

# HOUSE BILL No. 4683

May 1, 2007, Introduced by Rep. Gaffney and referred to the Committee on Banking and Financial Services.

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

## 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  
10       victim of identity theft.

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

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

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

27           (d) Extend credit to a consumer without exercising reasonable

1 procedures to verify the identity of that consumer. Compliance with  
2 regulations issued for depository institutions, and to be issued  
3 for other financial institutions, by the United States department  
4 of treasury under section 326 of the USA patriot act of 2001, 31  
5 USC 5318, is considered compliance with this subdivision. This  
6 subdivision does not apply to a purchase of a credit obligation in  
7 an acquisition, merger, purchase of assets, or assumption of  
8 liabilities or any change to or review of an existing credit  
9 account.

10 (E) SUBJECT TO SUBSECTION (3), IF THE PERSON IS A PERSON THAT  
11 OWNS OR LICENSES DATA THAT ARE INCLUDED IN A DATABASE, DO EITHER OF  
12 THE FOLLOWING:

13 (i) FAIL TO IMPLEMENT AND MAINTAIN REASONABLE SECURITY  
14 PROCEDURES AND PRACTICES, APPROPRIATE TO THE NATURE OF THE  
15 INFORMATION, TO PROTECT A CONSUMER'S PERSONAL IDENTIFYING  
16 INFORMATION IN THE DATABASE FROM UNAUTHORIZED ACCESS, DESTRUCTION,  
17 USE, MODIFICATION, OR DISCLOSURE.

18 (ii) IF THE PERSON DISCLOSED A CONSUMER'S PERSONAL IDENTIFYING  
19 INFORMATION IN THE DATABASE TO A NONAFFILIATED THIRD PARTY PURSUANT  
20 TO A CONTRACT, FAIL TO REQUIRE IN THE CONTRACT THAT THE THIRD PARTY  
21 MUST IMPLEMENT AND MAINTAIN REASONABLE SECURITY PROCEDURES AND  
22 PRACTICES, APPROPRIATE TO THE NATURE OF THE INFORMATION, TO PROTECT  
23 THAT PERSONAL IDENTIFYING INFORMATION FROM UNAUTHORIZED ACCESS,  
24 DESTRUCTION, USE, MODIFICATION, OR DISCLOSURE.

25 (2) A person who knowingly or intentionally violates  
26 subsection (1) is guilty of a misdemeanor punishable by  
27 imprisonment for not more than 30 days or a fine of not more than

1 \$1,000.00, or both. This subsection does not affect the  
2 availability of any civil remedy for a violation of this act, the  
3 Michigan consumer protection act, 1976 PA 331, MCL 445.901 to  
4 445.922, or any other state or federal law.

5 (3) SUBSECTION (1)(E) DOES NOT APPLY TO A PERSON THAT IS A  
6 FINANCIAL INSTITUTION DESCRIBED IN SECTION 12(9) OR A PERSON  
7 DESCRIBED IN SECTION 12(10).