

SENATE BILL No. 490

September 10, 2015, Introduced by Senator SCHUITMAKER and referred to the Committee on Commerce.

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, 3, 4, and 5 (MCL 445.1711, 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.

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

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

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

4 (b) Pursuant to a court order.

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

9 (D) TO ANY PERSON IF THE DISCLOSURE IS INCIDENT TO THE
10 ORDINARY COURSE OF BUSINESS OF THE PERSON THAT IS DISCLOSING THE
11 INFORMATION.

12 (E) ~~(d)~~—If the disclosure is for the ~~exclusive~~ purpose of
13 marketing goods and services ~~directly~~ to the consumer. **ALL OF THE**
14 **FOLLOWING APPLY FOR PURPOSES OF THIS SUBPARAGRAPH:**

15 (i) The person **THAT IS** disclosing the information shall inform
16 the customer by written notice that the customer may remove his or
17 her name at any time ~~by~~ **IN THE MANNER DESCRIBED IN SUBPARAGRAPH**

18 (ii). **ANY OF THE FOLLOWING METHODS OF NOTICE SATISFY THE WRITTEN**
19 **NOTICE REQUIREMENTS OF THIS SUBPARAGRAPH:**

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

22 (B) WRITTEN NOTICE PROVIDED TO THE CUSTOMER AT THE TIME HE OR
23 SHE ORDERS ANY OF THE MATERIALS DESCRIBED IN SECTION 2 OR OTHERWISE
24 PROVIDED TO THE CUSTOMER IN CONNECTION WITH THE TRANSACTION BETWEEN
25 THE PERSON AND CUSTOMER FOR THE SALE, RENTAL, OR LOAN OF THE
26 MATERIALS TO THE CUSTOMER.

27 (C) NOTICE THAT IS INCLUDED IN AN ONLINE PRIVACY POLICY THAT

1 IS POSTED ON THE INTERNET AND MAINTAINED BY THE PERSON THAT IS
2 DISCLOSING THE INFORMATION AND IS AVAILABLE TO THE GENERAL PUBLIC.

3 (ii) A CUSTOMER MAY PROVIDE written notice to ~~the~~A person
4 THAT IS disclosing ~~the~~information UNDER THIS SUBDIVISION THAT THE
5 CUSTOMER DOES NOT WANT HIS OR HER NAME DISCLOSED. BEGINNING 30 DAYS
6 AFTER THE PERSON RECEIVES THE WRITTEN NOTICE, THE PERSON SHALL NOT
7 DISCLOSE THE CUSTOMER'S NAME TO ANY OTHER PERSON UNDER THIS
8 SUBDIVISION.

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

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

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

18 (2) A customer DESCRIBED IN SUBSECTION (1) WHO SUFFERS ACTUAL
19 INJURY AS A RESULT OF A VIOLATION OF THIS ACT may bring a civil
20 action against the person THAT VIOLATED THIS ACT and may recover
21 both of the following:

22 (a) ~~Actual~~ONE OF THE FOLLOWING, WHICHEVER IS GREATER:

23 (i) THE CUSTOMER'S ACTUAL damages, including damages for
24 emotional distress. ~~, or \$5,000.00, whichever is greater.~~

25 (ii) IF THE VIOLATION IS THE DISCLOSURE OF THE CUSTOMER'S
26 INFORMATION AFTER HE OR SHE PROVIDED WRITTEN NOTICE TO THE PERSON
27 UNDER SECTION 3 (E) (ii) , \$5,000.00.

1 (b) Costs and reasonable attorney fees.

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

4 Enacting section 2. This amendatory act is curative and
5 intended to clarify that the prohibitions on disclosing information
6 contained in 1988 PA 378, MCL 445.1711 to 445.1715, do not prohibit
7 disclosing information if it is incident to the ordinary course of
8 business of the person disclosing the information, including
9 marketing goods and services to the consumer, when written notice
10 is provided.