

HOUSE BILL No. 4658

April 21, 2005, Introduced by Reps. Sheltroun, Miller, Kehrl, Lemmons, Jr., Vagnozzi, Tobocman, Cushingberry, Wojno, Leland, Mayes, Whitmer and Lemmons, III and referred to the Committee on Judiciary.

A bill to amend 2004 PA 452, entitled
"Identity theft protection act,"
by amending section 11 (MCL 445.71) and by adding section 12.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

9 (i) A copy of a police report evidencing the claim of the

1 victim of identity theft.

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

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

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

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

11 **(E) FAIL TO PROVIDE NOTICE IN VIOLATION OF SECTION 12.**

12 (2) A person who knowingly or intentionally violates
13 subsection (1) is guilty of a misdemeanor punishable by
14 imprisonment for not more than 30 days or a fine of not more than
15 \$1,000.00, or both. This subsection does not affect the
16 availability of any civil remedy for a violation of this act, the
17 Michigan consumer protection act, 1976 PA 331, MCL 445.901 to
18 445.922, or any other state or federal law.

19 **SEC. 12. (1) AN AGENCY OF THIS STATE THAT OWNS OR LICENSES**
20 **COMPUTERIZED DATA THAT INCLUDE PERSONAL IDENTIFYING INFORMATION**
21 **SHALL PROVIDE NOTICE OF ANY BREACH OF THE SECURITY OF THE SYSTEM**
22 **FOLLOWING DISCOVERY OR NOTIFICATION OF THE BREACH IN THE SECURITY**
23 **OF THE DATA TO ANY RESIDENT OF THIS STATE WHOSE UNENCRYPTED**
24 **PERSONAL IDENTIFYING INFORMATION IS ACQUIRED BY AN UNAUTHORIZED**
25 **PERSON OR IF THE AGENCY REASONABLY BELIEVES THAT AN UNAUTHORIZED**
26 **PERSON HAS ACQUIRED THAT INFORMATION. THE AGENCY SHALL PROVIDE**
27 **NOTICE WITHIN 5 DAYS AFTER THE AGENCY DISCOVERS OR IS NOTIFIED OF**

1 THE BREACH, UNLESS 1 OR BOTH OF THE FOLLOWING APPLY:

2 (A) A LAW ENFORCEMENT AGENCY DETERMINES THAT PROVIDING NOTICE
3 WILL IMPEDE A CRIMINAL INVESTIGATION. HOWEVER, THE AGENCY SHALL
4 PROVIDE NOTICE AFTER THE LAW ENFORCEMENT AGENCY DETERMINES THAT
5 DISCLOSURE WILL NOT COMPROMISE THE INVESTIGATION.

6 (B) DELAY IS NECESSARY TO DETERMINE THE SCOPE OF THE BREACH
7 AND RESTORE THE REASONABLE INTEGRITY OF THE DATA SYSTEM.

8 (2) AN AGENCY THAT MAINTAINS COMPUTERIZED DATA THAT INCLUDE
9 PERSONAL IDENTIFYING INFORMATION THAT THE AGENCY DOES NOT OWN SHALL
10 PROVIDE NOTICE TO THE OWNER OR LICENSEE OF THE INFORMATION OF ANY
11 BREACH OF THE SECURITY OF THE DATA IMMEDIATELY FOLLOWING DISCOVERY,
12 IF THE PERSONAL IDENTIFYING INFORMATION IS ACQUIRED BY AN
13 UNAUTHORIZED PERSON OR IF THE AGENCY REASONABLY BELIEVES THAT AN
14 UNAUTHORIZED PERSON HAS ACQUIRED THAT INFORMATION.

15 (3) A PERSON DOING BUSINESS IN THIS STATE THAT OWNS OR
16 LICENSES COMPUTERIZED DATA THAT INCLUDE PERSONAL IDENTIFYING
17 INFORMATION SHALL PROVIDE NOTICE OF ANY BREACH OF THE SECURITY OF
18 THE SYSTEM FOLLOWING DISCOVERY OR NOTIFICATION OF THE BREACH IN THE
19 SECURITY OF THE DATA TO ANY RESIDENT OF THIS STATE WHOSE
20 UNENCRYPTED PERSONAL IDENTIFYING INFORMATION IS ACQUIRED BY AN
21 UNAUTHORIZED PERSON OR IF THE PERSON REASONABLY BELIEVES THAT AN
22 UNAUTHORIZED PERSON HAS ACQUIRED THAT INFORMATION. THE PERSON SHALL
23 PROVIDE NOTICE WITHIN 5 DAYS AFTER THE PERSON DISCOVERS OR IS
24 NOTIFIED OF THE BREACH, UNLESS 1 OR BOTH OF THE FOLLOWING APPLY:

25 (A) A LAW ENFORCEMENT AGENCY DETERMINES THAT PROVIDING NOTICE
26 WILL IMPEDE A CRIMINAL INVESTIGATION. HOWEVER, THE PERSON SHALL
27 PROVIDE NOTICE AFTER THE LAW ENFORCEMENT AGENCY DETERMINES THAT

1 DISCLOSURE WILL NOT COMPROMISE THE INVESTIGATION.

2 (B) DELAY IS NECESSARY TO DETERMINE THE SCOPE OF THE BREACH
3 AND RESTORE THE REASONABLE INTEGRITY OF THE DATA SYSTEM.

4 (4) A PERSON DOING BUSINESS IN THIS STATE THAT MAINTAINS
5 COMPUTERIZED DATA THAT INCLUDE PERSONAL IDENTIFYING INFORMATION
6 THAT THE PERSON DOES NOT OWN SHALL PROVIDE NOTICE TO THE OWNER OR
7 LICENSEE OF THE INFORMATION OF ANY BREACH OF THE SECURITY OF THE
8 DATA IMMEDIATELY FOLLOWING DISCOVERY, IF THE PERSONAL IDENTIFYING
9 INFORMATION IS ACQUIRED BY AN UNAUTHORIZED PERSON OR IF THE PERSON
10 REASONABLY BELIEVES THAT AN UNAUTHORIZED PERSON HAS ACQUIRED THAT
11 INFORMATION.

12 (5) AN AGENCY OR PERSON DOING BUSINESS IN THIS STATE MAY
13 PROVIDE NOTICE UNDER THIS SECTION BY ANY OF THE FOLLOWING METHODS:

14 (A) WRITTEN NOTICE.

15 (B) ELECTRONIC NOTICE, IF THE NOTICE PROVIDED IS CONSISTENT
16 WITH THE PROVISIONS REGARDING ELECTRONIC RECORDS AND SIGNATURES SET
17 FORTH IN SECTION 101 OF TITLE I OF THE ELECTRONIC SIGNATURES IN
18 GLOBAL AND NATIONAL COMMERCE ACT, 15 USC 7001.

19 (C) SUBSTITUTE NOTICE, IF THE AGENCY OR PERSON DEMONSTRATES
20 THAT THE COST OF PROVIDING NOTICE WILL EXCEED \$250,000.00, THAT THE
21 AGENCY OR PERSON HAS TO PROVIDE NOTICE TO MORE THAN 500,000
22 INDIVIDUALS, OWNERS, OR LICENSEES DESCRIBED IN SUBSECTION (1), (2),
23 (3), OR (4), AS APPLICABLE, OR THAT THE AGENCY OR PERSON DOES NOT
24 HAVE SUFFICIENT CONTACT INFORMATION FOR THE INDIVIDUALS, OWNERS, OR
25 LICENSEES IT IS REQUIRED TO NOTIFY UNDER THAT SUBSECTION. AN AGENCY
26 OR PERSON PROVIDES SUBSTITUTE NOTICE UNDER THIS SUBDIVISION BY
27 DOING ALL OF THE FOLLOWING:

1 (i) PROVIDING NOTICE BY ELECTRONIC MAIL TO THOSE INDIVIDUALS,
2 OWNERS, OR LICENSEES FOR WHOM THE AGENCY OR PERSON HAS ELECTRONIC
3 MAIL ADDRESSES.

4 (ii) IF THE AGENCY OR PERSON MAINTAINS A WEBSITE, CONSPICUOUSLY
5 POSTING THE NOTICE ON THAT WEBSITE.

6 (iii) NOTIFYING MAJOR STATEWIDE MEDIA.

7 (iv) IF THE AGENCY OR PERSON MAINTAINS ITS OWN NOTIFICATION
8 PROCEDURES FOR SECURITY BREACHES AS PART OF AN INFORMATION SECURITY
9 POLICY FOR THE TREATMENT OF PERSONAL IDENTIFYING INFORMATION THAT
10 ARE CONSISTENT WITH THE TIME REQUIREMENTS OF THIS SECTION,
11 NOTIFYING THE INDIVIDUALS, OWNERS, OR LICENSEES IN ACCORDANCE WITH
12 THOSE PROCEDURES.

13 (6) A PERSON INJURED BY A VIOLATION OF THIS SECTION MAY BRING
14 A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION TO RECOVER
15 ACTUAL DAMAGES AND REASONABLE ATTORNEY FEES OR SEEK INJUNCTIVE OR
16 ANY OTHER RELIEF AVAILABLE AT LAW OR IN EQUITY.

17 (7) AS USED IN THIS SECTION:

18 (A) "AGENCY" MEANS A DEPARTMENT, BOARD, COMMISSION, OFFICE,
19 AGENCY, AUTHORITY, OR OTHER UNIT OF STATE GOVERNMENT. THE TERM
20 INCLUDES A STATE INSTITUTION OF HIGHER EDUCATION.

21 (B) "BREACH OF THE SECURITY OF THE SYSTEM" OR "SECURITY
22 BREACH" MEANS UNAUTHORIZED ACQUISITION OF COMPUTERIZED DATA THAT
23 COMPROMISES THE SECURITY, CONFIDENTIALITY, OR INTEGRITY OF PERSONAL
24 IDENTIFYING INFORMATION MAINTAINED BY AN AGENCY OR A PERSON DOING
25 BUSINESS IN THIS STATE. THE TERM DOES NOT INCLUDE GOOD FAITH
26 ACQUISITION OF PERSONAL IDENTIFYING INFORMATION BY AN EMPLOYEE OR
27 AGENT OF THE AGENCY OR PERSON RELATED TO THE ACTIVITIES OF THE

- 1 AGENCY OR PERSON IF THE PERSONAL IDENTIFYING INFORMATION IS NOT
- 2 USED OR SUBJECT TO FURTHER UNAUTHORIZED DISCLOSURE.