

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.

1 THE TERM INCLUDES AN INSTITUTION OF HIGHER EDUCATION OF THIS STATE.

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

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

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

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

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

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

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

22 (iii) Child care expenses.

23 (iv) Educational expenses.

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

26 (vi) Repayment of genetic testing expenses, under the paternity
27 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

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 THE LAST 4 SEQUENTIAL DIGITS OF A SOCIAL SECURITY NUMBER,
17 DRIVER LICENSE NUMBER, STATE PERSONAL IDENTIFICATION CARD NUMBER,
18 OR ACCOUNT NUMBER IS ACCESSIBLE AS PART OF PERSONAL INFORMATION.

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

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

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

26 SEC. 12. (1) UNLESS THE PERSON OR AGENCY DETERMINES THAT THE
27 SECURITY BREACH HAS NOT OR IS NOT LIKELY TO CAUSE SUBSTANTIAL LOSS

1 OR INJURY TO, OR RESULT IN IDENTITY THEFT WITH RESPECT TO, 1 OR
2 MORE RESIDENTS OF THIS STATE, A PERSON OR AGENCY THAT OWNS OR
3 LICENSES DATA THAT ARE INCLUDED IN A DATABASE THAT DISCOVERS A
4 SECURITY BREACH, OR RECEIVES NOTICE OF A SECURITY BREACH UNDER
5 SUBSECTION (2), SHALL PROVIDE A NOTICE OF THE SECURITY BREACH TO
6 EACH RESIDENT OF THIS STATE WHO MEETS 1 OR MORE OF THE FOLLOWING:

7 (A) THAT RESIDENT'S PERSONAL INFORMATION WAS ACCESSED AND
8 ACQUIRED BY AN UNAUTHORIZED PERSON. AS USED IN THIS SUBDIVISION,
9 PERSONAL INFORMATION INCLUDES ENCRYPTED OR REDACTED PERSONAL
10 INFORMATION.

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

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

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

1 (4) A PERSON OR AGENCY SHALL PROVIDE ANY NOTICE REQUIRED UNDER
2 THIS SECTION WITHOUT UNREASONABLE DELAY. A PERSON OR AGENCY MAY
3 DELAY PROVIDING NOTICE WITHOUT VIOLATING THIS SUBSECTION IF EITHER
4 OF THE FOLLOWING IS MET:

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

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

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

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

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

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

1 NOTICE.

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

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

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

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

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

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

1 (i) IF THE PERSON OR AGENCY HAS ELECTRONIC MAIL ADDRESSES FOR
2 ANY OF THE RESIDENTS OF THIS STATE WHO ARE ENTITLED TO RECEIVE THE
3 NOTICE, PROVIDING ELECTRONIC NOTICE TO THOSE RESIDENTS.

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

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

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

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

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

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

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

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

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

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

1 (7) A PERSON OR AGENCY MAY PROVIDE ANY NOTICE REQUIRED UNDER
2 THIS SECTION PURSUANT TO AN AGREEMENT BETWEEN THAT PERSON OR AGENCY
3 AND ANOTHER PERSON OR AGENCY, IF THE NOTICE PROVIDED PURSUANT TO
4 THE AGREEMENT DOES NOT CONFLICT WITH ANY PROVISION OF THIS SECTION.

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

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

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

19 (9) A FINANCIAL INSTITUTION THAT IS SUBJECT TO, AND HAS
20 NOTIFICATION PROCEDURES IN PLACE THAT ARE SUBJECT TO EXAMINATION BY
21 THE FINANCIAL INSTITUTION'S APPROPRIATE FEDERAL REGULATOR FOR
22 COMPLIANCE WITH, THE INTERAGENCY GUIDANCE ON RESPONSE PROGRAMS FOR
23 UNAUTHORIZED ACCESS TO CUSTOMER INFORMATION AND CUSTOMER NOTICE
24 PRESCRIBED BY THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
25 AND THE OTHER FEDERAL BANK, THRIFT, AND CREDIT UNION REGULATORY
26 AGENCIES, AND ITS AFFILIATES, ARE CONSIDERED TO BE IN COMPLIANCE
27 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 \$1,000.00, OR BOTH.

25 (13) SUBJECT TO SUBSECTION (14), A PERSON THAT FAILS TO
26 PROVIDE ANY NOTICE OF A SECURITY BREACH REQUIRED UNDER THIS SECTION
27 MAY BE ORDERED TO PAY A CIVIL FINE OF NOT MORE THAN \$1,000.00 FOR

1 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 \$2,500,000.00.

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

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

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

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

1 (2) A PERSON WHO KNOWINGLY OR INTENTIONALLY VIOLATES THIS
2 SECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR
3 NOT MORE THAN 30 DAYS OR A FINE OF NOT MORE THAN \$1,000.00 FOR EACH
4 VIOLATION, OR BOTH. THIS SUBSECTION DOES NOT AFFECT THE
5 AVAILABILITY OF ANY CIVIL REMEDY FOR A VIOLATION OF THIS SECTION OR
6 ANY OTHER STATE OR FEDERAL LAW.

7 (3) AS USED IN THIS SECTION, "DESTROY" MEANS TO DESTROY OR
8 ARRANGE FOR THE DESTRUCTION OF DATA BY SHREDDING, ERASING, OR
9 OTHERWISE MODIFYING THE DATA SO THAT THEY CANNOT BE READ,
10 DECIPHERED, OR RECONSTRUCTED THROUGH GENERALLY AVAILABLE MEANS.

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

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

18 (3) A PERSON WHO KNOWINGLY OR INTENTIONALLY VIOLATES THIS
19 SECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR
20 NOT MORE THAN 30 DAYS OR A FINE OF NOT MORE THAN \$1,000.00 FOR EACH
21 VIOLATION, OR BOTH. THIS SUBSECTION DOES NOT AFFECT THE
22 AVAILABILITY OF ANY CIVIL REMEDY FOR A VIOLATION OF THIS SECTION OR
23 ANY OTHER STATE OR FEDERAL LAW.

24 Enacting section 1. This amendatory act takes effect 180 days
25 after the date it is enacted.