

**SUBSTITUTE FOR
HOUSE BILL NO. 6406**

A bill to amend 2004 PA 452, entitled
"Identity theft protection act,"
by amending the title and section 3 (MCL 445.63), the title as
amended by 2006 PA 566 and section 3 as amended by 2010 PA 318, and
by adding section 4; and to repeal acts and parts of acts.

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:

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

6 ~~(b) "Breach of the security of a database" or "security~~
7 ~~breach" means the unauthorized access and acquisition of data that~~
8 ~~compromises the security or confidentiality of personal information~~
9 ~~maintained by a person or agency as part of a database of personal~~
10 ~~information regarding multiple individuals. These terms do not~~
11 ~~include unauthorized access to data by an employee or other~~
12 ~~individual if the access meets all of the following:~~

13 ~~(i) The employee or other individual acted in good faith in~~
14 ~~accessing the data.~~

15 ~~(ii) The access was related to the activities of the agency or~~
16 ~~person.~~

17 ~~(iii) The employee or other individual did not misuse any~~
18 ~~personal information or disclose any personal information to an~~
19 ~~unauthorized person.~~

20 **(A)** ~~(e)~~ "Child or spousal support" means support for a child
21 or spouse, paid or provided pursuant to state or federal law under
22 a court order or judgment. Support includes, but is not limited to,
23 any of the following:

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

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

26 (iii) Child care expenses.

27 (iv) Educational expenses.

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

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

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

7 **(B)** ~~(d)~~ "Credit card" means that term as defined in section
8 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

9 ~~(c) "Data" means computerized personal information.~~

10 **(C)** ~~(f)~~ "Depository institution" means a state or nationally
11 chartered bank or a state or federally chartered savings and loan
12 association, savings bank, or credit union.

13 ~~(g) "Encrypted" means transformation of data through the use
14 of an algorithmic process into a form in which there is a low
15 probability of assigning meaning without use of a confidential
16 process or key, or securing information by another method that
17 renders the data elements unreadable or unusable.~~

18 **(D)** ~~(h)~~ "False pretenses" includes, but is not limited to, a
19 false, misleading, or fraudulent representation, writing,
20 communication, statement, or message, communicated by any means to
21 another person, that the maker of the representation, writing,
22 communication, statement, or message knows or should have known is
23 false or fraudulent. The false pretense may be a representation
24 regarding a past or existing fact or circumstance or a
25 representation regarding the intention to perform a future event or
26 to have a future event performed.

27 **(E)** ~~(i)~~ "Financial institution" means a depository

1 institution, an affiliate of a depository institution, a licensee
2 under the consumer financial services act, 1988 PA 161, MCL
3 487.2051 to 487.2072, 1984 PA 379, MCL 493.101 to 493.114, the
4 motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101
5 to 492.141, the secondary mortgage loan act, 1981 PA 125, MCL
6 493.51 to 493.81, the mortgage brokers, lenders, and servicers
7 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the
8 regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24, a seller
9 under the home improvement finance act, 1965 PA 332, MCL 445.1101
10 to 445.1431, or the retail installment sales act, 1966 PA 224, MCL
11 445.851 to 445.873, or a person subject to subtitle A of title V of
12 the Gramm-Leach-Bliley act, 15 USC 6801 to 6809.

13 **(F)** ~~(j)~~—"Financial transaction device" means that term as
14 defined in section 157m of the Michigan penal code, 1931 PA 328,
15 MCL 750.157m.

16 **(G)** ~~(k)~~—"Identity theft" means engaging in an act or conduct
17 prohibited in section 5(1).

18 **(H)** ~~(l)~~—"Interactive computer service" means an information
19 service or system that enables computer access by multiple users to
20 a computer server, including, but not limited to, a service or
21 system that provides access to the internet or to software services
22 available on a server.

23 **(I)** ~~(m)~~—"Law enforcement agency" means that term as defined in
24 section 2804 of the public health code, 1978 PA 368, MCL 333.2804.

25 **(J)** ~~(n)~~—"Local registrar" means that term as defined in
26 section 2804 of the public health code, 1978 PA 368, MCL 333.2804.

27 **(K)** ~~(o)~~—"Medical records or information" includes, but is not

1 limited to, medical and mental health histories, reports,
2 summaries, diagnoses and prognoses, treatment and medication
3 information, notes, entries, and ~~x-rays~~ **X-RAYS** and other imaging
4 records.

5 (l) ~~(p)~~ "Person" means an individual, partnership,
6 corporation, limited liability company, association, or other legal
7 entity.

8 (M) ~~(q)~~ "Personal identifying information" means a name,
9 number, or other information that is used for the purpose of
10 identifying a specific person or providing access to a person's
11 financial accounts, including, but not limited to, a person's name,
12 address, telephone number, driver license or state personal
13 identification card number, ~~social security~~ **SOCIAL SECURITY** number,
14 place of employment, employee identification number, employer or
15 taxpayer identification number, government passport number, health
16 insurance identification number, mother's maiden name, demand
17 deposit account number, savings account number, financial
18 transaction device account number or the person's account password,
19 any other account password in combination with sufficient
20 information to identify and access the account, automated or
21 electronic signature, biometrics, stock or other security
22 certificate or account number, credit card number, vital record, or
23 medical records or information.

24 ~~—— (r) "Personal information" means the first name or first
25 initial and last name linked to 1 or more of the following data
26 elements of a resident of this state:~~

27 ~~—— (i) Social security number.~~

1 ~~(ii) Driver license number or state personal identification~~
2 ~~card number.~~

3 ~~(iii) Demand deposit or other financial account number, or~~
4 ~~credit card or debit card number, in combination with any required~~
5 ~~security code, access code, or password that would permit access to~~
6 ~~any of the resident's financial accounts.~~

7 (N) ~~(s)~~ "Public utility" means that term as defined in section
8 1 of 1972 PA 299, MCL 460.111.

9 ~~(t) "Redact" means to alter or truncate data so that no more~~
10 ~~than 4 sequential digits of a driver license number, state personal~~
11 ~~identification card number, or account number, or no more than 5~~
12 ~~sequential digits of a social security number, are accessible as~~
13 ~~part of personal information.~~

14 (O) ~~(u)~~ "State registrar" means that term as defined in
15 section 2805 of the public health code, 1978 PA 368, MCL 333.2805.

16 (P) ~~(v)~~ "Trade or commerce" means that term as defined in
17 section 2 of the Michigan consumer protection act, ~~1971~~ 1976 PA
18 331, MCL 445.902.

19 (Q) ~~(w)~~ "Vital record" means that term as defined in section
20 2805 of the public health code, 1978 PA 368, MCL 333.2805.

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

24 **SEC. 4. AN ENTITY THAT IS SUBJECT TO OR REGULATED UNDER THE**
25 **INSURANCE CODE OF 1956, 1956 PA 218, MCL 500.100 TO 500.8302, IS**
26 **EXEMPT FROM THIS ACT.**

27 Enacting section 1. Sections 12, 12a, and 12b of the identity

1 theft protection act, 2004 PA 452, MCL 445.72, 445.72a, and
2 445.72b, are repealed.

3 Enacting section 2. This amendatory act takes effect 90 days
4 after the date it is enacted into law.

5 Enacting section 3. This amendatory act does not take effect
6 unless House Bill No. 6405 of the 99th Legislature is enacted into
7 law.