

SUBSTITUTE FOR
SENATE BILL NO. 1202

A bill to amend 2004 PA 452, entitled
"Identity theft protection act,"
by amending section 5 (MCL 445.65) and by adding section 5a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

5 (i) Obtain credit, goods, services, money, property, a vital
6 record, **A CONFIDENTIAL TELEPHONE RECORD**, medical records or
7 information, or employment.

8 (ii) Commit another unlawful act.

9 (b) By concealing, withholding, or misrepresenting the
10 person's identity, use or attempt to use the personal identifying

1 information of another person to do either of the following:

2 (i) Obtain credit, goods, services, money, property, a vital
3 record, **A CONFIDENTIAL TELEPHONE RECORD**, medical records or
4 information, or employment.

5 (ii) Commit another unlawful act.

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

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

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

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

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

24 **SEC. 5A. (1) AS USED IN THIS ACT:**

25 **(A) "CONFIDENTIAL TELEPHONE RECORD" MEANS ANY OF THE**
26 **FOLLOWING:**

27 **(i) INFORMATION THAT RELATES TO THE QUANTITY, TECHNICAL**

Senate Bill No. 1202 (S-1) as amended June 13, 2006

1 CONFIGURATION, TYPE, DESTINATION, LOCATION, AND AMOUNT OF USE OF A
2 SERVICE OFFERED BY A TELECOMMUNICATION PROVIDER SUBSCRIBED TO BY
3 ANY CUSTOMER OF THAT TELECOMMUNICATION PROVIDER.

4 (ii) INFORMATION THAT IS MADE AVAILABLE TO A TELECOMMUNICATION
5 PROVIDER BY A CUSTOMER SOLELY BY VIRTUE OF THE RELATIONSHIP BETWEEN
6 THE TELECOMMUNICATION PROVIDER AND THE CUSTOMER.

7 (iii) INFORMATION CONTAINED IN ANY BILL RELATED TO THE PRODUCT
8 OR SERVICE OFFERED BY A TELECOMMUNICATION PROVIDER AND RECEIVED BY
9 ANY CUSTOMER OF THE TELECOMMUNICATION PROVIDER.

10 [(B)] "COVERED SPECIALIZED MOBILE RADIO SERVICE" MEANS A COMMERCIAL
MOBILE RADIO SERVICE THAT OFFERS REAL-TIME, 2-WAY SWITCHED VOICE OR DATA
SERVICE AND IS INTERCONNECTED WITH THE PUBLIC SWITCHED NETWORK UTILIZING
AN IN-NETWORK SWITCHING FACILITY.

11 [(C)] "IP-ENABLED VOICE SERVICE" MEANS AN INTERCONNECTED VOICE
12 OVER INTERNET PROTOCOL SERVICE THAT ENABLES REAL-TIME, 2-WAY VOICE
13 COMMUNICATIONS, REQUIRES A BROADBAND CONNECTION FROM THE USER'S
14 LOCATION USING INTERNET PROTOCOL-COMPATIBLE EQUIPMENT, AND PERMITS
15 USERS GENERALLY TO RECEIVE CALLS THAT ORIGINATE ON THE PUBLIC
16 SWITCHED TELEPHONE NETWORK AND TO TERMINATE CALLS TO THE PUBLIC
SWITCHED TELEPHONE NETWORK.

17 [(D)] "TELECOMMUNICATION PROVIDER" MEANS ALL OF THE FOLLOWING:

18 (i) A PROVIDER AS THAT TERM IS DEFINED IN SECTION 102 OF THE
19 MICHIGAN TELECOMMUNICATIONS ACT, 1991 PA 179, MCL 484.2102.

20 (ii) A PROVIDER OF IP-ENABLED VOICE SERVICE.

21 (iii) A PROVIDER OF ANY TELECOMMUNICATION SERVICE.

22 [(E)] "TELECOMMUNICATION SERVICE" MEANS ALL OF THE FOLLOWING:

23 (i) A SERVICE AS THAT TERM IS DEFINED IN SECTION 102 OF THE
24 MICHIGAN TELECOMMUNICATIONS ACT, 1991 PA 179, MCL 484.2102.

25 (ii) CELLULAR TELEPHONE SERVICE.

26 (iii) BROADBAND PERSONAL COMMUNICATION SERVICE.

27 (iv) COVERED SPECIALIZED MOBILE RADIO.

1 (2) A PERSON SHALL NOT DO ANY OF THE FOLLOWING:

2 (A) KNOWINGLY PROCURE, ATTEMPT TO PROCURE, OR SOLICIT OR
3 CONSPIRE WITH ANOTHER TO PROCURE A CONFIDENTIAL TELEPHONE RECORD OF
4 ANY RESIDENT OF THIS STATE WITHOUT THE AUTHORIZATION OF THE
5 CUSTOMER TO WHOM THE RECORD PERTAINS OR BY FRAUDULENT, DECEPTIVE,
6 OR FALSE MEANS.

7 (B) KNOWINGLY SELL OR ATTEMPT TO SELL A CONFIDENTIAL TELEPHONE
8 RECORD OF ANY RESIDENT OF THIS STATE WITHOUT THE AUTHORIZATION OF
9 THE CUSTOMER TO WHOM THE RECORD PERTAINS.

10 (C) RECEIVE A CONFIDENTIAL TELEPHONE RECORD OF ANY RESIDENT OF
11 THIS STATE KNOWING THAT THE RECORD HAS BEEN OBTAINED WITHOUT THE
12 AUTHORIZATION OF THE CUSTOMER TO WHOM THE RECORD PERTAINS OR BY
13 FRAUDULENT, DECEPTIVE, OR FALSE MEANS.

14 (3) THIS SECTION DOES NOT PROHIBIT ANY ACTION BY A LAW
15 ENFORCEMENT AGENCY, OR ANY OFFICER, EMPLOYEE, OR AGENT OF SUCH
16 AGENCY, FROM OBTAINING CONFIDENTIAL TELEPHONE RECORDS IN CONNECTION
17 WITH THE PERFORMANCE OF THE OFFICIAL DUTIES OF THE AGENCY.

18 (4) THIS SECTION DOES NOT PROHIBIT A TELECOMMUNICATION
19 PROVIDER FROM OBTAINING, USING, DISCLOSING, OR PERMITTING ACCESS TO
20 ANY CONFIDENTIAL TELEPHONE RECORD, EITHER DIRECTLY OR INDIRECTLY,
21 THROUGH ITS AGENTS, SUBCONTRACTORS, AFFILIATES, OR REPRESENTATIVES
22 IN THE NORMAL COURSE OF BUSINESS. THIS SECTION DOES NOT EXPAND THE
23 OBLIGATIONS AND DUTIES OF A TELECOMMUNICATION PROVIDER TO PROTECT
24 CONFIDENTIAL TELEPHONE RECORDS BEYOND THOSE OBLIGATIONS AND DUTIES
25 OTHERWISE ESTABLISHED BY FEDERAL AND STATE LAW.