

HOUSE BILL No. 6168

September 9, 2004, Introduced by Rep. Robertson and referred to the Committee on Criminal Justice.

A bill to prohibit certain acts and practices concerning identity theft; to provide for the powers and duties of certain state and local governmental officers and entities; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "identity theft protection act".

3 Sec. 3. As used in this act:

4 (a) "Credit card" means that term as defined in section 157m
5 of the Michigan penal code, 1931 PA 328, MCL 750.157m.

6 (b) "Depository institution" means a state or nationally
7 chartered bank or a state or federally chartered savings and loan
8 association, savings bank, or credit union.

9 (c) "Financial institution" means a depository institution,

1 an affiliate of a depository institution, a licensee under the
2 consumer financial services act, 1988 PA 161, MCL 487.2051 to
3 487.2072, 1984 PA 379, MCL 493.101 to 493.114, the motor vehicle
4 sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141,
5 the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to
6 493.81, the mortgage brokers, lenders, and servicers licensing
7 act, 1987 PA 173, MCL 445.1651 to 445.1684, or the regulatory
8 loan act of 1963, 1939 PA 21, MCL 493.1 to 493.24, a seller under
9 the home improvement finance act, 1965 PA 332, MCL 445.1101 to
10 445.1431, or the retail installment sales act, 1966 PA 224, MCL
11 445.851 to 445.873, or a person subject to subtitle A of title V
12 of the Gramm-Leach-Bliley act, 15 USC 6801 to 6809.

13 (d) "Financial transaction device" means that term as defined
14 in section 157m of the Michigan penal code, 1931 PA 328, MCL
15 750.157m.

16 (e) "Identity theft" means engaging in an act or conduct
17 prohibited in section 4(1).

18 (f) "Law enforcement agency" means that term as defined in
19 section 2804 of the public health code, 1978 PA 368, MCL
20 333.2804.

21 (g) "Local registrar" means that term as defined in section
22 2804 of the public health code, 1978 PA 368, MCL 333.2804.

23 (h) "Medical records or information" includes, but is not
24 limited to, medical and mental health histories, reports,
25 summaries, diagnoses and prognoses, treatment and medication
26 information, notes, entries, and x-rays and other imaging
27 records.

1 (i) "Person" means an individual, partnership, corporation,
2 limited liability company, association, or other legal entity.

3 (j) "Personal identifying information" means a name, number,
4 or other information that is used for the purpose of identifying
5 a specific person or providing access to a person's financial
6 accounts, including, but not limited to, a person's name,
7 address, telephone number, driver license or state personal
8 identification card number, social security number, place of
9 employment, employee identification number, employer or taxpayer
10 identification number, government passport number, health
11 insurance identification number, mother's maiden name, demand
12 deposit account number, savings account number, financial
13 transaction device account number or the person's account
14 password, stock or other security certificate or account number,
15 credit card number, or medical records or information.

16 (k) "Trade or commerce" means that term as defined in section
17 2 of the Michigan consumer protection act, 1971 PA 331, MCL
18 445.902.

19 (l) "Vital record" means that term as defined in section 2805
20 of the public health code, 1978 PA 368, MCL 333.2805.

21 Sec. 4. (1) A person shall not use or attempt to use
22 personal identifying information of another person without that
23 other person's consent, either with the intent to defraud or
24 otherwise violate the law, or by concealing, withholding, or
25 misrepresenting the identity of the person using or attempting to
26 use that information, to do any of the following:

27 (a) Obtain credit, goods, services, money, property, medical

1 records or information, or employment.

2 (b) Commit any other unlawful act.

3 (2) Subsection (1) does not apply to any of the following
4 acts if committed to obtain credit, goods, services, money,
5 property, medical records or information, or employment:

6 (a) Giving a bona fide gift for or for the benefit or control
7 of, or use or consumption by, the person whose personal
8 identifying information was used. This subdivision does not
9 apply if the act is committed with the intent to defraud or
10 commit another unlawful act.

11 (b) An act in otherwise lawful pursuit or enforcement of a
12 person's legal rights, including an investigation of a crime or
13 an audit, collection, investigation, or transfer of a debt,
14 claim, receivable, account, or interest in a receivable or
15 account.

16 (c) An act authorized or required by state or federal law,
17 rule, regulation, or court order or rule.

18 (d) An act committed by a person who has contracted with a
19 person described in subdivision (a), (b), or (c) to use any
20 personal identifying information, if the person has privacy
21 protections in place similar to those of the person described in
22 that subdivision that makes the personal identifying information
23 confidential.

24 (3) For purposes of subsection (1), "consent" does not
25 include authorizing use of personal identifying information if
26 the person giving permission knows that the information will be
27 used to commit an unlawful act.

1 Sec. 5. A person shall not do any of the following:

2 (a) Obtain or possess, or attempt to obtain or possess,
3 personal identifying information of another person with the
4 intent to use that information to commit identity theft or
5 another crime.

6 (b) Sell or transfer, or attempt to sell or transfer,
7 personal identifying information of another person if the person
8 knows or has reason to know that the specific intended recipient
9 will use, attempt to use, or further transfer the information to
10 another person for the purpose of committing identity theft or
11 another crime.

12 (c) Falsify a police report of identity theft, or knowingly
13 create, possess, or use a false police report of identity theft,
14 described in section 23 of chapter XVI of the code of criminal
15 procedure, 1927 PA 175, MCL 776.23.

16 Sec. 6. (1) Subject to subsection (6), a person who
17 violates section 4 or 5 is guilty of a felony punishable by
18 imprisonment for not more than 5 years or a fine of not more than
19 \$10,000.00, or both.

20 (2) Sections 4 and 5 apply whether an individual who is a
21 victim or intended victim of a violation of 1 of those sections
22 is alive or deceased at the time of the violation.

23 (3) This section does not prohibit a person from being
24 charged with, convicted of, or sentenced for any other violation
25 of law committed by that person using information obtained in
26 violation of this section.

27 (4) Sections 4 and 5 do not apply to a person lawfully

1 obtaining or attempting to obtain personal identifying
2 information of another person pursuant to the discovery process
3 in a civil or criminal action, an administrative proceeding, or
4 an arbitration proceeding.

5 (5) Sections 4 and 5 do not apply to a person lawfully
6 transferring, obtaining, or attempting to obtain personal
7 identifying information of another person for the purpose of
8 detecting, preventing, or deterring identity theft or another
9 crime or the funding of a criminal activity.

10 (6) Subsection (1) does not apply to a violation of a statute
11 or rule administered by a regulatory board, commission, or
12 officer acting under authority of this state or the United States
13 that confers primary jurisdiction on that regulatory board,
14 commission, or officer to authorize, prohibit, or regulate the
15 transactions and conduct of that person, including, but not
16 limited to, a state or federal statute or rule governing a
17 financial institution and the insurance code of 1956, 1956 PA
18 218, MCL 500.100 to 500.8302, if the act is committed by a person
19 subject to and regulated by that statute or rule, or by another
20 person who has contracted with that person to use personal
21 identifying information and who has similar privacy protection
22 policies in place similar to that person that makes the personal
23 identifying information confidential.

24 Sec. 7. (1) A person shall not do any of the following in
25 the conduct of trade or commerce:

26 (a) Deny credit or public utility service to or reduce the
27 credit limit of a consumer solely because the consumer was a

1 victim of identity theft, if the person had prior knowledge that
2 the consumer was a victim of identity theft. A consumer is
3 presumed to be a victim of identity theft for the purposes of
4 this subdivision if he or she possesses a valid police report
5 provided under section 23 of chapter XVI of the code of criminal
6 procedure, 1927 PA 175, MCL 776.23.

7 (b) Solicit to extend credit to a consumer who does not have
8 an existing line of credit, or has not had or applied for a line
9 of credit within the preceding year, through the use of an
10 unsolicited check that includes personal identifying information
11 other than the recipient's name, address, and a partial, encoded,
12 or truncated personal identifying number. In addition to any
13 other penalty or remedy under this act or the Michigan consumer
14 protection act, 1976 PA 331, MCL 445.901 to 445.922, a credit
15 card issuer, financial institution, or other lender that violates
16 this subdivision, and not the consumer, is liable for the amount
17 of the instrument if the instrument is used by an unauthorized
18 user and for any fees assessed to the consumer if the instrument
19 is dishonored.

20 (c) Solicit to extend credit to a consumer who does not have
21 a current credit card, or has not had or applied for a credit
22 card within the preceding year, through the use of an unsolicited
23 credit card sent to the consumer. In addition to any other
24 penalty or remedy under this act or the Michigan consumer
25 protection act, 1976 PA 331, MCL 445.901 to 445.922, a credit
26 card issuer, financial institution, or other lender that violates
27 this subdivision, and not the consumer, is liable for any charges

1 if the credit card is used by an unauthorized user and for any
2 interest or finance charges assessed to the consumer.

3 (d) Extend credit to a consumer without exercising procedures
4 to verify the identity of that consumer. Compliance with
5 regulations issued by the United States department of treasury
6 under section 326 of the USA patriot act of 2001, 31 USC 5318, is
7 considered compliance with this subdivision.

8 (2) A person who knowingly or intentionally violates
9 subsection (1) is guilty of a misdemeanor punishable by
10 imprisonment for not more than 30 days or a fine of not more than
11 \$100.00, or both. This subsection does not affect the
12 availability of any civil remedy for a violation of this act, the
13 Michigan consumer protection act, 1976 PA 331, MCL 445.901 to
14 445.922, or any other state or federal law.

15 Sec. 9. A law enforcement agency, financial institution, or
16 victim of identity theft may obtain copies of a vital record from
17 a local registrar under part 28 of the public health code, 1978
18 PA 368, MCL 333.2801 to 333.2899, if necessary to enforce this
19 act or investigate or prevent identity theft. The registrar may
20 charge for the actual costs of copying the vital records obtained
21 by a financial institution or victim of identity theft.

22 Sec. 13. (1) There is created an identity theft advisory
23 board. The 5 members of the identity theft advisory board are
24 the governor or his or her designee, the attorney general or his
25 or her designee, who shall serve as the chairperson of the
26 identity theft advisory board, the secretary of state or his or
27 her designee, the majority leader of the senate or his or her

1 designee, and the speaker of the house of representatives or his
2 or her designee. The board shall annually report to the standing
3 committees of the senate and the house of representatives with
4 jurisdiction over issues relating to identity theft with any
5 recommendations for statutory changes.

6 (2) The identity theft advisory board shall study data from
7 identity theft cases in this state.

8 Enacting section 1. This act takes effect March 1, 2005.

9 Enacting section 2. Section 285 of the Michigan penal code,
10 1931 PA 328, MCL 750.285, is repealed.