

HOUSE BILL No. 5087

August 22, 1991, Introduced by Rep. Bryant and referred to the Committee on Civil Rights, Constitution and Women's Issues.

A bill to impose certain duties upon state agencies relative to the collection, storage, use, and disclosure of data relating to individuals; to establish the office of fair information practices; to provide remedies; and to prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan fair information practices act".

3 Sec. 2. As used in this act:

4 (a) "Agency" means a department, branch, authority, board,
5 commission, or other unit or entity of state government.

6 (b) "Amend" means to supplement, delete, purge, or otherwise
7 change content.

8 (c) "Data" means items of information pertaining to
9 condition, status, act, or omission existing independently of the
10 memory of an individual, which information is retrievable by

1 manual or other means, whether or not coded, and includes the
2 normal and computer art meanings of the word data.

3 (d) "Department" means the department of management and
4 budget.

5 (e) "Individual" means a natural person.

6 (f) "Record" means an item of information or grouping of
7 information or data about an individual, identifiable by name,
8 number, symbol, or other identifying particular.

9 (g) "Routine use" means ordinary use of a record compatible
10 with the purposes for which the record was collected.

11 (h) "System of records" means a group of records used by an
12 agency.

13 (i) "Use" means collection, production, storage, mainte-
14 nance, and dissemination and includes the normal meaning of the
15 word use.

16 Sec. 3. (1) The use of data concerning an individual by the
17 state shall comply with this act.

18 (2) The office of fair information practices is created in
19 the department and shall be responsible for enforcement of this
20 act. The director of the department shall be the ex officio
21 director of the office of fair information practices.

22 (3) An agency shall cooperate in investigations by the
23 director relating to enforcement of this act.

24 (4) Unless otherwise prohibited by law, the director and
25 staff designated by the director shall have access to all data
26 used by any agency.

1 (5) The director or an agency may bring an action in the
2 circuit court for Ingham county for equitable relief for a
3 violation of this act by an agency.

4 Sec. 4. An agency shall not disclose a record contained in
5 a system of records by any means of communication to a person, or
6 to another agency, unless the individual to whom the record per-
7 tains has in writing requested the disclosure. This restriction
8 shall not apply to a disclosure of a record for 1 or more of the
9 following reasons:

10 (a) An officer or employee of the agency maintaining the
11 record if the officer or employee has a need for the record in
12 the performance of his or her official duties.

13 (b) A record required pursuant to the administrative proce-
14 dures act of 1969, Act No. 306 of the Public Acts of 1969, being
15 sections 24.201 to 24.328 of the Michigan Compiled Laws.

16 (c) A routine use.

17 (d) To a person who has provided the agency with advance
18 adequate written assurance that the record will be used solely as
19 a statistical research or reporting record, if the record is
20 transferred in a form that is not individually identifiable.

21 (e) To the secretary of state for a record which has suffi-
22 cient historical or other value to warrant its continued preser-
23 vation by the state.

24 (f) To another agency or to an instrumentality of a govern-
25 mental jurisdiction within or under the control of this or
26 another state, or to an agency of the United States government,
27 for a civil or criminal law enforcement activity, if the activity

1 is authorized by law and if the head of the agency or
2 instrumentality has made a written request to the agency which
3 maintains the record specifying the particular portion desired
4 and the law enforcement activity for which the record is sought.

5 (g) To a person pursuant to a showing of compelling circum-
6 stances affecting the health or safety of an individual, if noti-
7 fication of the disclosure is transmitted to the last known
8 address of the individual.

9 (h) To a committee or subcommittee of the legislature or
10 either house of the legislature, to the extent that the matter is
11 within its jurisdiction.

12 (i) To the auditor general in the course of the performance
13 of the duties of that office.

14 (j) Pursuant to the order of a court of competent
15 jurisdiction.

16 Sec. 5. For each system of records under its control, an
17 agency shall do all of the following:

18 (a) Except for disclosures made under section 4(a) to (c),
19 keep an accurate accounting of the date, nature, and purpose of
20 the disclosure of a record, and the name and address of the
21 agency or person to whom the disclosure is made.

22 (b) Retain the accounting made under subdivision (a) for at
23 least 2 years or for the life of the record, whichever is longer,
24 after the disclosure for which the accounting is made.

25 (c) Except for disclosures made under section 4(f), make the
26 accounting made under subdivision (a) available to the individual
27 named in the record at the request of the individual.

1 (d) If an accounting of a disclosure is made, inform a
2 person or other agency about a correction or amendment, or a
3 statement of disagreement made by the agency pursuant to this
4 section, relating to a record that has been disclosed to the
5 person or agency.

6 (e) Upon request by an individual to gain access to a record
7 of the individual or, except as otherwise provided, to gain
8 access to information pertaining to the individual which is con-
9 tained in the system of records, permit the individual, and on
10 request, 1 additional person of the individual's own choosing, to
11 review the record and have a copy made in a form comprehensible
12 to the individual. The agency may require the individual to fur-
13 nish a written statement authorizing discussion of that
14 individual's record in the accompanying person's presence.

15 (f) Permit the individual to request a correction or amend-
16 ment of a record pertaining to the individual. Not later than 10
17 working days, excluding legal holidays, after the date of receipt
18 of a request, the agency shall acknowledge the request in writing
19 and promptly correct or amend the portions of the record which
20 the individual believes to be inaccurate, irrelevant, untimely,
21 or incomplete, or inform the individual of its refusal to correct
22 or amend the record in accordance with the request. Upon refus-
23 al, the agency shall inform the individual of the reason for the
24 refusal, the procedures available to the individual to request an
25 agency review of the refusal by an officer designated by the
26 administrative head of the agency, or by the department in which

1 the agency exists, and the name and business address of that
2 reviewing official.

3 (g) Permit an individual who disagrees with the refusal of
4 the agency to correct or amend the record of the individual to
5 request a review of the refusal. Not later than 30 working days,
6 excluding legal holidays, after the date on which the individual,
7 in writing, requests a review, the agency shall complete the
8 review and make a final determination unless, for good cause
9 shown, the reviewing official extends the 30-day period. If,
10 after the review, the reviewing official refuses to correct or
11 amend the record in accordance with the request, the agency shall
12 permit the individual to file with the agency a concise statement
13 setting forth the reasons for the disagreement with the refusal
14 of the agency, and shall notify the individual of the provisions
15 for judicial review of the reviewing official's determination.

16 (h) Clearly note in a disclosure occurring after the filing
17 of the statement under subdivision (g), which disclosure contains
18 information about which the individual has filed a statement of
19 disagreement, any portion of the record which is disputed and
20 shall provide the statement, and, if the agency considers it
21 appropriate, a concise statement of the reasons of the agency for
22 not making the requested correction or amendment.

23 Sec. 6. For each system of records under its control, an
24 agency shall maintain only the information about an individual
25 that is relevant and necessary to accomplish a purpose of the
26 agency required or permitted to be accomplished by law, and shall
27 collect information to the greatest extent practicable directly

1 from the subject individual if the information may result in
2 adverse determinations concerning rights, benefits, and privi-
3 leges of an individual. In addition, the agency shall give the
4 following information to each individual from whom it requests
5 information concerning the individual, for use in a record
6 subject to this act, verbally if a telephone request and other-
7 wise on the form which it uses to collect the information or on a
8 separate form that can be retained by the individual:

9 (a) The legal authority, and whether granted by statute,
10 rule, or executive order, which authorizes the solicitation of
11 the information and whether disclosure of the information is man-
12 datory or voluntary.

13 (b) The principal purpose for which the information is
14 intended to be used.

15 (c) The routine uses which may be made of the information,
16 as published pursuant to section 7.

17 (d) General consequences on the individual for not providing
18 all or any part of the requested information.

19 Sec. 7. For a system of records under its control, an
20 agency shall publish at least annually, before January 31, a
21 notice of the existence and character of the system of records.
22 The notice shall include all of the following:

23 (a) The name and location of the system of records.

24 (b) The categories of individuals on whom records are main-
25 tained in the system of records.

26 (c) The categories or records maintained in the system of
27 records.

1 (d) The routine uses of the records contained in the system
2 of records, including the categories of users and the purpose of
3 their use.

4 (e) The policies and practices of the agency regarding stor-
5 age, retrievability, access controls, retention, and disposal of
6 the records.

7 (f) The title and business address of the agency official
8 who is responsible for the system of records.

9 (g) The agency procedures by which an individual may be
10 notified on request if the system of records contains a record
11 pertaining to the individual.

12 (h) The agency procedures by which an individual may be
13 notified on request regarding how the individual may gain access
14 to a record contained in the system of records pertaining to the
15 individual, and how the individual may contest its content.

16 (i) The categories of information sources for records in the
17 system.

18 Sec. 8. For a system of records under its control, an
19 agency shall do all of the following:

20 (a) At least 30 days before the commencement of a new rou-
21 tine use of information, give notice to the legislature and the
22 governor of the proposed new routine use of information in the
23 system of records, and provide an opportunity for interested per-
24 sons to submit written data, views, or arguments to the agency.

25 (b) Maintain all records which are used by the agency in
26 making a determination about an individual with the accuracy,
27 relevance, timeliness, and completeness as is reasonably

1 necessary to assure fairness to the individual in the
2 determination.

3 (c) Make reasonable efforts, before allowing dissemination
4 of a record about an individual to a person other than an agency,
5 unless the dissemination is made pursuant to section 4(f), to
6 assure the records are accurate, complete, timely, and relevant
7 for agency purposes.

8 (d) Make reasonable efforts to serve notice on an individual
9 when a record on that individual is made available to a person
10 under compulsory legal process, when and if the process becomes a
11 matter of public record.

12 (e) Establish appropriate administrative, technical, and
13 physical safeguards to insure reasonable security and confiden-
14 tiality of records and to reasonably protect against anticipated
15 threats or hazards to the security or integrity of records which
16 could result in substantial harm, embarrassment, inconvenience,
17 or unfairness to an individual on whom information is
18 maintained.

19 Sec. 9. (1) Unless otherwise provided by rule promulgated
20 pursuant to this act, access to a record which may be reasonably
21 construed as medical or psychological in nature, may be made by
22 the individual to whom the record pertains or by a physician des-
23 ignated by the individual, at the discretion of the agency. An
24 agency may refuse to disclose a record if the individual refuses
25 to designate a physician.

26 (2) Access to a record in which the name of an individual
27 appears may be restricted or prohibited by rule if the record

1 primarily concerns a different person, if the record is not
2 retrievable by the name of the individual seeking access, and if
3 the routine use of the record could not be expected to affect and
4 has not materially affected any rights, benefits, or privileges
5 of the individual seeking access.

6 (3) Access to a record which primarily pertains to the
7 requesting individual shall be total or sufficiently extensive to
8 provide the individual with a complete and accurate understanding
9 of the record as it pertains to or affects the individual.

10 Sec. 10. (1) The department shall promulgate rules to
11 implement this act pursuant to the administrative procedures act
12 of 1969, Act No. 306 of the Public Acts to 1969, being
13 sections 24.201 to 24.328 of the Michigan Compiled Laws, includ-
14 ing rules which shall do all of the following:

15 (a) Establish procedures by which an individual may be noti-
16 fied in response to a request by the individual as to whether a
17 nonexempt system of records named by the individual contains a
18 record pertaining to the individual.

19 (b) Define reasonable times, places, and requirements for
20 access and for identifying an individual who requests access to a
21 record or information.

22 (c) Establish specific procedures consistent with this act
23 for the disclosure of medical or psychological records.

24 (d) Establish procedures for reviewing a request from an
25 individual concerning the correction or amendment of a record
26 pertaining to the individual, for making a determination on the
27 request, for a review within the agency or department of an

1 initial adverse agency determination, and for additional means as
2 may be necessary for an individual to fully exercise rights under
3 this act.

4 (e) Unless the fee is otherwise set by statute, establish
5 fees to be charged, if any, to an individual for copies of a
6 record. The fee established shall not exceed the cost of copying
7 exclusive of cost of search for or review of the record.

8 (2) With the consent of the department, other agencies in
9 the executive branch which have rule-making authority otherwise
10 granted may promulgate rules consistent with this act relative to
11 the use of the data.

12 Sec. 11. (1) The following provisions do not apply to a
13 system of records exempted under subsection (2):

14 (a) Section 5(c) to (h).

15 (b) Section 6.

16 (c) Section 7 (g) to (i).

17 (d) Section 8(a) and (d).

18 (2) The head of an agency may exempt from subsection (1) any
19 system of records within or under the control and responsibility
20 of that agency, upon prior notice to and approval by the gover-
21 nor, or for a system of records which are exclusively court
22 records, upon prior notice to and approval by the chief justice
23 of the Michigan supreme court, if the records are both of the
24 following:

25 (a) Investigatory material compiled solely for the purpose
26 of determining suitability, eligibility, or qualifications for

1 civilian employment, contracts, or licensure, or a change in
2 status or renewal or revocation of that status.

3 (b) Maintained by an agency or component of the agency which
4 performs as its principal function, activity pertaining to the
5 enforcement of criminal laws, including police efforts to pre-
6 vent, control, or reduce crime or to apprehend criminals and the
7 activities of prosecutors, courts, correctional, probation,
8 pardon, or parole authorities, if those records consist of any of
9 the following:

10 (i) Information compiled for the purpose of identifying
11 individual criminal offenders and alleged offenders and consist-
12 ing of identifying data and notations of arrests, the nature and
13 disposition of criminal charges, sentencing, confinement,
14 release, and parole and probation status.

15 (ii) Information compiled for the purpose of a criminal
16 investigation, including reports of informants and investigators,
17 and associated with an identifiable individual.

18 (iii) Reports, identifiable to an individual compiled at any
19 stage of the process of enforcement of the criminal laws, from
20 arrest or indictment through release from supervision.

21 Sec. 12. (1) If an exemption is sought under section 11(2),
22 the head of the agency involved in obtaining the exemption shall
23 prepare a written statement setting forth the specific statutory
24 grounds and reasons why an exemption is sought for a system of
25 records. The written statement shall accompany the notice
26 described in section 11(2). The notice shall be considered as a
27 public record subject to disclosure under the freedom of

1 information act, Act No. 442 of the Public Acts of 1976, being
2 sections 15.231 to 15.246 of the Michigan Compiled Laws.

3 (2) An exemption as to a system or subsystem of records may
4 be removed by the legislature by concurrent resolution adopted by
5 a record roll call vote of not less than 3/4 of the members
6 elected and serving in each house. A resolution pursuant to this
7 section shall not be adopted until it has been in possession of
8 the house acting on the resolution for at least 5 days. If an
9 exemption is removed by the legislature, it may be reinstated on
10 request of the agency and approval by the governor, for a period
11 of not more than 30 days, or by concurrent resolution of the
12 legislature.

13 (3) Unless pertinent to and within the scope of an autho-
14 rized law enforcement activity, an agency shall not maintain a
15 record substantially describing how an individual exercises indi-
16 vidual rights guaranteed by the first amendment of the constitu-
17 tion of the United States unless authorized by statute or
18 expressly authorized by the individual to whom the record
19 pertains.

20 Sec. 13. A person aggrieved by a final order of an agency
21 under this act may appeal the order to the circuit court pursuant
22 to the Michigan court rules and sections 101 to 106 of the admin-
23 istrative procedures act of 1969, Act No. 306 of the Public Acts
24 of 1969, being sections 24.301 to 24.306 of the Michigan Compiled
25 Laws.

26 Sec. 14. (1) If an agency fails to comply with this act or
27 a rule promulgated pursuant to this act, and the failure has an

1 adverse effect on an individual, the individual shall have a
2 civil cause of action against the agency, and the circuit court
3 shall have jurisdiction in the matter.

4 (2) In an action brought under this act the court may grant
5 equitable relief, and in a case in which the complainant has sub-
6 stantially prevailed, may assess against the agency or state
7 attorney fees and other litigation costs reasonably incurred.

8 (3) In an action brought under this act the court may order
9 an agency to give access to a complainant to records improperly
10 withheld from the complainant. The court, with consent of the
11 director of the office of fair information practices, may examine
12 the contents of relevant agency records in camera to determine
13 whether access to the records or any portion of the records may
14 be withheld under any of the exemptions or special provisions of
15 this act. The burden shall be on the agency to sustain its
16 action.

17 (4) In an action brought under this act in which the court
18 determines that the agency intentionally or willfully violated
19 this act or rules promulgated pursuant to this act, the agency
20 may be held liable to the individual for damages in an amount
21 equal to the sum of actual pecuniary loss sustained by the indi-
22 vidual as a result of the violation and an additional amount of
23 not more than \$5,000.00 for all other damages.

24 (5) An action to enforce liability created under this act
25 may be brought in the circuit court for the county in which the
26 complainant resides, in which the complainant's principal place

1 of business is located, in which the agency records are situated,
2 or in the county of Ingham.

3 (6) An action for damages shall be brought within 2 years
4 after the date on which the cause of action arises. The cause of
5 action arises when the plaintiff first knows or should have known
6 that the violation complained of occurred. The running of this
7 time limitation shall not be considered to commence before
8 July 1, 1990.

9 (7) This act shall not be construed to authorize a civil
10 action or damages by reason of an injury sustained as the result
11 of collection or use of a record before the effective date of
12 this act.

13 (8) A continuing violation of this act or rules promulgated
14 pursuant to this act shall give rise to a cause of action for
15 each day of its continuance.

16 (9) For the purposes of this act, the parent or guardian of
17 a minor, or the legal guardian of an individual who has been
18 declared to be incompetent by a court of competent jurisdiction,
19 may act on behalf of the minor or individual. In other cases,
20 where equity demands, a circuit or probate court may appoint a
21 guardian ad litem to represent a person substantially unable to
22 personally pursue his or her rights under this act.

23 (10) A class action may not be instituted pursuant to this
24 act.

25 Sec. 15. Nothing in this act shall allow an individual
26 access to information compiled in reasonable anticipation of a
27 civil action or proceeding.

1 Sec. 16. (1) An officer or employee of an agency who by
2 virtue of employment or official position has possession of or
3 access to agency records which contain individually indentifiable
4 information the disclosure of which is restricted or prohibited
5 by this act or by rules promulgated pursuant to this act, and
6 who, knowing that disclosure of the specific material is
7 restricted or prohibited, willfully discloses the material in a
8 form, at a time, in a manner, or to a person or agency prohibited
9 by this act or by rules promulgated pursuant to this act, is
10 guilty of a misdemeanor, punishable by a fine of not more than
11 \$5,000.00.

12 (2) A person who does any of the following is guilty of a
13 misdemeanor, punishable by a fine of not more than \$5,000.00:

14 (a) Willfully fails to comply with the notice requirements
15 of sections 5 to 8.

16 (b) Under false pretenses and without proper authority,
17 willfully requests or obtains from an agency a record subject to
18 this act concerning an individual.

19 (c) Willfully secretes, falsely amends, or destroys a
20 record, knowingly lacking proper authority to do so.

21 (d) Knowingly makes a fraudulent request to correct or amend
22 a record with intent to defraud an agency.

23 (3) A person who attempts to commit an act prohibited under
24 this section is guilty of a misdemeanor, punishable by a fine of
25 not more than \$1,000.00.

26 Sec. 17. If an agency shares information with a political
27 subdivision, an organization in a cooperative program, or

1 provides by a contract for the operation by or on behalf of the
2 agency of a system of records to accomplish an agency function,
3 the agency, consistent with its authority, shall cause the
4 requirements of this act to be applied, and this act shall apply
5 to the system of records. For purposes of section 16, a contrac-
6 tor and an employee of a contractor, if the contract is agreed to
7 on or after the effective date of this act, shall be considered
8 to be an employee of an agency.

9 Sec. 18. The director shall require agencies to provide
10 advance notice to the department of a proposal to establish or
11 substantially alter a system of records and to permit an evalu-
12 ation of the probable or potential effect of adoption of the pro-
13 posal on the privacy and other personal rights of individuals.

14 Sec. 19. The state shall not be immune from liability under
15 this act.

16 Sec. 20. The department, and other agencies as provided in
17 this act, may promulgate rules for the implementation of this act
18 pursuant to the administrative procedures act of 1969, Act
19 No. 306 of the Public Acts of 1969, being sections 24.201 to
20 24.328 of the Michigan Compiled Laws, which rules shall not take
21 effect before June 30, 1992.

22 Sec. 21. (1) Sections 1 to 9 and 11 to 20 shall take effect
23 July 1, 1992.

24 (2) Section 10 and this section shall take effect upon the
25 date of enactment of this act.