for tax filing purposes.

CONTENT

The bill would amend the Michigan Penal Code to delete a provision that prohibits a man and woman who are not married to each other from lewdly and lasciviously associating and cohabitating together. The bill would retain a provision that prohibits any individual, married or unmarried, from engaging in open and gross lewdness and lascivious behavior.

Each offense is a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000. A prosecution of either offense may not be commenced after one year from the time of the violation.

MCL 750.335

PREVIOUS LEGISLATION

(Please note: This section does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

The bill is a reintroduction of Senate Bill 896 from the 2015-2016 Legislative Session. Senate Bill 896 was reported by the Senate Committee on Judiciary but received no further action.

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

Deleting this provision would benefit Michigan taxpayers and tax-preparers. Under the Internal Revenue Code (26 USC 152), a taxpayer may claim a "qualifying relative" as a dependent when filing tax returns. A qualifying relative includes an individual (other than the taxpayer's spouse or child) who: 1) has the same principal place of abode as the taxpayer; 2) is a member of the taxpayer's household; 3) has a gross income less than the amount of an exemption; and 4) receives over half of the person's support from the taxpayer. The

Internal Revenue Code also provides that a person may not be treated as a member of the taxpayer's household if the relationship between the person and the taxpayer is in violation of local or State law. Therefore, a Michigan resident is prohibited from claiming a dependent exemption for an unmarried sexual partner with whom he or she lives and for whom he or she provides at least 50% of support because cohabitation remains illegal under the Michigan Penal Code. Even though this provision is not enforced, taxpayers and tax preparers must obey the Federal tax law as written, and so otherwise-eligible taxpayers cannot legally claim the dependent exemption. Removing the cohabitation provision from the Code would eliminate an unfair Federal tax penalty on some Michigan residents and place Michigan taxpayers on equal footing with those in 48 other states.

Supporting Argument

The Michigan Penal Code's prohibition against an unmarried man and woman lewdly and lasciviously associating and cohabitating is antiquated and unnecessary. Couples who choose to cohabit instead of marrying may do so for a variety of reasons. Instead of respecting this choice, the law penalizes couples for not getting married; however, this prohibition is rarely enforced. Additionally, only two states (Michigan and Mississippi) still have laws that prohibit fornication and cohabitation by unmarried couples. These factors suggest that the prohibition should be eliminated. Doing so would modernize Michigan law to respect the choices of its residents.

Opposing Argument

Deleting the Penal Code's prohibition on cohabitation may discourage marriage and harm Michigan children. Reportedly, the prohibition was enacted to encourage couples to marry by punishing those who refused to do so. While this may be outdated logic, encouraging couples to marry is ultimately a good thing because marriage provides stability to families and children. Deleting the prohibition on cohabitation to allow unmarried couples to access dependent benefits offers them no incentive to marry, which could contribute to the destabilization of families in Michigan.

Legislative Analyst: Tyler P. VanHuyse

FISCAL IMPACT

The bill likely would have no fiscal impact on State or local government. A decrease in misdemeanor arrests and convictions could lead to decreased demands on local court systems, law enforcement, and jails, as well as decreased fine revenue dedicated to public libraries; however, the last time a person was charged under this Section of the Code is not known.

Fiscal Analyst: Joe Carrasco, Jr.

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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.