

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 490

A bill to amend 1988 PA 378, entitled

"An act to preserve personal privacy with respect to the purchase, rental, or borrowing of certain materials; and to provide penalties and remedies for violation of this act,"

by amending sections 1, 2, 3, 4, and 5 (MCL 445.1711, 445.1712, 445.1713, 445.1714, and 445.1715), section 5 as added by 1989 PA 206.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Customer" means ~~a person~~ **AN INDIVIDUAL** who purchases,
3 rents, or borrows a book, ~~or~~ other written material, ~~or~~ a sound
4 recording, or a video recording.

5 (b) "Employee" means ~~a person~~ **AN INDIVIDUAL** who works for an
6 employer in exchange for wages or other remuneration.

1 (c) "Employer" means a person ~~who~~ **THAT** has 1 or more
2 employees.

3 (D) "ORDINARY COURSE OF BUSINESS" MEANS ACTIVITIES RELATED TO
4 THE SALE, RENTAL, OR LENDING OF, OR ADVERTISING IN, MATERIALS
5 DESCRIBED IN SECTION 2.

6 (E) "WRITTEN" INCLUDES ANY ELECTRONIC MEANS USING THE INTERNET
7 OR OTHERWISE AUTHORIZED UNDER THE UNIFORM ELECTRONIC TRANSACTIONS
8 ACT, 2000 PA 305, MCL 450.831 TO 450.849.

9 Sec. 2. (1) ~~Except~~ **SUBJECT TO SUBSECTION (2) AND EXCEPT** as
10 provided in section 3 or as otherwise provided by law, a person, or
11 an employee or agent of the person, engaged in the business of
12 selling at retail, renting, or lending books or other written
13 materials, sound recordings, or video recordings shall not
14 **KNOWINGLY** disclose to any person, other than the customer, a record
15 or information ~~concerning the purchase, lease, rental, or borrowing~~
16 ~~of~~ **THAT PERSONALLY IDENTIFIES THE CUSTOMER AS HAVING PURCHASED,**
17 **LEASED, RENTED, OR BORROWED** those materials ~~by a customer that~~
18 ~~indicates the identity of the customer.~~ **FROM THE PERSON ENGAGED IN**
19 **THE BUSINESS.**

20 (2) **THIS SECTION DOES NOT APPLY TO THE DISCLOSURE OF A RECORD**
21 **OR INFORMATION THAT HAS BEEN AGGREGATED OR HAS BEEN PROCESSED IN A**
22 **MANNER DESIGNED TO PREVENT ITS ASSOCIATION WITH AN IDENTIFIABLE**
23 **CUSTOMER.**

24 Sec. 3. A record or information described in section 2 may be
25 disclosed only in 1 or more of the following circumstances:

26 (a) With the written permission of the customer.

27 (b) Pursuant to a **WARRANT OR** court order.

1 (c) To the extent reasonably necessary to collect payment for
2 the materials or the rental of the materials, if the customer has
3 received written notice that the payment is due and has failed to
4 pay or arrange for payment within a reasonable time after notice.

5 (D) TO ANY PERSON IF THE DISCLOSURE IS INCIDENT TO THE
6 ORDINARY COURSE OF BUSINESS OF THE PERSON THAT IS DISCLOSING THE
7 RECORD OR INFORMATION. THIS SUBDIVISION ONLY APPLIES TO A RECORD OR
8 INFORMATION THAT IS CREATED OR OBTAINED AFTER THE EFFECTIVE DATE OF
9 THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION.

10 (E) ~~(d) If the disclosure is for the exclusive purpose of~~
11 ~~marketing goods and services directly to the consumer. TO~~
12 CUSTOMERS. ALL OF THE FOLLOWING APPLY FOR PURPOSES OF THIS
13 SUBDIVISION:

14 (i) The person THAT IS disclosing the information shall inform
15 the customer by written notice that the customer may remove his or
16 her name at any time ~~by written~~ AND SHALL SPECIFY THE MANNER OR
17 MANNERS BY WHICH THE CUSTOMER MAY REMOVE HIS OR HER NAME. UNLESS
18 THE PERSON'S METHOD OF COMMUNICATION WITH CUSTOMERS IS BY
19 ELECTRONIC MEANS, THE WRITTEN NOTICE SHALL INCLUDE A NONELECTRONIC
20 METHOD THAT THE CUSTOMER MAY USE TO OPT OUT OF DISCLOSURE. ANY OF
21 THE FOLLOWING METHODS OF NOTICE SATISFY THE WRITTEN NOTICE
22 REQUIREMENTS OF THIS SUBPARAGRAPH:

23 (A) WRITTEN NOTICE INCLUDED IN OR WITH ANY MATERIALS SOLD,
24 RENTED, OR LENT TO THE CUSTOMER UNDER SECTION 2.

25 (B) WRITTEN NOTICE PROVIDED TO THE CUSTOMER AT THE TIME HE OR
26 SHE ORDERS ANY OF THE MATERIALS DESCRIBED IN SECTION 2 OR OTHERWISE
27 PROVIDED TO THE CUSTOMER IN CONNECTION WITH THE TRANSACTION BETWEEN

1 THE PERSON AND CUSTOMER FOR THE SALE, RENTAL, OR LOAN OF THE
2 MATERIALS TO THE CUSTOMER.

3 (C) NOTICE THAT IS INCLUDED AND CLEARLY AND CONSPICUOUSLY
4 DISCLOSED IN AN ONLINE PRIVACY POLICY OR SIMILAR COMMUNICATION THAT
5 IS POSTED ON THE INTERNET, IS MAINTAINED BY THE PERSON THAT IS
6 DISCLOSING THE INFORMATION, AND IS AVAILABLE TO CUSTOMERS OR THE
7 GENERAL PUBLIC.

8 (ii) A CUSTOMER MAY PROVIDE notice to the person THAT IS
9 disclosing ~~the information~~ UNDER THIS SUBDIVISION THAT THE CUSTOMER
10 DOES NOT WANT HIS OR HER NAME DISCLOSED.

11 (iii) BEGINNING 30 DAYS AFTER THE PERSON RECEIVES THE
12 CUSTOMER'S NOTICE, THE PERSON SHALL NOT KNOWINGLY DISCLOSE THE
13 CUSTOMER'S NAME TO ANY OTHER PERSON FOR MARKETING GOODS AND
14 SERVICES.

15 (F) ~~(e)~~ Pursuant to a search warrant issued by a state or
16 federal court or A grand jury subpoena.

17 Sec. 4. A person ~~who~~ THAT violates this act is guilty of a
18 misdemeanor.

19 Sec. 5. (1) Regardless of any criminal prosecution for a THE
20 violation, ~~of this act, a person who~~ THAT violates this act ~~shall~~
21 MAY be liable in a civil action for damages to ~~the customer~~
22 ~~identified in a record or other information that is disclosed in~~
23 ~~violation of this act. The~~ A CUSTOMER UNDER SUBSECTION (2).

24 (2) A customer DESCRIBED IN SUBSECTION (1) WHO SUFFERS ACTUAL
25 DAMAGES AS A RESULT OF A VIOLATION OF THIS ACT may bring a civil
26 action against the person THAT VIOLATED THIS ACT and may recover
27 both of the following:

1 (a) ~~Actual~~ **THE CUSTOMER'S ACTUAL** damages, including damages
2 for emotional distress. ~~, or \$5,000.00, whichever is greater.~~

3 (b) ~~Costs~~ **REASONABLE COSTS** and ~~reasonable~~ attorney fees.

4 (3) **NO LIABILITY MAY RESULT FROM THE LAWFUL DISCLOSURE OF A**
5 **RECORD OR INFORMATION THAT IS PERMITTED UNDER SECTION 3.**

6 Enacting section 1. This amendatory act takes effect 90 days
7 after the date it is enacted into law.

8 Enacting section 2. This amendatory act is curative and
9 intended to clarify that the prohibitions on disclosing information
10 contained in 1988 PA 378, MCL 445.1711 to 445.1715, do not prohibit
11 disclosing information if it is incident to the ordinary course of
12 business of the person disclosing the information, including
13 marketing goods and services to customers or potential customers
14 when written notice is provided, and that a civil action for a
15 violation of those prohibitions may only be brought by a customer
16 who has suffered actual damages as a result of the violation.