

# SENATE BILL No. 309

March 16, 2005, Introduced by Senators JOHNSON, HARDIMAN, PATTERSON, TOY, CROSEY, STAMAS and VAN WOERKOM and referred to the Committee on Judiciary.

A bill to amend 2004 PA 452, entitled  
"Identity theft protection act,"  
by amending section 11 (MCL 445.71) and by adding section 12.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 11. (1) A person shall not do any of the following in the  
2           conduct of trade or commerce:

3           (a) Deny credit or public utility service to or reduce the  
4           credit limit of a consumer solely because the consumer was a victim  
5           of identity theft, if the person had prior knowledge that the  
6           consumer was a victim of identity theft. A consumer is presumed to  
7           be a victim of identity theft for the purposes of this subdivision  
8           if he or she provides both of the following to the person:

9           (i) A copy of a police report evidencing the claim of the  
10          victim of identity theft.

1           (ii) Either a properly completed copy of a standardized  
2 affidavit of identity theft developed and made available by the  
3 federal trade commission pursuant to 15 USC 1681g or an affidavit  
4 of fact that is acceptable to the person for that purpose.

5           (b) Solicit to extend credit to a consumer who does not have  
6 an existing line of credit, or has not had or applied for a line of  
7 credit within the preceding year, through the use of an unsolicited  
8 check that includes personal identifying information other than the  
9 recipient's name, address, and a partial, encoded, or truncated  
10 personal identifying number. In addition to any other penalty or  
11 remedy under this act or the Michigan consumer protection act, 1976  
12 PA 331, MCL 445.901 to 445.922, a credit card issuer, financial  
13 institution, or other lender that violates this subdivision, and  
14 not the consumer, is liable for the amount of the instrument if the  
15 instrument is used by an unauthorized user and for any fees  
16 assessed to the consumer if the instrument is dishonored.

17           (c) Solicit to extend credit to a consumer who does not have a  
18 current credit card, or has not had or applied for a credit card  
19 within the preceding year, through the use of an unsolicited credit  
20 card sent to the consumer. In addition to any other penalty or  
21 remedy under this act or the Michigan consumer protection act, 1976  
22 PA 331, MCL 445.901 to 445.922, a credit card issuer, financial  
23 institution, or other lender that violates this subdivision, and  
24 not the consumer, is liable for any charges if the credit card is  
25 used by an unauthorized user and for any interest or finance  
26 charges assessed to the consumer.

27           (d) Extend credit to a consumer without exercising reasonable

1 procedures to verify the identity of that consumer. Compliance with  
2 regulations issued for depository institutions, and to be issued  
3 for other financial institutions, by the United States department  
4 of treasury under section 326 of the USA patriot act of 2001, 31  
5 USC 5318, is considered compliance with this subdivision. This  
6 subdivision does not apply to a purchase of a credit obligation in  
7 an acquisition, merger, purchase of assets, or assumption of  
8 liabilities or any change to or review of an existing credit  
9 account.

10 **(E) FAIL TO PROVIDE NOTICE TO A PERSON IN VIOLATION OF SECTION**  
11 **12.**

12 (2) A person who knowingly or intentionally violates  
13 subsection (1) is guilty of a misdemeanor punishable by  
14 imprisonment for not more than 30 days or a fine of not more than  
15 \$1,000.00, or both. This subsection does not affect the  
16 availability of any civil remedy for a violation of this act, the  
17 Michigan consumer protection act, 1976 PA 331, MCL 445.901 to  
18 445.922, or any other state or federal law.

19 **SEC. 12. (1) AN AGENCY OF THIS STATE THAT OWNS OR LICENSES**  
20 **COMPUTERIZED DATA THAT INCLUDE PERSONAL IDENTIFYING INFORMATION**  
21 **SHALL PROVIDE NOTICE OF ANY BREACH OF THE SECURITY OF THE SYSTEM**  
22 **FOLLOWING DISCOVERY OR NOTIFICATION OF THE BREACH IN THE SECURITY**  
23 **OF THE DATA TO A RESIDENT OF THIS STATE WHOSE UNENCRYPTED PERSONAL**  
24 **IDENTIFYING INFORMATION IS ACQUIRED BY AN UNAUTHORIZED PERSON OR IF**  
25 **THE AGENCY REASONABLY BELIEVES THAT AN UNAUTHORIZED PERSON HAS**  
26 **ACQUIRED THAT INFORMATION. THE AGENCY SHALL PROVIDE NOTICE IN THE**  
27 **MOST EXPEDIENT TIME POSSIBLE AND WITHOUT UNREASONABLE DELAY.**

1           (2) AN AGENCY THAT MAINTAINS COMPUTERIZED DATA THAT INCLUDE  
2 PERSONAL IDENTIFYING INFORMATION THAT THE AGENCY DOES NOT OWN SHALL  
3 PROVIDE NOTICE TO THE OWNER OR LICENSEE OF THE INFORMATION OF ANY  
4 BREACH OF THE SECURITY OF THE DATA IMMEDIATELY FOLLOWING DISCOVERY,  
5 IF THE PERSONAL IDENTIFYING INFORMATION IS ACQUIRED BY AN  
6 UNAUTHORIZED PERSON OR IF THE AGENCY REASONABLY BELIEVES THAT AN  
7 UNAUTHORIZED PERSON HAS ACQUIRED THAT INFORMATION.

8           (3) A PERSON DOING BUSINESS IN THIS STATE THAT OWNS OR  
9 LICENSES COMPUTERIZED DATA THAT INCLUDE PERSONAL IDENTIFYING  
10 INFORMATION SHALL PROVIDE NOTICE OF ANY BREACH OF THE SECURITY OF  
11 THE SYSTEM FOLLOWING DISCOVERY OR NOTIFICATION OF THE BREACH IN THE  
12 SECURITY OF THE DATA TO A RESIDENT OF THIS STATE WHOSE UNENCRYPTED  
13 PERSONAL IDENTIFYING INFORMATION IS ACQUIRED BY AN UNAUTHORIZED  
14 PERSON OR IF THE PERSON REASONABLY BELIEVES THAT AN UNAUTHORIZED  
15 PERSON HAS ACQUIRED THAT INFORMATION. THE PERSON SHALL PROVIDE  
16 NOTICE IN THE MOST EXPEDIENT TIME POSSIBLE AND WITHOUT UNREASONABLE  
17 DELAY, UNLESS DELAY IS NECESSARY TO DETERMINE THE SCOPE OF THE  
18 BREACH AND RESTORE THE REASONABLE INTEGRITY OF THE DATA SYSTEM.

19           (4) A PERSON DOING BUSINESS IN THIS STATE THAT MAINTAINS  
20 COMPUTERIZED DATA THAT INCLUDE PERSONAL IDENTIFYING INFORMATION  
21 THAT THE PERSON DOES NOT OWN SHALL PROVIDE NOTICE TO THE OWNER OR  
22 LICENSEE OF THE INFORMATION OF ANY BREACH OF THE SECURITY OF THE  
23 DATA IMMEDIATELY FOLLOWING DISCOVERY, IF THE PERSONAL IDENTIFYING  
24 INFORMATION IS ACQUIRED BY AN UNAUTHORIZED PERSON OR IF THE PERSON  
25 REASONABLY BELIEVES THAT AN UNAUTHORIZED PERSON HAS ACQUIRED THAT  
26 INFORMATION.

27           (5) AN AGENCY OR PERSON DOING BUSINESS IN THIS STATE MAY

1 PROVIDE NOTICE UNDER THIS SECTION BY 1 OF THE FOLLOWING METHODS:

2 (A) WRITTEN NOTICE.

3 (B) ELECTRONIC NOTICE, IF THE NOTICE PROVIDED IS CONSISTENT  
4 WITH THE PROVISIONS REGARDING ELECTRONIC RECORDS AND SIGNATURES SET  
5 FORTH IN SECTION 101 OF TITLE I OF THE ELECTRONIC SIGNATURES IN  
6 GLOBAL AND NATIONAL COMMERCE ACT, 15 USC 7001, AND THE AGENCY OR  
7 PERSON DOES NOT HAVE SUFFICIENT CONTACT INFORMATION FOR THE  
8 INDIVIDUALS, OWNERS, OR LICENSEES IT IS REQUIRED TO NOTIFY UNDER  
9 THAT SUBSECTION TO PROVIDE EACH OF THEM WITH WRITTEN NOTICE.

10 (6) AN AGENCY OR A PERSON DOING BUSINESS IN THIS STATE THAT IS  
11 REQUIRED TO PROVIDE NOTICE TO A PERSON UNDER THIS SECTION SHALL  
12 NOTIFY THE DEPARTMENT OF ATTORNEY GENERAL, THE COMPUTER CRIMES  
13 SECTION OF THE DEPARTMENT OF STATE POLICE, AND ANY LOCAL LAW  
14 ENFORCEMENT AGENCY WITH JURISDICTION IN THE CITY, VILLAGE, OR  
15 TOWNSHIP WHERE THE AGENCY OR PERSON IS LOCATED.

16 (7) A PERSON INJURED BY A VIOLATION OF THIS SECTION MAY BRING  
17 A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION TO RECOVER  
18 ACTUAL DAMAGES AND REASONABLE ATTORNEY FEES OR SEEK INJUNCTIVE OR  
19 ANY OTHER RELIEF AVAILABLE AT LAW OR IN EQUITY.

20 (8) AS USED IN THIS SECTION:

21 (A) "AGENCY" MEANS A DEPARTMENT, BOARD, COMMISSION, OFFICE,  
22 AGENCY, AUTHORITY, OR OTHER UNIT OF STATE GOVERNMENT. THE TERM  
23 INCLUDES A STATE INSTITUTION OF HIGHER EDUCATION.

24 (B) "BREACH OF THE SECURITY OF THE SYSTEM" MEANS UNAUTHORIZED  
25 ACQUISITION OF COMPUTERIZED DATA THAT COMPROMISES THE SECURITY,  
26 CONFIDENTIALITY, OR INTEGRITY OF PERSONAL IDENTIFYING INFORMATION  
27 MAINTAINED BY AN AGENCY OR A PERSON DOING BUSINESS IN THIS STATE.

1 THE TERM DOES NOT INCLUDE GOOD FAITH ACQUISITION OF PERSONAL  
2 IDENTIFYING INFORMATION BY AN EMPLOYEE OR AGENT OF THE AGENCY OR  
3 PERSON RELATED TO THE ACTIVITIES OF THE AGENCY OR PERSON IF THE  
4 PERSONAL IDENTIFYING INFORMATION IS NOT USED OR SUBJECT TO FURTHER  
5 UNAUTHORIZED DISCLOSURE.