

STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010

Introduced by Senators Patterson, Cropsey, Jelinek, Kuipers, Garcia, Kahn, Hardiman and Richardville

ENROLLED SENATE BILL No. 149

AN ACT to amend 2004 PA 452, entitled "An act to prohibit certain acts and practices concerning identity theft; to require notification of a security breach of a database that contains certain personal information; to provide for the powers and duties of certain state and local governmental officers and entities; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," 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:

Sec. 3. As used in this act:

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

(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.

- (d) "Credit card" means that term as defined in section 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.
- (e) "Data" means computerized personal information.
- (f) "Depository institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union.
- (g) "Encrypted" means transformation of data through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without use of a confidential process or key, or securing information by another method that renders the data elements unreadable or unusable.
- (h) "False pretenses" includes, but is not limited to, a false, misleading, or fraudulent representation, writing, communication, statement, or message, communicated by any means to another person, that the maker of the representation, writing, communication, statement, or message knows or should have known is false or fraudulent. The false pretense may be a representation regarding a past or existing fact or circumstance or a representation regarding the intention to perform a future event or to have a future event performed.
- (i) "Financial institution" means a depository institution, an affiliate of a depository institution, a licensee under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, 1984 PA 379, MCL 493.101 to 493.114, the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24, a seller under the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431, or the retail installment sales act, 1966 PA 224, MCL 445.851 to 445.873, or a person subject to subtitle A of title V of the Gramm-Leach-Bliley act, 15 USC 6801 to 6809.
- (j) "Financial transaction device" means that term as defined in section 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.
- (k) "Identity theft" means engaging in an act or conduct prohibited in section 5(1).
- (l) "Interactive computer service" means an information service or system that enables computer access by multiple users to a computer server, including, but not limited to, a service or system that provides access to the internet or to software services available on a server.
- (m) "Law enforcement agency" means that term as defined in section 2804 of the public health code, 1978 PA 368, MCL 333.2804.
- (n) "Local registrar" means that term as defined in section 2804 of the public health code, 1978 PA 368, MCL 333.2804.
- (o) "Medical records or information" includes, but is not limited to, medical and mental health histories, reports, summaries, diagnoses and prognoses, treatment and medication information, notes, entries, and x-rays and other imaging records.
- (p) "Person" means an individual, partnership, corporation, limited liability company, association, or other legal entity.
- (q) "Personal identifying information" means a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts, including, but not limited to, a person's name, address, telephone number, driver license or state personal identification card number, social security number, place of employment, employee identification number, employer or taxpayer identification number, government passport number, health insurance identification number, mother's maiden name, demand deposit account number, savings account number, financial transaction device account number or the person's account password, any other account password in combination with sufficient information to identify and access the account, automated or electronic signature, biometrics, stock or other security certificate or account number, credit card number, vital record, or medical records or information.
- (r) "Personal information" means the first name or first initial and last name linked to 1 or more of the following data elements of a resident of this state:
- (i) Social security number.
 - (ii) Driver license number or state personal identification card number.
 - (iii) Demand deposit or other financial account number, or credit card or debit card number, in combination with any required security code, access code, or password that would permit access to any of the resident's financial accounts.
- (s) "Public utility" means that term as defined in section 1 of 1972 PA 299, MCL 460.111.
- (t) "Redact" means to alter or truncate data so that no more than 4 sequential digits of a driver license number, state personal identification card number, or account number, or no more than 5 sequential digits of a social security number, are accessible as part of personal information.
- (u) "State registrar" means that term as defined in section 2805 of the public health code, 1978 PA 368, MCL 333.2805.

(v) "Trade or commerce" means that term as defined in section 2 of the Michigan consumer protection act, 1971 PA 331, MCL 445.902.

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

(x) "Webpage" means a location that has a uniform resource locator or URL with respect to the world wide web or another location that can be accessed on the internet.

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

(a) Make any electronic mail or other communication under false pretenses purporting to be by or on behalf of a business, without the authority or approval of the business, and use that electronic mail or other communication to induce, request, or solicit any individual to provide personal identifying information with the intent to use that information to commit identity theft or another crime.

(b) Create or operate a webpage that represents itself as belonging to or being associated with a business, without the authority or approval of that business, and induces, requests, or solicits any user of the internet to provide personal identifying information with the intent to use that information to commit identity theft or another crime.

(c) Alter a setting on a user's computer or similar device or software program through which the user may access the internet and cause any user of the internet to view a communication that represents itself as belonging to or being associated with a business, which message has been created or is operated without the authority or approval of that business, and induces, requests, or solicits any user of the internet to provide personal identifying information with the intent to use that information to commit identity theft or another crime.

(d) Obtain or possess, or attempt to obtain or possess, personal identifying information of another person with the intent to use that information to commit identity theft or another crime.

(e) Sell or transfer, or attempt to sell or transfer, personal identifying information of another person if the person knows or has reason to know that the specific intended recipient will use, attempt to use, or further transfer the information to another person for the purpose of committing identity theft or another crime.

(f) Falsify a police report of identity theft, or knowingly create, possess, or use a false police report of identity theft.

Sec. 7a. (1) A person shall not do any of the following:

(a) Make any electronic mail or other communication under false pretenses purporting to be by or on behalf of a business, without the authority or approval of the business, and use that electronic mail or other communication to induce, request, or solicit any individual to provide personal identifying information.

(b) Create or operate a webpage that represents itself as belonging to or being associated with a business, without the authority or approval of that business, and induces, requests, or solicits any user of the internet to provide personal identifying information.

(c) Alter a setting on a user's computer or similar device or software program through which the user may access the internet and cause any user of the internet to view a communication that represents itself as belonging to or being associated with a business, which message has been created or is operated without the authority or approval of that business, and induces, requests, or solicits any user of the internet to provide personal identifying information.

(2) An interactive computer service provider shall not be held liable under any provision of the laws of this state for removing or disabling access to an internet domain name controlled or operated by the registrar or by the provider, or to content that resides on an internet website or other online location controlled or operated by the provider, that the provider believes in good faith is used to engage in a violation of this act. This act does not apply to a telecommunications provider's or internet service provider's good faith transmission or routing of, or intermediate temporary storing or caching of, personal identifying information.

(3) The attorney general, or an interactive computer service provider harmed by a violation of subsection (1), may bring a civil action against a person who has violated that subsection.

(4) Subsection (1) does not apply to the following:

(a) A law enforcement officer while that officer is engaged in the performance of his or her official duties.

(b) Any other individual authorized to conduct lawful investigations while that individual is engaged in a lawful investigation.

(5) A person bringing an action under this section may recover 1 of the following:

(a) Actual damages, including reasonable attorney fees.

(b) In lieu of actual damages, reasonable attorney fees plus the lesser of the following:

(i) \$5,000.00 per violation.

(ii) \$250,000.00 for each day that a violation occurs.

(6) If the attorney general has reason to believe that a person has violated section 7(a), (b), or (c) or this section, the attorney general may investigate the business transactions of that person. The attorney general may require that person to appear, at a reasonable time and place, to give information under oath and to produce any documents and evidence necessary to determine whether the person is in compliance with the requirements of that section.

Sec. 9. (1) Subject to subsection (6), a person who violates section 5 or 7 is guilty of a felony punishable as follows:

(a) Except as otherwise provided in subdivisions (b) and (c), by imprisonment for not more than 5 years or a fine of not more than \$25,000.00, or both.

(b) If the violation is a second violation of section 5 or 7, by imprisonment for not more than 10 years or a fine of not more than \$50,000.00, or both.

(c) If the violation is a third or subsequent violation of section 5 or 7, by imprisonment for not more than 15 years or a fine of not more than \$75,000.00, or both.

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

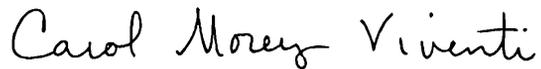
(3) This section does not prohibit a person from being charged with, convicted of, or sentenced for any other violation of law committed by that person using information obtained in violation of this section or any other violation of law committed by that person while violating or attempting to violate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

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

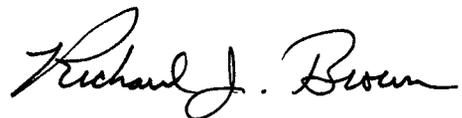
(5) A person may assert as a defense in a civil action or as an affirmative defense in a criminal prosecution for a violation of section 5 or 7, and has the burden of proof on that defense by a preponderance of the evidence, that the person lawfully transferred, obtained, or attempted to obtain personal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

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

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



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor