

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 149

A bill to amend 2004 PA 452, entitled
"Identity theft protection act,"
by amending sections 3, 7, and 9 (MCL 445.63, 445.67, and 445.69),
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
8 breach" means the unauthorized access and acquisition of data that
9 compromises the security or confidentiality of personal information

1 maintained by a person or agency as part of a database of personal
2 information regarding multiple individuals. These terms do not
3 include unauthorized access to data by an employee or other
4 individual if the access meets all of the following:

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

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

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

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

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

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

18 (iii) Child care expenses.

19 (iv) Educational expenses.

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

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

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

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

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

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

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

10 (H) "FALSE PRETENSES" INCLUDES, BUT IS NOT LIMITED TO, A
11 FALSE, MISLEADING, OR FRAUDULENT REPRESENTATION, WRITING,
12 COMMUNICATION, STATEMENT, OR MESSAGE, COMMUNICATED BY ANY MEANS TO
13 ANOTHER PERSON, THAT THE MAKER OF THE REPRESENTATION, WRITING,
14 COMMUNICATION, STATEMENT, OR MESSAGE KNOWS OR SHOULD HAVE KNOWN IS
15 FALSE OR FRAUDULENT. THE FALSE PRETENSE MAY BE A REPRESENTATION
16 REGARDING A PAST OR EXISTING FACT OR CIRCUMSTANCE OR A
17 REPRESENTATION REGARDING THE INTENTION TO PERFORM A FUTURE EVENT OR
18 TO HAVE A FUTURE EVENT PERFORMED.

19 (I) ~~(h)~~ "Financial institution" means a depository
20 institution, an affiliate of a depository institution, a licensee
21 under the consumer financial services act, 1988 PA 161, MCL
22 487.2051 to 487.2072, 1984 PA 379, MCL 493.101 to 493.114, the
23 motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101
24 to 492.141, the secondary mortgage loan act, 1981 PA 125, MCL
25 493.51 to 493.81, the mortgage brokers, lenders, and servicers
26 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the
27 regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24, a seller

1 under the home improvement finance act, 1965 PA 332, MCL 445.1101
2 to 445.1431, or the retail installment sales act, 1966 PA 224, MCL
3 445.851 to 445.873, or a person subject to subtitle A of title V of
4 the Gramm-Leach-Bliley act, 15 USC 6801 to 6809.

5 (J) ~~(i)~~—"Financial transaction device" means that term as
6 defined in section 157m of the Michigan penal code, 1931 PA 328,
7 MCL 750.157m.

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

10 (I) "INTERACTIVE COMPUTER SERVICE" MEANS AN INFORMATION SERVICE
11 OR SYSTEM THAT ENABLES COMPUTER ACCESS BY MULTIPLE USERS TO A
12 COMPUTER SERVER, INCLUDING, BUT NOT LIMITED TO, A SERVICE OR SYSTEM
13 THAT PROVIDES ACCESS TO THE INTERNET OR TO SOFTWARE SERVICES
14 AVAILABLE ON A SERVER.

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

17 (N) ~~(l)~~—"Local registrar" means that term as defined in section
18 2804 of the public health code, 1978 PA 368, MCL 333.2804.

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

23 (P) ~~(n)~~—"Person" means an individual, partnership,
24 corporation, limited liability company, association, or other legal
25 entity.

26 (Q) ~~(o)~~—"Personal identifying information" means a name,
27 number, or other information that is used for the purpose of

1 identifying a specific person or providing access to a person's
2 financial accounts, including, but not limited to, a person's name,
3 address, telephone number, driver license or state personal
4 identification card number, social security number, place of
5 employment, employee identification number, employer or taxpayer
6 identification number, government passport number, health insurance
7 identification number, mother's maiden name, demand deposit account
8 number, savings account number, financial transaction device
9 account number or the person's account password, **ANY OTHER ACCOUNT**
10 **PASSWORD IN COMBINATION WITH SUFFICIENT INFORMATION TO IDENTIFY AND**
11 **ACCESS THE ACCOUNT, AUTOMATED OR ELECTRONIC SIGNATURE, BIOMETRICS,**
12 stock or other security certificate or account number, credit card
13 number, vital record, or medical records or information.

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

17 (i) Social security number.

18 (ii) Driver license number or state personal identification
19 card number.

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

24 (S) ~~(q)~~—"Public utility" means that term as defined in section
25 1 of 1972 PA 299, MCL 460.111.

26 (T) ~~(r)~~—"Redact" means to alter or truncate data so that no
27 more than 4 sequential digits of a driver license number, state

1 personal identification card number, or account number, or no more
2 than 5 sequential digits of a social security number, are
3 accessible as part of personal information.

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

6 (V) ~~(t)~~—"Trade or commerce" means that term as defined in
7 section 2 of the Michigan consumer protection act, 1971 PA 331, MCL
8 445.902.

9 (W) ~~(u)~~—"Vital record" means that term as defined in section
10 2805 of the public health code, 1978 PA 368, MCL 333.2805.

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

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

15 (A) MAKE ANY ELECTRONIC MAIL OR OTHER COMMUNICATION UNDER
16 FALSE PRETENSES PURPORTING TO BE BY OR ON BEHALF OF A BUSINESS,
17 WITHOUT THE AUTHORITY OR APPROVAL OF THE BUSINESS, AND USE THAT
18 ELECTRONIC MAIL OR OTHER COMMUNICATION TO INDUCE, REQUEST, OR
19 SOLICIT ANY INDIVIDUAL TO PROVIDE PERSONAL IDENTIFYING INFORMATION
20 WITH THE INTENT TO USE THAT INFORMATION TO COMMIT IDENTITY THEFT OR
21 ANOTHER CRIME.

22 (B) CREATE OR OPERATE A WEBPAGE THAT REPRESENTS ITSELF AS
23 BELONGING TO OR BEING ASSOCIATED WITH A BUSINESS, WITHOUT THE
24 AUTHORITY OR APPROVAL OF THAT BUSINESS, AND INDUCES, REQUESTS, OR
25 SOLICITS ANY USER OF THE INTERNET TO PROVIDE PERSONAL IDENTIFYING
26 INFORMATION WITH THE INTENT TO USE THAT INFORMATION TO COMMIT
27 IDENTITY THEFT OR ANOTHER CRIME.

1 (C) ALTER A SETTING ON A USER'S COMPUTER OR SIMILAR DEVICE OR
2 SOFTWARE PROGRAM THROUGH WHICH THE USER MAY ACCESS THE INTERNET AND
3 CAUSE ANY USER OF THE INTERNET TO VIEW A COMMUNICATION THAT
4 REPRESENTS ITSELF AS BELONGING TO OR BEING ASSOCIATED WITH A
5 BUSINESS, WHICH MESSAGE HAS BEEN CREATED OR IS OPERATED WITHOUT THE
6 AUTHORITY OR APPROVAL OF THAT BUSINESS, AND INDUCES, REQUESTS, OR
7 SOLICITS ANY USER OF THE INTERNET TO PROVIDE PERSONAL IDENTIFYING
8 INFORMATION WITH THE INTENT TO USE THAT INFORMATION TO COMMIT
9 IDENTITY THEFT OR ANOTHER CRIME.

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

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

19 (F) ~~(c)~~ Falsify a police report of identity theft, or
20 knowingly create, possess, or use a false police report of identity
21 theft.

22 SEC. 7A. (1) A PERSON SHALL NOT DO ANY OF THE FOLLOWING:

23 (A) MAKE ANY ELECTRONIC MAIL OR OTHER COMMUNICATION UNDER
24 FALSE PRETENSES PURPORTING TO BE BY OR ON BEHALF OF A BUSINESS,
25 WITHOUT THE AUTHORITY OR APPROVAL OF THE BUSINESS, AND USE THAT
26 ELECTRONIC MAIL OR OTHER COMMUNICATION TO INDUCE, REQUEST, OR
27 SOLICIT ANY INDIVIDUAL TO PROVIDE PERSONAL IDENTIFYING INFORMATION.

1 (B) CREATE OR OPERATE A WEBPAGE THAT REPRESENTS ITSELF AS
2 BELONGING TO OR BEING ASSOCIATED WITH A BUSINESS, WITHOUT THE
3 AUTHORITY OR APPROVAL OF THAT BUSINESS, AND INDUCES, REQUESTS, OR
4 SOLICITS ANY USER OF THE INTERNET TO PROVIDE PERSONAL IDENTIFYING
5 INFORMATION.

6 (C) ALTER A SETTING ON A USER'S COMPUTER OR SIMILAR DEVICE OR
7 SOFTWARE PROGRAM THROUGH WHICH THE USER MAY ACCESS THE INTERNET AND
8 CAUSE ANY USER OF THE INTERNET TO VIEW A COMMUNICATION THAT
9 REPRESENTS ITSELF AS BELONGING TO OR BEING ASSOCIATED WITH A
10 BUSINESS, WHICH MESSAGE HAS BEEN CREATED OR IS OPERATED WITHOUT THE
11 AUTHORITY OR APPROVAL OF THAT BUSINESS, AND INDUCES, REQUESTS, OR
12 SOLICITS ANY USER OF THE INTERNET TO PROVIDE PERSONAL IDENTIFYING
13 INFORMATION.

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

24 (3) THE ATTORNEY GENERAL, OR AN INTERACTIVE COMPUTER SERVICE
25 PROVIDER HARMED BY A VIOLATION OF SUBSECTION (1), MAY BRING A CIVIL
26 ACTION AGAINST A PERSON WHO HAS VIOLATED THAT SUBSECTION.

27 (4) SUBSECTION (1) DOES NOT APPLY TO THE FOLLOWING:

1 (A) A LAW ENFORCEMENT OFFICER WHILE THAT OFFICER IS ENGAGED IN
2 THE PERFORMANCE OF HIS OR HER OFFICIAL DUTIES.

3 (B) ANY OTHER INDIVIDUAL AUTHORIZED TO CONDUCT LAWFUL
4 INVESTIGATIONS WHILE THAT INDIVIDUAL IS ENGAGED IN A LAWFUL
5 INVESTIGATION.

6 (5) A PERSON BRINGING AN ACTION UNDER THIS SECTION MAY RECOVER
7 1 OF THE FOLLOWING:

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

9 (B) IN LIEU OF ACTUAL DAMAGES, REASONABLE ATTORNEY FEES PLUS
10 THE LESSER OF THE FOLLOWING:

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

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

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

20 Sec. 9. (1) Subject to subsection (6), a person who violates
21 section 5 or 7 is guilty of a felony punishable **AS FOLLOWS:**

22 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISIONS (B) AND (C),
23 by imprisonment for not more than 5 years or a fine of not more
24 than \$25,000.00, or both.

25 (B) IF THE VIOLATION IS A SECOND VIOLATION OF SECTION 5 OR 7,
26 BY IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A FINE OF NOT MORE
27 THAN \$50,000.00, OR BOTH.

1 (C) IF THE VIOLATION IS A THIRD OR SUBSEQUENT VIOLATION OF
2 SECTION 5 OR 7, BY IMPRISONMENT FOR NOT MORE THAN 15 YEARS OR A
3 FINE OF NOT MORE THAN \$75,000.00, OR BOTH.

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

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

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

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

27 (6) Subsection (1) does not apply to a violation of a statute

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

11 Enacting section 1. This amendatory act takes effect April 1,
12 2011.