

HOUSE BILL No. 5923

November 6, 2014, Introduced by Rep. McCann and referred to the Committee on Energy and Technology.

A bill to amend 2004 PA 452, entitled "Identity theft protection act," by amending section 11 (MCL 445.71), as amended by 2010 PA 315, and by adding section 11a.

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

1 victim of identity theft.

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

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

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

1 (d) Extend credit to a consumer without exercising reasonable
2 procedures to verify the identity of that consumer. Compliance with
3 regulations issued for depository institutions, and to be issued
4 for other financial institutions, by the United States department
5 of treasury under section 326 of the USA patriot act of 2001, 31
6 USC 5318, is considered compliance with this subdivision. This
7 subdivision does not apply to a purchase of a credit obligation in
8 an acquisition, merger, purchase of assets, or assumption of
9 liabilities or any change to or review of an existing credit
10 account.

11 (E) SUBJECT TO SUBSECTION (4), IF THE PERSON IS A PERSON THAT
12 OWNS OR LICENSES DATA THAT ARE INCLUDED IN A DATABASE, DO ANY OF
13 THE FOLLOWING:

14 (i) FAIL TO PERMIT A CONSUMER TO REVIEW HIS OR HER PERSONAL
15 IDENTIFYING INFORMATION IN THE DATABASE.

16 (ii) FAIL TO DISPLAY AN OPT-OUT NOTICE ON THE PERSON'S WEBPAGE
17 AS REQUIRED UNDER SECTION 11A.

18 (iii) ACCEPT PAYMENT FROM A CONSUMER WHO DEMANDS TO REVIEW OR
19 REMOVE HIS OR HER PERSONAL IDENTIFYING INFORMATION.

20 (2) A person who knowingly or intentionally violates
21 subsection (1) is guilty of a misdemeanor punishable as follows:

22 (a) Except as otherwise provided in subdivisions (b) and (c),
23 by imprisonment for not more than 93 days or a fine of not more
24 than \$1,000.00, or both.

25 (b) For a second violation, by imprisonment for not more than
26 93 days or a fine of not more than \$2,000.00, or both.

27 (c) For a third or subsequent violation, by imprisonment for

1 not more than 93 days or a fine of not more than \$3,000.00, or
2 both.

3 (3) Subsection (2) does not prohibit a person from being
4 liable for any civil remedy for a violation of this act, the
5 Michigan consumer protection act, 1976 PA 331, MCL 445.901 to
6 445.922, or any other state or federal law.

7 (4) SUBSECTION (1) (E) DOES NOT APPLY TO A PERSON THAT IS A
8 FINANCIAL INSTITUTION DESCRIBED IN SECTION 12(9) OR A PERSON
9 DESCRIBED IN SECTION 12(10).

10 SEC. 11A. A PERSON THAT OWNS OR LICENSES DATA THAT ARE
11 INCLUDED IN A DATABASE SHALL CONSPICUOUSLY POST AN OPT-OUT NOTICE
12 ON THE PERSON'S WEBPAGE. THE OPT-OUT NOTICE MUST PROVIDE SPECIFIC
13 AND EASILY UNDERSTOOD INSTRUCTIONS FOR THE CONSUMER TO MAKE A
14 DEMAND ON THE PERSON'S WEBPAGE THAT HIS OR HER PERSONAL IDENTIFYING
15 INFORMATION NOT BE SHARED WITH OR SOLD TO A THIRD PARTY.