

# SENATE BILL No. 792

October 23, 2003, Introduced by Senators BISHOP, BRATER, BIRKHOLZ, ALLEN, GILBERT, VAN WOERKOM, KUIPERS, JELINEK, GARCIA, HAMMERSTROM, HARDIMAN, JOHNSON, STAMAS, CLARK-COLEMAN, SCOTT, CHERRY, BERNERO, LELAND, McMANUS, JACOBS, OLSHOVE, PRUSI, BROWN, CASSIS, CROPSEY, SWITALSKI, GEORGE and EMERSON and referred to the Committee on Judiciary.

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; to require the promulgation of rules; 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) "Financial institution" means that term as defined in  
5 section 2815a of the public health code, 1978 PA 368, MCL  
6 333.2815a.

7       (b) "Identity theft" means any unauthorized use of another  
8 person's personal identifying information to obtain credit,  
9 goods, services, money, property, or employment or to commit any

1 illegal act.

2 (c) "Law enforcement agency" means that term as defined in  
3 section 2804 of the public health code, 1978 PA 368, MCL  
4 333.2804.

5 (d) "Local registrar" means that term as defined in section  
6 2804 of the public health code, 1978 PA 368, MCL 333.2804.

7 (e) "Person" means an individual, partnership, corporation,  
8 limited liability company, association, or other legal entity.

9 (f) "Personal identifying information" means a person's name,  
10 address, telephone number, driver license number, social security  
11 number, place of employment, employee identification number,  
12 mother's maiden name, demand deposit account number, savings  
13 account number, credit card number, or medical records or  
14 information.

15 (g) "Trade or commerce" means that term as defined in section  
16 3 of the Michigan consumer protection act, 1971 PA 331, MCL  
17 445.902.

18 (h) "Victim of identity theft" means a person whose personal  
19 identifying information is used by another without authorization  
20 for any of the following:

21 (i) To obtain credit, goods, services, money, property, or  
22 employment.

23 (ii) To commit an illegal act.

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

26 Sec. 5. (1) A person shall not commit identity theft or  
27 obtain or attempt to obtain personal identifying information of

1 another person with the intent to use that information to commit  
2 identity theft or another illegal act.

3 (2) A person who violates this section is guilty of a felony  
4 punishable by imprisonment for not more than 5 years or a fine of  
5 not more than \$10,000.00, or both.

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

10 (4) This section does not apply to a person who obtains or  
11 attempts to obtain personal identifying information of another  
12 person pursuant to the discovery process of a civil action, an  
13 administrative proceeding, or an arbitration proceeding.

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

16 (a) Deny credit to or reduce the credit limit of a consumer  
17 solely because the consumer was a victim of identity theft.

18 (b) Solicit to extend credit to a consumer through the use of  
19 an unsolicited check, unsolicited convenience check, or other  
20 unsolicited negotiable instrument sent by a credit card issuer,  
21 financial institution, or other lender to the consumer. In  
22 addition to any other penalty or remedy under this act or the  
23 Michigan consumer protection act, 1976 PA 331, MCL 445.901 to  
24 445.922, a credit card issuer, financial institution, or other  
25 lender that violates this subdivision, and not the consumer, is  
26 liable for the amount of the instrument if the instrument is used  
27 and any fees if the instrument is dishonored because of

1 insufficient funds.

2 (c) Solicit to extend credit to a consumer through the use of  
3 an unsolicited credit card sent by a credit card issuer,  
4 financial institution, or other lender to the consumer. In  
5 addition to any other penalty or remedy under this act or the  
6 Michigan consumer protection act, 1976 PA 331, MCL 445.901 to  
7 445.922, a credit card issuer, financial institution, or other  
8 lender that violates this subdivision, and not the consumer, is  
9 liable for any charges if the credit card is used and any  
10 interest or finance charges.

11 (d) Fail to verify the identity of an individual submitting a  
12 credit application to the person before providing credit to the  
13 individual, by at least examining 3 pieces of identification,  
14 including at least 1 piece of identification that contains the  
15 individual's photograph and signature.

16 (2) A person who knowingly or intentionally violates  
17 subsection (1) is guilty of a misdemeanor punishable by  
18 imprisonment for not more than 30 days or a fine of not more than  
19 \$100.00, or both. This subsection does not affect the  
20 availability of any civil remedy for the violation of subsection  
21 (1) under subsection (1), this act, the Michigan consumer  
22 protection act, 1976 PA 331, MCL 445.901 to 445.922, or other  
23 state or federal law.

24 Sec. 9. A law enforcement agency or a financial institution  
25 or other person may request copies of a vital record from a local  
26 registrar under section 2815a of the public health code, 1978 PA  
27 368, MCL 333.2815a, if necessary to enforce this act or

1 investigate or prevent identity theft.

2       Sec. 11. Subject to section 208e of the Michigan vehicle  
3 code, 1949 PA 300, MCL 257.208e, an individual who has reasonable  
4 cause to believe that he or she is the victim of identity theft  
5 may submit a request for suppression of any record maintained by  
6 the secretary of state under the Michigan vehicle code, 1949 PA  
7 300, MCL 257.1 to 257.923.

8       Sec. 13. (1) There is created an identity theft advisory  
9 board. The 5 members of the identity theft advisory board are  
10 the governor or his or her designee, the attorney general or his  
11 or her designee, who shall serve as the chairperson of the  
12 identity theft advisory board, the secretary of state or his or  
13 her designee, the majority leader of the senate or his or her  
14 designee, and the speaker of the house of representatives or his  
15 or her designee. The board shall annually report to the standing  
16 committees of the senate and the house of representatives with  
17 jurisdiction over issues relating to identity theft with any  
18 recommendations for statutory changes.

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

21       Enacting section 1. Section 285 of the Michigan penal code,  
22 1931 PA 328, MCL 750.285, is repealed.

23       Enacting section 2. This act does not take effect unless  
24 all of the following bills of the 92nd Legislature are enacted  
25 into law:

26       (a) Senate Bill No. 793.

27

1 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
2 no. 03792'03 \*).

3 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
4 no. 03793'03 \*).

5 (d) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
6 no. 03794'03 \*).

7 (e) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
8 no. 04807'03 a).

9 (f) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
10 no. 04808'03).

11 (g) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
12 no. 04808'03 a).