



A SUMMARY OF HOUSE BILL 5087 AS INTRODUCED 8-22-91

The bill would create the Michigan Fair Information Practices Act to establish procedures for the maintenance of records and the disclosure of information about individuals by state agencies. Under the bill, the Office of Fair Information Practices would be established in the Department of Civil Service, with the director of the department as ex officio director. The director and his or her staff would have access to all data used by a state agency, unless prohibited by law. The provisions of the bill would also apply in cases where an agency shared information with a political subdivision, an organization in a cooperative program, or contracted for the operation of a system of records.

Departmental Responsibilities. The department would promulgate rules, which could not take effect before June 30, 1992, to accomplish the following objectives:

- Establish procedures by which an individual could request and receive notification as to whether a nonexempt system of records named by the individual contained his or her record.
- Define reasonable times, places, and requirements for access and for identifying an individual who requested access to a record or information.
- Establish specific procedures, consistent with the act, for the disclosure of medical or psychological records.
- Establish procedures for reviewing a request from an individual concerning the correction or amendment of his or her record, for making a determination on the request, for a review within the agency or department of an initial adverse agency determination, and for additional means, as necessary, for an individual to fully exercise his or her rights.
- Establish fees to be charged for copies of a record, unless otherwise set by statute. The fee could not exceed the cost of copying, not including the cost of searching for or reviewing the record.

In addition, other agencies that had rule-making authority could promulgate rules consistent with the bill relative to the use of the data.

Agency Record-Keeping Requirements. Under the bill, an agency would have to notify the department before substantially altering records, so that the department could

evaluate the potential effects of the alteration. Each state agency would be required to do all of the following for each system of records under its control:

- Keep an accurate accounting of the date, nature, and purpose of the disclosure of a record, and -- except for disclosures made for a civil or criminal law enforcement activity -- make the accounting available to the individual named in the record at that individual's request activity,

- Retain the accounting for at least two years after the disclosure, or for the life of the record, whichever was longer. (This requirement would not apply to records disclosed to an agency's employee for the performance of official duties, to a record acquired under the Administrative Procedures Act, or to a record disclosed for routine use.)

- Inform a person or agency about a correction, amendment, or statement of disagreement it had made relating to a disclosed record.

- Grant an individual, and -- on request -- a person of the individual's choosing, access to his or her own records.

- Grant an individual the opportunity to have his or her records corrected or amended, or inform the individual of its refusal to correct or amend the record, and of the procedures available to the individual to request an agency review of the refusal.

- Permit an individual to request a review of a agency's refusal to correct or amend that individual's records.

- Should a reviewing agency refuse to correct or amend a record in accordance with a request, permit an individual to file a concise statement setting forth his or her reasons for disagreement with the reviewing agency's refusal; notify the individual of the provisions for judicial review of the reviewing official's determination; and note on a disclosure after the statement is filed any portion of the record that is disputed, together with the agency's reasons for not granting the requested correction or amendment.

Confidentiality Requirements. Under the bill, a state agency would only be allowed to maintain information about an individual that was relevant and necessary to accomplish a legitimate purpose of the agency. To the greatest extent practicable, an agency would collect information directly from the individual if it could result in adverse determinations concerning an individual's rights, benefits, and privileges. In addition, when an agency requested information concerning an individual it would be required to give the individual information regarding the legal authority for the solicitation, including whether it was mandatory or voluntary; the principal purpose for which the information would be used; the routine uses that could be made of the information; and the general consequences to the individual if he or she did not comply with the request. Each state agency would also be required to publish annually, before January 31, a notice of the existence and character of its system of records.

An agency would also be required to give notice to the legislature and the governor at least 30 days before the commencement of a new routine use of information, and to provide an opportunity for interested persons to submit written data, views, or arguments. An agency would also be required to maintain all records that it used to make a determination about an individual with as much accuracy, relevance, timeliness, and completeness as is necessary to assure fairness; make reasonable efforts to assure that records were accurate before disseminating them, and to serve notice on an individual when and if the individual's records were made available under compulsory legal process; and to establish appropriate administrative, technical, and physical safeguards to ensure reasonable security and confidentiality.

Access to Records. Under the bill, a state agency would be prohibited from disclosing a record regarding an individual without his or her written consent or request, unless the disclosure was made:

- To the legislature or the auditor general.
- For official purposes by agency personnel or for routine use.
- When a record was required under the Administrative Procedures Act.
- For statistical research, if the record was transmitted in a form that was not individually identifiable.
- When a record had sufficient historical or other value to warrant its continued preservation by the secretary of state.
- In connection with law enforcement activities.
- Under a showing of compelling circumstances affecting the health or safety of an individual to whom the record pertained, provided that an attempt was made to notify the individual.
- Under court order.

Exempted Records. The head of any agency could exempt any system of records within or under the agency's control and responsibility, or for a system of records that were exclusively court records, upon prior notice and approval by the governor or the chief justice of the supreme court, respectively, if the records were both of the following:

- Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for civilian employment, contracts, or licensure, or a change in status or renewal or revocation of that status.
- Maintained by a law enforcement agency, if those records consisted of either information compiled to identify individual criminal offenders, information compiled for a

criminal investigation, or reports compiled at any stage of the process of enforcement of the criminal laws.

If an exemption were sought under these provisions, the head of the agency involved would prepare a written statement setting forth the specific statutory grounds and reasons why an exemption was sought. The statement would accompany the notice to the governor or to the chief justice of the supreme court, and would be considered a public record.

An exemption to a system or subsystem of records could also be removed by the legislature by concurrent resolution adopted by a record roll call vote of at least three-quarters of the members of each house. Otherwise, an agency could not maintain a record describing how an individual exercised individual rights guaranteed by the first amendment of the U.S. Constitution unless authorized by statute or expressly authorized by the individual to whom the record pertained.

Other Restrictions. Access to a record that could reasonably be construed as medical or psychological in nature could be made by the individual to whom the record pertained or by a physician designated by the individual at the discretion of the agency. An agency could refuse to disclose a record if the individual refused to designate a physician.

-- Access to a record in which the name of an individual appeared could be restricted or prohibited by rule if the record primarily concerned a different person, if the record was not retrievable by the name of the individual seeking access, and if the routine use of the record could not be expected to affect and had not materially affected any rights, benefits, or privileges of the individual seeking access.

-- Access to a record that primarily pertained to the requesting individual would be total or sufficiently extensive to provide the individual with a complete and accurate understanding of the record as it pertained to the individual.

Penalties. The state would not be immune from liability under the bill. The director, and staff designated by the director, could bring action for equitable relief in Ingham County Circuit Court against an agency that violated the act. An individual aggrieved by a final order of an agency under the bill could appeal the order to the circuit court; however, a class action could not be instituted under the act. Nothing in the bill would permit an individual access to information compiled in reasonable anticipation of a civil action or proceeding. An officer or employee of an agency who willfully disclosed the material in agency records in a manner prohibited under the bill would be guilty of a misdemeanor, punishable by a fine of up to \$5,000. (Contractors and their employees would be considered agency employees for purposes of this provision.) The same penalty would be assessed against any person found guilty of the following:

- Willfully failing to comply with the notice requirements of the act.
- Willfully requesting or obtaining from an agency, under false pretenses and without proper authority, a record of an individual.

-- Willfully secreting, falsely amending, or destroying a record, knowingly lacking proper authority to do so.

-- Knowingly making a fraudulent request to correct or amend a record with intent to defraud an agency.

An attempted violation of the act would be a misdemeanor, punishable by a fine of up to \$1,000.

Effective Date. The bill would take effect July 1, 1992, except for the provisions dealing with the promulgation of rules, which would have immediate effect.