

# SENATE BILL No. 945

December 4, 2007, Introduced by Senators PATTERSON, JELINEK, RICHARDVILLE, ANDERSON, OLSHOVE, ALLEN, BASHAM, BIRKHOLZ and HARDIMAN and referred to the Committee on Judiciary.

A bill to amend 2004 PA 452, entitled  
"Identity theft protection act,"  
by amending sections 3 and 7 (MCL 445.63 and 445.67), section 3 as  
amended by 2006 PA 566, and by adding section 7a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 3. As used in this act:

2       (a) "Agency" means a department, board, commission, office,  
3       agency, authority, or other unit of state government of this state.  
4       The term includes an institution of higher education of this state.  
5       The term does not include a circuit, probate, district, or  
6       municipal court.

7       (b) "Breach of the security of a database" or "security

breach" means the unauthorized access and acquisition of data that compromises the security or confidentiality of personal information maintained by a person or agency as part of a database of personal information regarding multiple individuals. These terms do not include unauthorized access to data by an employee or other individual if the access meets all of the following:

(i) The employee or other individual acted in good faith in accessing the data.

(ii) The access was related to the activities of the agency or person.

(iii) The employee or other individual did not misuse any personal information or disclose any personal information to an unauthorized person.

(c) "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.

1 (d) "Credit card" means that term as defined in section 157m  
2 of the Michigan penal code, 1931 PA 328, MCL 750.157m.

3 (e) "Data" means computerized personal information.

4 (f) "Depository institution" means a state or nationally  
5 chartered bank or a state or federally chartered savings and loan  
6 association, savings bank, or credit union.

7 (g) "Encrypted" means transformation of data through the use  
8 of an algorithmic process into a form in which there is a low  
9 probability of assigning meaning without use of a confidential  
10 process or key, or securing information by another method that  
11 renders the data elements unreadable or unusable.

12 **(H) "FALSE PRETENSES" MEANS THE REPRESENTATION OF A FACT OR**  
13 **CIRCUMSTANCE WHICH IS NOT TRUE AND IS CALCULATED TO MISLEAD.**

14 **(I)** ~~(h)~~—"Financial institution" means a depository  
15 institution, an affiliate of a depository institution, a licensee  
16 under the consumer financial services act, 1988 PA 161, MCL  
17 487.2051 to 487.2072, 1984 PA 379, MCL 493.101 to 493.114, the  
18 motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101  
19 to 492.141, the secondary mortgage loan act, 1981 PA 125, MCL  
20 493.51 to 493.81, the mortgage brokers, lenders, and servicers  
21 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the  
22 regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24, a seller  
23 under the home improvement finance act, 1965 PA 332, MCL 445.1101  
24 to 445.1431, or the retail installment sales act, 1966 PA 224, MCL  
25 445.851 to 445.873, or a person subject to subtitle A of title V of  
26 the Gramm-Leach-Bliley act, 15 USC 6801 to 6809.

27 **(J)** ~~(i)~~—"Financial transaction device" means that term as

1 defined in section 157m of the Michigan penal code, 1931 PA 328,  
2 MCL 750.157m.

3 (K) ~~(j)~~—"Identity theft" means engaging in an act or conduct  
4 prohibited in section 5(1).

5 (I) "INTERACTIVE COMPUTER SERVICE" MEANS AN INFORMATION SERVICE  
6 OR SYSTEM THAT ENABLES COMPUTER ACCESS BY MULTIPLE USERS TO A  
7 COMPUTER SERVER, INCLUDING, BUT NOT LIMITED TO, A SERVICE OR SYSTEM  
8 THAT PROVIDES ACCESS TO THE INTERNET OR TO SOFTWARE SERVICES  
9 AVAILABLE ON A SERVER.

10 (M) ~~(k)~~—"Law enforcement agency" means that term as defined in  
11 section 2804 of the public health code, 1978 PA 368, MCL 333.2804.

12 (N) ~~(l)~~—"Local registrar" means that term as defined in section  
13 2804 of the public health code, 1978 PA 368, MCL 333.2804.

14 (O) ~~(m)~~—"Medical records or information" includes, but is not  
15 limited to, medical and mental health histories, reports,  
16 summaries, diagnoses and prognoses, treatment and medication  
17 information, notes, entries, and x-rays and other imaging records.

18 (P) ~~(n)~~—"Person" means an individual, partnership,  
19 corporation, limited liability company, association, or other legal  
20 entity.

21 (Q) ~~(o)~~—"Personal identifying information" means a name,  
22 number, or other information that is used for the purpose of  
23 identifying a specific person or providing access to a person's  
24 financial accounts, including, but not limited to, a person's name,  
25 address, telephone number, driver license or state personal  
26 identification card number, social security number, place of  
27 employment, employee identification number, employer or taxpayer

1 identification number, government passport number, health insurance  
2 identification number, mother's maiden name, demand deposit account  
3 number, savings account number, financial transaction device  
4 account number or the person's account password, stock or other  
5 security certificate or account number, credit card number, vital  
6 record, or medical records or information.

7       **(R)** ~~(p)~~—"Personal information" means the first name or first  
8 initial and last name linked to 1 or more of the following data  
9 elements of a resident of this state:

10       (i) Social security number.

11       (ii) Driver license number or state personal identification  
12 card number.

13       (iii) Demand deposit or other financial account number, or  
14 credit card or debit card number, in combination with any required  
15 security code, access code, or password that would permit access to  
16 any of the resident's financial accounts.

17       **(S)** ~~(q)~~—"Public utility" means that term as defined in section  
18 1 of 1972 PA 299, MCL 460.111.

19       **(T)** ~~(r)~~—"Redact" means to alter or truncate data so that no  
20 more than 4 sequential digits of a driver license number, state  
21 personal identification card number, or account number, or no more  
22 than 5 sequential digits of a social security number, are  
23 accessible as part of personal information.

24       **(U)** ~~(s)~~—"State registrar" means that term as defined in  
25 section 2805 of the public health code, 1978 PA 368, MCL 333.2805.

26       **(V)** ~~(t)~~—"Trade or commerce" means that term as defined in  
27 section 2 of the Michigan consumer protection act, 1971 PA 331, MCL

1 445.902.

2 (W) ~~(u)~~ "Vital record" means that term as defined in section  
3 2805 of the public health code, 1978 PA 368, MCL 333.2805.

4 (X) "WEBPAGE" MEANS A LOCATION THAT HAS A SINGLE UNIFORM  
5 RESOURCE LOCATOR OR URL WITH RESPECT TO THE WORLD WIDE WEB OR  
6 ANOTHER LOCATION THAT CAN BE ACCESSED ON THE INTERNET.

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

8 (A) MAKE ANY COMMUNICATION UNDER FALSE PRETENSES PURPORTING TO  
9 BE BY OR ON BEHALF OF A BUSINESS, WITHOUT THE AUTHORITY OR APPROVAL  
10 OF THE BUSINESS, AND USE THAT COMMUNICATION TO INDUCE, REQUEST, OR  
11 SOLICIT ANY INDIVIDUAL TO PROVIDE PERSONAL IDENTIFYING INFORMATION  
12 WITH THE INTENT TO USE THAT INFORMATION TO COMMIT IDENTITY THEFT OR  
13 ANOTHER CRIME.

14 (B) CREATE OR OPERATE A WEBPAGE THAT REPRESENTS ITSELF AS  
15 BELONGING TO OR BEING ASSOCIATED WITH A BUSINESS, WITHOUT THE  
16 AUTHORITY OR APPROVAL OF THAT BUSINESS, AND INDUCES, REQUESTS, OR  
17 SOLICITS ANY USER OF THE INTERNET TO PROVIDE PERSONAL IDENTIFYING  
18 INFORMATION WITH THE INTENT TO USE THAT INFORMATION TO COMMIT  
19 IDENTITY THEFT OR ANOTHER CRIME.

20 (C) ALTER A SETTING ON A USER'S COMPUTER OR SIMILAR DEVICE OR  
21 SOFTWARE PROGRAM THROUGH WHICH THE USER MAY SEARCH THE INTERNET AND  
22 CAUSE ANY USER OF THE INTERNET TO VIEW A COMMUNICATION THAT  
23 REPRESENTS ITSELF AS BELONGING TO OR BEING ASSOCIATED WITH A  
24 BUSINESS, WHICH MESSAGE HAS BEEN CREATED OR IS OPERATED WITHOUT THE  
25 AUTHORITY OR APPROVAL OF THAT BUSINESS, AND INDUCES, REQUESTS, OR  
26 SOLICITS ANY USER OF THE INTERNET TO PROVIDE PERSONAL IDENTIFYING  
27 INFORMATION WITH THE INTENT TO USE THAT INFORMATION TO COMMIT

1 IDENTITY THEFT OR ANOTHER CRIME.

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

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

11 (F) ~~(c)~~—Falsify a police report of identity theft, or  
12 knowingly create, possess, or use a false police report of identity  
13 theft.

14 SEC. 7A. (1) AN INTERACTIVE COMPUTER SERVICE PROVIDER SHALL  
15 NOT BE HELD LIABLE UNDER ANY PROVISION OF THE LAWS OF THIS STATE  
16 FOR REMOVING OR DISABLING ACCESS TO AN INTERNET DOMAIN NAME  
17 CONTROLLED OR OPERATED BY THE REGISTRAR OR BY THE PROVIDER, OR TO  
18 CONTENT THAT RESIDES ON AN INTERNET WEBSITE OR OTHER ONLINE  
19 LOCATION CONTROLLED OR OPERATED BY THE PROVIDER, THAT THE PROVIDER  
20 BELIEVES IN GOOD FAITH IS USED TO ENGAGE IN A VIOLATION OF THIS  
21 ACT. THIS ACT DOES NOT APPLY TO A TELECOMMUNICATIONS PROVIDER'S OR  
22 INTERNET SERVICE PROVIDER'S GOOD FAITH TRANSMISSION OR ROUTING OF,  
23 OR INTERMEDIATE TEMPORARY STORING OR CACHING OF, PERSONAL  
24 IDENTIFYING INFORMATION.

25 (2) THE ATTORNEY GENERAL, OR AN INTERACTIVE COMPUTER SERVICE  
26 PROVIDER OR INDIVIDUAL HARMED BY A VIOLATION OF SECTION 7(A), (B),  
27 OR (C), MAY BRING A CIVIL ACTION AGAINST A PERSON WHO HAS VIOLATED

1 THAT SECTION.

2 (3) IN EACH ACTION BROUGHT UNDER THIS SECTION, THE PREVAILING  
3 PARTY MAY BE AWARDED REASONABLE ATTORNEY FEES IF THE ACTION IS  
4 FOUND BY THE COURT TO BE FRIVOLOUS.

5 (4) A PERSON BRINGING AN ACTION UNDER THIS SECTION MAY RECOVER  
6 1 OF THE FOLLOWING:

7 (A) ACTUAL DAMAGES, INCLUDING REASONABLE ATTORNEY FEES.

8 (B) IN LIEU OF ACTUAL DAMAGES, THE LESSER OF THE FOLLOWING:

9 (i) \$5,000.00 PER VIOLATION.

10 (ii) \$250,000.00 FOR EACH DAY THAT A VIOLATION OCCURS.

11 (5) IF THE ATTORNEY GENERAL HAS REASON TO BELIEVE THAT A  
12 PERSON HAS VIOLATED SECTION 7 (A), (B), OR (C), THE ATTORNEY GENERAL  
13 MAY INVESTIGATE THE BUSINESS TRANSACTIONS OF THAT PERSON. THE  
14 ATTORNEY GENERAL MAY REQUIRE THAT PERSON TO APPEAR, AT A REASONABLE  
15 TIME AND PLACE, TO GIVE INFORMATION UNDER OATH AND TO PRODUCE SUCH  
16 DOCUMENTS AND EVIDENCE NECESSARY TO DETERMINE WHETHER THE PERSON IS  
17 IN COMPLIANCE WITH THE REQUIREMENTS OF THAT SECTION.

18 (6) ANY DAMAGES COLLECTED BY THE ATTORNEY GENERAL UNDER THIS  
19 SECTION SHALL BE CREDITED TO THE ATTORNEY GENERAL FOR THE COSTS OF  
20 INVESTIGATING, ENFORCING, AND DEFENDING THIS ACT.