

Act No. 452
Public Acts of 2004
Approved by the Governor
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STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004

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

ENROLLED SENATE BILL No. 792

AN ACT 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:

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

Sec. 3. As used in this act:

(a) “Child or spousal support” means support for a child or spouse, paid or provided pursuant to state or federal law under a court order or judgment. Support includes, but is not limited to, any of the following:

(i) Expenses for day-to-day care.

(ii) Medical, dental, or other health care.

(iii) Child care expenses.

(iv) Educational expenses.

(v) Expenses in connection with pregnancy or confinement under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(vi) Repayment of genetic testing expenses, under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(vii) A surcharge as provided by section 3a of the support and parenting time enforcement act, 1982 PA 295, MCL 552.603a.

(b) “Credit card” means that term as defined in section 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

(c) “Depository institution” means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union.

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

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

(f) "Identity theft" means engaging in an act or conduct prohibited in section 5(1).

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

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

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

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

(k) "Personal identifying information" means a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts, including, but not limited to, a person's name, address, telephone number, driver license or state personal identification card number, social security number, place of employment, employee identification number, employer or taxpayer identification number, government passport number, health insurance identification number, mother's maiden name, demand deposit account number, savings account number, financial transaction device account number or the person's account password, stock or other security certificate or account number, credit card number, vital record, or medical records or information.

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

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

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

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

(a) With intent to defraud or violate the law, use or attempt to use the personal identifying information of another person to do either of the following:

- (i) Obtain credit, goods, services, money, property, a vital record, medical records or information, or employment.
- (ii) Commit another unlawful act.

(b) By concealing, withholding, or misrepresenting the person's identity, use or attempt to use the personal identifying information of another person to do either of the following:

- (i) Obtain credit, goods, services, money, property, a vital record, medical records or information, or employment.
- (ii) Commit another unlawful act.

(2) A person who violates subsection (1)(b)(i) may assert 1 or more of the following as a defense in a civil action or as an affirmative defense in a criminal prosecution, and has the burden of proof on that defense by a preponderance of the evidence:

(a) That the person gave a bona fide gift for or for the benefit or control of, or use or consumption by, the person whose personal identifying information was used.

(b) That the person acted in otherwise lawful pursuit or enforcement of a person's legal rights, including an investigation of a crime or an audit, collection, investigation, or transfer of a debt, child or spousal support obligation, tax liability, claim, receivable, account, or interest in a receivable or account.

(c) That the action taken was authorized or required by state or federal law, rule, regulation, or court order or rule.

(d) That the person acted with the consent of the person whose personal identifying information was used, unless the person giving consent knows that the information will be used to commit an unlawful act.

Sec. 7. A person shall not do any of the following:

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

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

(c) Falsify a police report of identity theft, or knowingly create, possess, or use a false police report of identity theft.

Sec. 9. (1) Subject to subsection (6), a person who violates section 5 or 7 is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$25,000.00, or both.

(2) Sections 5 and 7 apply whether an individual who is a victim or intended victim of a violation of 1 of those sections is alive or deceased at the time of the violation.

(3) This section does not prohibit a person from being charged with, convicted of, or sentenced for any other violation of law committed by that person using information obtained in violation of this section or any other violation of law committed by that person while violating or attempting to violate this section.

(4) The court may order that a term of imprisonment imposed under this section be served consecutively to any term of imprisonment imposed for a conviction of any other violation of law committed by that person using the information obtained in violation of this section or any other violation of law committed by that person while violating or attempting to violate this section.

(5) A person may assert as a defense in a civil action or as an affirmative defense in a criminal prosecution for a violation of section 5 or 7, and has the burden of proof on that defense by a preponderance of the evidence, that the person lawfully transferred, obtained, or attempted to obtain personal identifying information of another person for the purpose of detecting, preventing, or deterring identity theft or another crime or the funding of a criminal activity.

(6) Subsection (1) does not apply to a violation of a statute or rule administered by a regulatory board, commission, or officer acting under authority of this state or the United States that confers primary jurisdiction on that regulatory board, commission, or officer to authorize, prohibit, or regulate the transactions and conduct of that person, including, but not limited to, a state or federal statute or rule governing a financial institution and the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, if the act is committed by a person subject to and regulated by that statute or rule, or by another person who has contracted with that person to use personal identifying information.

Sec. 11. (1) A person shall not do any of the following in the conduct of trade or commerce:

(a) Deny credit or public utility service to or reduce the credit limit of a consumer solely because the consumer was a victim of identity theft, if the person had prior knowledge that the consumer was a victim of identity theft. A consumer is presumed to be a victim of identity theft for the purposes of this subdivision if he or she provides both of the following to the person:

(i) A copy of a police report evidencing the claim of the victim of identity theft.

(ii) Either a properly completed copy of a standardized affidavit of identity theft developed and made available by the federal trade commission pursuant to 15 USC 1681g or an affidavit of fact that is acceptable to the person for that purpose.

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

(c) Solicit to extend credit to a consumer who does not have a current credit card, or has not had or applied for a credit card within the preceding year, through the use of an unsolicited credit card sent to the consumer. In addition to any other penalty or remedy under this act or the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922, a credit card issuer, financial institution, or other lender that violates this subdivision, and not the consumer, is liable for any charges if the credit card is used by an unauthorized user and for any interest or finance charges assessed to the consumer.

(d) Extend credit to a consumer without exercising reasonable procedures to verify the identity of that consumer. Compliance with regulations issued for depository institutions, and to be issued for other financial institutions, by the United States department of treasury under section 326 of the USA patriot act of 2001, 31 USC 5318, is considered compliance with this subdivision. This subdivision does not apply to a purchase of a credit obligation in an acquisition, merger, purchase of assets, or assumption of liabilities or any change to or review of an existing credit account.

(2) A person who knowingly or intentionally violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not more than \$1,000.00, or both. This subsection does not affect the availability of any civil remedy for a violation of this act, the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922, or any other state or federal law.

Sec. 13. (1) A law enforcement agency or victim of identity theft may verify information from a vital record from a local registrar or the state registrar in the manner described in section 2881(2) of the public health code, 1978 PA 368, MCL 333.2881.

(2) A state registrar or local registrar that verifies information from a vital record under section 2881(2) of the public health code, 1978 PA 368, MCL 333.2881, for a law enforcement agency investigating identity theft may provide that law enforcement agency with all of the following information about any previous requests concerning that public record that is available to the registrar:

(a) Whether or not a certified copy or copies of the record were requested.

(b) The date or dates a copy or copies of the record were issued.

(c) The name of each applicant who requested the record.

(d) The address, e-mail address, telephone number, and other identifying information of each applicant who requested the record.

(e) Payment information regarding each request.

(3) A state registrar or local registrar that verifies information from a vital record under section 2881(2) of the public health code, 1978 PA 368, MCL 333.2881, for an individual who provides proof that he or she is a victim of identity theft may provide that individual with all of the following information about any previous requests concerning that public record that is available to the registrar:

(a) Whether or not a certified copy or copies of the record were requested.

(b) The date or dates a copy or copies of the record were issued.

(4) For purposes of subsection (3), it is sufficient proof that an individual is a victim of identity theft for a state registrar or local registrar to provide the information described in that subsection if he or she provides the registrar with a copy of a police report evidencing the claim that he or she is a victim of identity theft; and, if available, an affidavit of identity theft, in a form developed by the state registrar in cooperation with the attorney general for purposes of this subsection.

(5) A law enforcement agency may request an administrative use copy of a vital record from the state registrar in the manner described in section 2891 of the public health code, 1978 PA 368, MCL 333.2891.

(6) A law enforcement agency may request an administrative use copy of a vital record from a local registrar in the manner described in section 2891 of the public health code, 1978 PA 368, MCL 333.2891, if the request for the administrative use copy is in writing and contains both of the following:

(a) A statement that the law enforcement agency requires information from a vital record beyond the information the local registrar may verify under subsections (1) and (2).

(b) The agreement of the law enforcement agency that it will maintain the administrative use copy of the vital record in a secure location and will destroy the copy by confidential means when it no longer needs the copy.

Sec. 15. Section 285 of the Michigan penal code, 1931 PA 328, MCL 750.285, is repealed.

Sec. 17. This act takes effect March 1, 2005.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Dany E. Randall

Clerk of the House of Representatives

Approved _____

Governor