

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 309

A bill to amend 2004 PA 452, entitled
"Identity theft protection act,"
by amending the title and section 3 (MCL 445.63) and by adding
sections 12, 12a, and 12b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

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.

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.

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1 THE TERM INCLUDES AN INSTITUTION OF HIGHER EDUCATION OF THIS STATE. [THE
2 TERM DOES NOT INCLUDE A CIRCUIT, PROBATE, DISTRICT, OR MUNICIPAL COURT.]

3 (B) "BREACH OF THE SECURITY OF A DATABASE" OR "SECURITY
4 BREACH" MEANS THE UNAUTHORIZED ACCESS AND ACQUISITION OF DATA THAT
5 COMPROMISES THE SECURITY OR CONFIDENTIALITY OF PERSONAL INFORMATION
6 MAINTAINED BY A PERSON OR AGENCY AS PART OF A DATABASE OF PERSONAL
7 INFORMATION REGARDING MULTIPLE INDIVIDUALS. THESE TERMS DO NOT
8 INCLUDE UNAUTHORIZED ACCESS TO DATA BY AN EMPLOYEE OR OTHER
9 INDIVIDUAL IF THE ACCESS MEETS ALL OF THE FOLLOWING:

10 (i) THE EMPLOYEE OR OTHER INDIVIDUAL ACTED IN GOOD FAITH IN
11 ACCESSING THE DATA.

12 (ii) THE ACCESS WAS RELATED TO THE ACTIVITIES OF THE AGENCY OR
13 PERSON.

14 (iii) THE EMPLOYEE OR OTHER INDIVIDUAL DID NOT MISUSE ANY
15 PERSONAL INFORMATION OR DISCLOSE ANY PERSONAL INFORMATION TO AN
16 UNAUTHORIZED PERSON.

17 (C) ~~(a)~~ "Child or spousal support" means support for a child
18 or spouse, paid or provided pursuant to state or federal law under
19 a court order or judgment. Support includes, but is not limited to,
20 any of the following:

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

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

23 (iii) Child care expenses.

24 (iv) Educational expenses.

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

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

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

3 (D) ~~—(b)—~~ "Credit card" means that term as defined in section
4 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

5 (E) **"DATA" MEANS COMPUTERIZED PERSONAL INFORMATION.**

6 (F) ~~—(e)—~~ "Depository institution" means a state or nationally
7 chartered bank or a state or federally chartered savings and loan
8 association, savings bank, or credit union.

9 (G) **"ENCRYPTED" MEANS TRANSFORMATION OF DATA THROUGH THE USE
10 OF AN ALGORITHMIC PROCESS INTO A FORM IN WHICH THERE IS A LOW
11 PROBABILITY OF ASSIGNING MEANING WITHOUT USE OF A CONFIDENTIAL
12 PROCESS OR KEY, OR SECURING INFORMATION BY ANOTHER METHOD THAT
13 RENDERS THE DATA ELEMENTS UNREADABLE OR UNUSABLE.**

14 (H) ~~—(d)—~~ "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 (I) ~~—(e)—~~ "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 (J) ~~—(f)—~~ "Identity theft" means engaging in an act or conduct
4 prohibited in section 5(1).

5 (K) ~~—(g)—~~ "Law enforcement agency" means that term as defined
6 in section 2804 of the public health code, 1978 PA 368, MCL
7 333.2804.

8 (L) ~~—(h)—~~ "Local registrar" means that term as defined in
9 section 2804 of the public health code, 1978 PA 368, MCL 333.2804.

10 (M) ~~—(i)—~~ "Medical records or information" includes, but is
11 not limited to, medical and mental health histories, reports,
12 summaries, diagnoses and prognoses, treatment and medication
13 information, notes, entries, and x-rays and other imaging records.

14 (N) ~~—(j)—~~ "Person" means an individual, partnership,
15 corporation, limited liability company, association, or other legal
16 entity.

17 (O) ~~—(k)—~~ "Personal identifying information" means a name,
18 number, or other information that is used for the purpose of
19 identifying a specific person or providing access to a person's
20 financial accounts, including, but not limited to, a person's name,
21 address, telephone number, driver license or state personal
22 identification card number, social security number, place of
23 employment, employee identification number, employer or taxpayer
24 identification number, government passport number, health insurance
25 identification number, mother's maiden name, demand deposit account
26 number, savings account number, financial transaction device
27 account number or the person's account password, stock or other

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1 security certificate or account number, credit card number, vital
2 record, or medical records or information.

3 (P) "PERSONAL INFORMATION" MEANS THE FIRST NAME OR FIRST
4 INITIAL AND LAST NAME LINKED TO 1 OR MORE OF THE FOLLOWING DATA
5 ELEMENTS OF A RESIDENT OF THIS STATE:

6 (i) SOCIAL SECURITY NUMBER.

7 (ii) DRIVER LICENSE NUMBER OR STATE PERSONAL IDENTIFICATION
8 CARD NUMBER.

9 (iii) DEMAND DEPOSIT OR OTHER FINANCIAL ACCOUNT NUMBER, OR
10 CREDIT CARD OR DEBIT CARD NUMBER, IN COMBINATION WITH ANY REQUIRED
11 SECURITY CODE, ACCESS CODE, OR PASSWORD THAT WOULD PERMIT ACCESS TO
12 ANY OF THE RESIDENT'S FINANCIAL ACCOUNTS.

13 (Q) "PUBLIC UTILITY" MEANS THAT TERM AS DEFINED IN SECTION 1
14 OF 1972 PA 299, MCL 460.111.

15 (R) "REDACT" MEANS TO ALTER OR TRUNCATE DATA SO THAT NO MORE
16 THAN [] 4 SEQUENTIAL DIGITS OF A DRIVER LICENSE NUMBER, STATE
17 PERSONAL IDENTIFICATION CARD NUMBER, OR ACCOUNT NUMBER, OR NO MORE
18 THAN 5 SEQUENTIAL DIGITS OF A SOCIAL SECURITY NUMBER, ARE
19 ACCESSIBLE AS PART OF PERSONAL INFORMATION.

20 (S) ~~(l)~~ "State registrar" means that term as defined in
21 section 2805 of the public health code, 1978 PA 368, MCL 333.2805.

22 (T) ~~(m)~~ "Trade or commerce" means that term as defined in
23 section 2 of the Michigan consumer protection act, 1971 PA 331, MCL
24 445.902.

25 (U) ~~(n)~~ "Vital record" means that term as defined in section
26 2805 of the public health code, 1978 PA 368, MCL 333.2805.

27 SEC. 12. (1) UNLESS THE PERSON OR AGENCY DETERMINES THAT THE

1 SECURITY BREACH HAS NOT OR IS NOT LIKELY TO CAUSE SUBSTANTIAL LOSS
2 OR INJURY TO, OR RESULT IN IDENTITY THEFT WITH RESPECT TO, 1 OR
3 MORE RESIDENTS OF THIS STATE, A PERSON OR AGENCY THAT OWNS OR
4 LICENSES DATA THAT ARE INCLUDED IN A DATABASE THAT DISCOVERS A
5 SECURITY BREACH, OR RECEIVES NOTICE OF A SECURITY BREACH UNDER
6 SUBSECTION (2), SHALL PROVIDE A NOTICE OF THE SECURITY BREACH TO
7 EACH RESIDENT OF THIS STATE WHO MEETS 1 OR MORE OF THE FOLLOWING:

8 (A) THAT RESIDENT'S UNENCRYPTED AND UNREDACTED PERSONAL
9 INFORMATION WAS ACCESSED AND ACQUIRED BY AN UNAUTHORIZED PERSON.

10 (B) THAT RESIDENT'S PERSONAL INFORMATION WAS ACCESSED AND
11 ACQUIRED IN ENCRYPTED FORM BY A PERSON WITH UNAUTHORIZED ACCESS TO
12 THE ENCRYPTION KEY.

13 (2) UNLESS THE PERSON OR AGENCY DETERMINES THAT THE SECURITY
14 BREACH HAS NOT OR IS NOT LIKELY TO CAUSE SUBSTANTIAL LOSS OR INJURY
15 TO, OR RESULT IN IDENTITY THEFT WITH RESPECT TO, 1 OR MORE
16 RESIDENTS OF THIS STATE, A PERSON OR AGENCY THAT MAINTAINS A
17 DATABASE THAT INCLUDES DATA THAT THE PERSON OR AGENCY DOES NOT OWN
18 OR LICENSE THAT DISCOVERS A BREACH OF THE SECURITY OF THE DATABASE
19 SHALL PROVIDE A NOTICE TO THE OWNER OR LICENSOR OF THE INFORMATION
20 OF THE SECURITY BREACH.

21 (3) IN DETERMINING WHETHER A SECURITY BREACH IS NOT LIKELY TO
22 CAUSE SUBSTANTIAL LOSS OR INJURY TO, OR RESULT IN IDENTITY THEFT
23 WITH RESPECT TO, 1 OR MORE RESIDENTS OF THIS STATE UNDER SUBSECTION
24 (1) OR (2), A PERSON OR AGENCY SHALL ACT WITH THE CARE AN
25 ORDINARILY PRUDENT PERSON OR AGENCY IN LIKE POSITION WOULD EXERCISE
26 UNDER SIMILAR CIRCUMSTANCES.

27 (4) A PERSON OR AGENCY SHALL PROVIDE ANY NOTICE REQUIRED UNDER

1 THIS SECTION WITHOUT UNREASONABLE DELAY. A PERSON OR AGENCY MAY
2 DELAY PROVIDING NOTICE WITHOUT VIOLATING THIS SUBSECTION IF EITHER
3 OF THE FOLLOWING IS MET:

4 (A) A DELAY IS NECESSARY IN ORDER FOR THE PERSON OR AGENCY TO
5 TAKE ANY MEASURES NECESSARY TO DETERMINE THE SCOPE OF THE SECURITY
6 BREACH AND RESTORE THE REASONABLE INTEGRITY OF THE DATABASE.
7 HOWEVER, THE AGENCY OR PERSON SHALL PROVIDE THE NOTICE REQUIRED
8 UNDER THIS SUBSECTION WITHOUT UNREASONABLE DELAY AFTER THE PERSON
9 OR AGENCY COMPLETES THE MEASURES NECESSARY TO DETERMINE THE SCOPE
10 OF THE SECURITY BREACH AND RESTORE THE REASONABLE INTEGRITY OF THE
11 DATABASE.

12 (B) A LAW ENFORCEMENT AGENCY DETERMINES AND ADVISES THE AGENCY
13 OR PERSON THAT PROVIDING A NOTICE WILL IMPEDE A CRIMINAL OR CIVIL
14 INVESTIGATION OR JEOPARDIZE HOMELAND OR NATIONAL SECURITY. HOWEVER,
15 THE AGENCY OR PERSON SHALL PROVIDE THE NOTICE REQUIRED UNDER THIS
16 SECTION WITHOUT UNREASONABLE DELAY AFTER THE LAW ENFORCEMENT AGENCY
17 DETERMINES THAT PROVIDING THE NOTICE WILL NO LONGER IMPEDE THE
18 INVESTIGATION OR JEOPARDIZE HOMELAND OR NATIONAL SECURITY.

19 (5) EXCEPT AS PROVIDED IN SUBSECTION (11), AN AGENCY OR PERSON
20 SHALL PROVIDE ANY NOTICE REQUIRED UNDER THIS SECTION BY PROVIDING 1
21 OR MORE OF THE FOLLOWING TO THE RECIPIENT:

22 (A) WRITTEN NOTICE SENT TO THE RECIPIENT AT THE RECIPIENT'S
23 POSTAL ADDRESS IN THE RECORDS OF THE AGENCY OR PERSON.

24 (B) WRITTEN NOTICE SENT ELECTRONICALLY TO THE RECIPIENT IF ANY
25 OF THE FOLLOWING ARE MET:

26 (i) THE RECIPIENT HAS EXPRESSLY CONSENTED TO RECEIVE ELECTRONIC
27 NOTICE.

1 (ii) THE PERSON OR AGENCY HAS AN EXISTING BUSINESS RELATIONSHIP
2 WITH THE RECIPIENT THAT INCLUDES PERIODIC ELECTRONIC MAIL
3 COMMUNICATIONS AND BASED ON THOSE COMMUNICATIONS THE PERSON OR
4 AGENCY REASONABLY BELIEVES THAT IT HAS THE RECIPIENT'S CURRENT
5 ELECTRONIC MAIL ADDRESS.

6 (iii) THE PERSON OR AGENCY CONDUCTS ITS BUSINESS PRIMARILY
7 THROUGH INTERNET ACCOUNT TRANSACTIONS OR ON THE INTERNET.

8 (C) IF NOT OTHERWISE PROHIBITED BY STATE OR FEDERAL LAW,
9 NOTICE GIVEN BY TELEPHONE BY AN INDIVIDUAL WHO REPRESENTS THE
10 PERSON OR AGENCY IF ALL OF THE FOLLOWING ARE MET:

11 (i) THE NOTICE IS NOT GIVEN IN WHOLE OR IN PART BY USE OF A
12 RECORDED MESSAGE.

13 (ii) THE RECIPIENT HAS EXPRESSLY CONSENTED TO RECEIVE NOTICE BY
14 TELEPHONE, OR IF THE RECIPIENT HAS NOT EXPRESSLY CONSENTED TO
15 RECEIVE NOTICE BY TELEPHONE, THE PERSON OR AGENCY ALSO PROVIDES
16 NOTICE UNDER SUBDIVISION (A) OR (B) IF THE NOTICE BY TELEPHONE DOES
17 NOT RESULT IN A LIVE CONVERSATION BETWEEN THE INDIVIDUAL
18 REPRESENTING THE PERSON OR AGENCY AND THE RECIPIENT WITHIN 3
19 BUSINESS DAYS AFTER THE INITIAL ATTEMPT TO PROVIDE TELEPHONIC
20 NOTICE.

21 (D) SUBSTITUTE NOTICE, IF THE PERSON OR AGENCY DEMONSTRATES
22 THAT THE COST OF PROVIDING NOTICE UNDER SUBDIVISION (A), (B), OR
23 (C) WILL EXCEED \$250,000.00 OR THAT THE PERSON OR AGENCY HAS TO
24 PROVIDE NOTICE TO MORE THAN 500,000 RESIDENTS OF THIS STATE. A
25 PERSON OR AGENCY PROVIDES SUBSTITUTE NOTICE UNDER THIS SUBDIVISION
26 BY DOING ALL OF THE FOLLOWING:

27 (i) IF THE PERSON OR AGENCY HAS ELECTRONIC MAIL ADDRESSES FOR

1 ANY OF THE RESIDENTS OF THIS STATE WHO ARE ENTITLED TO RECEIVE THE
2 NOTICE, PROVIDING ELECTRONIC NOTICE TO THOSE RESIDENTS.

3 (ii) IF THE PERSON OR AGENCY MAINTAINS A WEBSITE, CONSPICUOUSLY
4 POSTING THE NOTICE ON THAT WEBSITE.

5 (iii) NOTIFYING MAJOR STATEWIDE MEDIA. A NOTIFICATION UNDER THIS
6 SUBPARAGRAPH SHALL INCLUDE A TELEPHONE NUMBER OR A WEBSITE ADDRESS
7 THAT A PERSON MAY USE TO OBTAIN ADDITIONAL ASSISTANCE AND
8 INFORMATION.

9 (6) A NOTICE UNDER THIS SECTION SHALL MEET ALL OF THE
10 FOLLOWING:

11 (A) FOR A NOTICE PROVIDED UNDER SUBSECTION (5) (A) OR (B), BE
12 WRITTEN IN A CLEAR AND CONSPICUOUS MANNER AND CONTAIN THE CONTENT
13 REQUIRED UNDER SUBDIVISIONS (C) TO (G).

14 (B) FOR A NOTICE PROVIDED UNDER SUBSECTION (5) (C), CLEARLY
15 COMMUNICATE THE CONTENT REQUIRED UNDER SUBDIVISIONS (C) TO (G) TO
16 THE RECIPIENT OF THE TELEPHONE CALL.

17 (C) DESCRIBE THE SECURITY BREACH IN GENERAL TERMS.

18 (D) DESCRIBE THE TYPE OF PERSONAL INFORMATION THAT IS THE
19 SUBJECT OF THE UNAUTHORIZED ACCESS OR USE.

20 (E) IF APPLICABLE, GENERALLY DESCRIBE WHAT THE AGENCY OR
21 PERSON PROVIDING THE NOTICE HAS DONE TO PROTECT DATA FROM FURTHER
22 SECURITY BREACHES.

23 (F) INCLUDE A TELEPHONE NUMBER WHERE A NOTICE RECIPIENT MAY
24 OBTAIN ASSISTANCE OR ADDITIONAL INFORMATION.

25 (G) REMIND NOTICE RECIPIENTS OF THE NEED TO REMAIN VIGILANT
26 FOR INCIDENTS OF FRAUD AND IDENTITY THEFT.

27 (7) A PERSON OR AGENCY MAY PROVIDE ANY NOTICE REQUIRED UNDER

1 THIS SECTION PURSUANT TO AN AGREEMENT BETWEEN THAT PERSON OR AGENCY
2 AND ANOTHER PERSON OR AGENCY, IF THE NOTICE PROVIDED PURSUANT TO
3 THE AGREEMENT DOES NOT CONFLICT WITH ANY PROVISION OF THIS SECTION.

4 (8) EXCEPT AS PROVIDED IN THIS SUBSECTION, AFTER A PERSON OR
5 AGENCY PROVIDES A NOTICE UNDER THIS SECTION, THE PERSON OR AGENCY
6 SHALL NOTIFY EACH CONSUMER REPORTING AGENCY THAT COMPILES AND
7 MAINTAINS FILES ON CONSUMERS ON A NATIONWIDE BASIS, AS DEFINED IN
8 15 USC 1681A(P), OF THE SECURITY BREACH WITHOUT UNREASONABLE DELAY.
9 A NOTIFICATION UNDER THIS SUBSECTION SHALL INCLUDE THE NUMBER OF
10 NOTICES THAT THE PERSON OR AGENCY PROVIDED TO RESIDENTS OF THIS
11 STATE AND THE TIMING OF THOSE NOTICES. THIS SUBSECTION DOES NOT
12 APPLY IF EITHER OF THE FOLLOWING IS MET:

13 (A) THE PERSON OR AGENCY IS REQUIRED UNDER THIS SECTION TO
14 PROVIDE NOTICE OF A SECURITY BREACH TO 1,000 OR FEWER RESIDENTS OF
15 THIS STATE.

16 (B) THE PERSON OR AGENCY IS SUBJECT TO TITLE V OF THE GRAMM-
17 LEACH-BLILEY ACT, 15 USC 6801 TO 6809.

18 (9) A FINANCIAL INSTITUTION THAT IS SUBJECT TO, AND HAS
19 NOTIFICATION PROCEDURES IN PLACE THAT ARE SUBJECT TO EXAMINATION BY
20 THE FINANCIAL INSTITUTION'S APPROPRIATE REGULATOR FOR COMPLIANCE
21 WITH, THE INTERAGENCY GUIDANCE ON RESPONSE PROGRAMS FOR
22 UNAUTHORIZED ACCESS TO CUSTOMER INFORMATION AND CUSTOMER NOTICE
23 PRESCRIBED BY THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
24 AND THE OTHER FEDERAL BANK AND THRIFT REGULATORY AGENCIES, OR
25 SIMILAR GUIDANCE PRESCRIBED AND ADOPTED BY THE NATIONAL CREDIT
26 UNION ADMINISTRATION, AND ITS AFFILIATES, IS CONSIDERED TO BE IN
27 COMPLIANCE WITH THIS SECTION.

1 (10) A PERSON OR AGENCY THAT IS SUBJECT TO AND COMPLIES WITH
2 THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996,
3 PUBLIC LAW 104-191, AND WITH REGULATIONS PROMULGATED UNDER THAT
4 ACT, 45 CFR PARTS 160 AND 164, FOR THE PREVENTION OF UNAUTHORIZED
5 ACCESS TO CUSTOMER INFORMATION AND CUSTOMER NOTICE IS CONSIDERED TO
6 BE IN COMPLIANCE WITH THIS SECTION.

7 (11) A PUBLIC UTILITY THAT SENDS MONTHLY BILLING OR ACCOUNT
8 STATEMENTS TO THE POSTAL ADDRESS OF ITS CUSTOMERS MAY PROVIDE
9 NOTICE OF A SECURITY BREACH TO ITS CUSTOMERS IN THE MANNER
10 DESCRIBED IN SUBSECTION (5), OR ALTERNATIVELY BY PROVIDING ALL OF
11 THE FOLLOWING:

12 (A) AS APPLICABLE, NOTICE AS DESCRIBED IN SUBSECTION (5)(B).

13 (B) NOTIFICATION TO THE MEDIA REASONABLY CALCULATED TO INFORM
14 THE CUSTOMERS OF THE PUBLIC UTILITY OF THE SECURITY BREACH.

15 (C) CONSPICUOUS POSTING OF THE NOTICE OF THE SECURITY BREACH
16 ON THE WEBSITE OF THE PUBLIC UTILITY.

17 (D) WRITTEN NOTICE SENT IN CONJUNCTION WITH THE MONTHLY
18 BILLING OR ACCOUNT STATEMENT TO THE CUSTOMER AT THE CUSTOMER'S
19 POSTAL ADDRESS IN THE RECORDS OF THE PUBLIC UTILITY.

20 (12) A PERSON THAT PROVIDES NOTICE OF A SECURITY BREACH IN THE
21 MANNER DESCRIBED IN THIS SECTION WHEN A SECURITY BREACH HAS NOT
22 OCCURRED, WITH THE INTENT TO DEFRAUD, IS GUILTY OF A MISDEMEANOR
23 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 30 DAYS OR A FINE OF
24 NOT MORE THAN \$250.00 FOR EACH VIOLATION, OR BOTH.

25 (13) SUBJECT TO SUBSECTION (14), A PERSON THAT KNOWINGLY FAILS
26 TO PROVIDE ANY NOTICE OF A SECURITY BREACH REQUIRED UNDER THIS
27 SECTION MAY BE ORDERED TO PAY A CIVIL FINE OF NOT MORE THAN \$250.00

1 FOR EACH FAILURE TO PROVIDE NOTICE. THE ATTORNEY GENERAL OR A
2 PROSECUTING ATTORNEY MAY BRING AN ACTION TO RECOVER A CIVIL FINE
3 UNDER THIS SECTION.

4 (14) THE AGGREGATE LIABILITY OF A PERSON FOR CIVIL FINES UNDER
5 SUBSECTION (13) FOR MULTIPLE VIOLATIONS OF SUBSECTION (13) THAT
6 ARISE FROM THE SAME SECURITY BREACH SHALL NOT EXCEED \$750,000.00.

7 (15) SUBSECTIONS (12) AND (13) DO NOT AFFECT THE AVAILABILITY
8 OF ANY CIVIL REMEDY FOR A VIOLATION OF STATE OR FEDERAL LAW.

9 (16) THIS SECTION APPLIES TO THE DISCOVERY OR NOTIFICATION OF
10 A BREACH OF THE SECURITY OF A DATABASE THAT OCCURS ON OR AFTER THE
11 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

12 (17) THIS SECTION DOES NOT APPLY TO THE ACCESS OR ACQUISITION
13 BY A PERSON OR AGENCY OF FEDERAL, STATE, OR LOCAL GOVERNMENT
14 RECORDS OR DOCUMENTS LAWFULLY MADE AVAILABLE TO THE GENERAL PUBLIC.

15 (18) THIS SECTION DEALS WITH SUBJECT MATTER THAT IS OF
16 STATEWIDE CONCERN, AND ANY CHARTER, ORDINANCE, RESOLUTION,
17 REGULATION, RULE, OR OTHER ACTION BY A MUNICIPAL CORPORATION OR
18 OTHER POLITICAL SUBDIVISION OF THIS STATE TO REGULATE, DIRECTLY OR
19 INDIRECTLY, ANY MATTER EXPRESSLY SET FORTH IN THIS SECTION IS
20 PREEMPTED.

21 SEC. 12A. (1) SUBJECT TO SUBSECTION (3), A PERSON OR AGENCY
22 THAT MAINTAINS A DATABASE THAT INCLUDES PERSONAL INFORMATION
23 REGARDING MULTIPLE INDIVIDUALS SHALL DESTROY ANY DATA THAT CONTAIN
24 PERSONAL INFORMATION CONCERNING AN INDIVIDUAL WHEN THAT DATA IS
25 REMOVED FROM THE DATABASE AND THE PERSON OR AGENCY IS NOT RETAINING
26 THE DATA ELSEWHERE FOR ANOTHER PURPOSE NOT PROHIBITED BY STATE OR
27 FEDERAL LAW. THIS SUBSECTION DOES NOT PROHIBIT A PERSON OR AGENCY

1 FROM RETAINING DATA THAT CONTAIN PERSONAL INFORMATION FOR PURPOSES
2 OF AN INVESTIGATION, AUDIT, OR INTERNAL REVIEW.

3 (2) A PERSON WHO KNOWINGLY VIOLATES THIS SECTION IS GUILTY OF
4 A MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN \$250.00 FOR
5 EACH VIOLATION. THIS SUBSECTION DOES NOT AFFECT THE AVAILABILITY OF
6 ANY CIVIL REMEDY FOR A VIOLATION OF STATE OR FEDERAL LAW.

7 (3) A PERSON OR AGENCY IS CONSIDERED TO BE IN COMPLIANCE WITH
8 THIS SECTION IF THE PERSON OR AGENCY IS SUBJECT TO FEDERAL LAW
9 CONCERNING THE DISPOSAL OF RECORDS CONTAINING PERSONAL IDENTIFYING
10 INFORMATION AND THE PERSON OR AGENCY IS IN COMPLIANCE WITH THAT
11 FEDERAL LAW.

12 (4) AS USED IN THIS SECTION, "DESTROY" MEANS TO DESTROY OR
13 ARRANGE FOR THE DESTRUCTION OF DATA BY SHREDDING, ERASING, OR
14 OTHERWISE MODIFYING THE DATA SO THAT THEY CANNOT BE READ,
15 DECIPHERED, OR RECONSTRUCTED THROUGH GENERALLY AVAILABLE MEANS.

16 SEC. 12B. (1) A PERSON SHALL NOT DISTRIBUTE AN ADVERTISEMENT
17 OR MAKE ANY OTHER SOLICITATION THAT MISREPRESENTS TO THE RECIPIENT
18 THAT A SECURITY BREACH HAS OCCURRED THAT MAY AFFECT THE RECIPIENT.

19 (2) A PERSON SHALL NOT DISTRIBUTE AN ADVERTISEMENT OR MAKE ANY
20 OTHER SOLICITATION THAT IS SUBSTANTIALLY SIMILAR TO A NOTICE
21 REQUIRED UNDER SECTION 12(5) OR BY FEDERAL LAW, IF THE FORM OF THAT
22 NOTICE IS PRESCRIBED BY STATE OR FEDERAL LAW, RULE, OR REGULATION.

23 (3) A PERSON WHO KNOWINGLY OR INTENTIONALLY VIOLATES THIS
24 SECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR
25 NOT MORE THAN 30 DAYS OR A FINE OF NOT MORE THAN \$1,000.00 FOR EACH
26 VIOLATION, OR BOTH. THIS SUBSECTION DOES NOT AFFECT THE
27 AVAILABILITY OF ANY CIVIL REMEDY FOR A VIOLATION OF THIS SECTION OR

1 **ANY OTHER STATE OR FEDERAL LAW.**

2 Enacting section 1. This amendatory act takes effect 180 days

3 after the date it is enacted.