

SENATE BILL NO. 611

October 29, 2019, Introduced by Senators MACGREGOR, HOLLIER and JOHNSON and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1982 PA 455, entitled "The library privacy act," by amending the title and sections 2, 3, and 4 (MCL 397.602, 397.603, and 397.604), section 2 as amended by 1999 PA 37 and section 3 as amended by 1996 PA 188.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to provide for the confidentiality of certain library
3 records; ~~and to provide for certain exceptions to the~~
4 **confidentiality of those library records;** to provide for the

1 selection and use of library materials; **and to provide remedies.**

2 Sec. 2. As used in this act:

3 (a) "Computer" means any connected, directly interoperable or
4 interactive device, equipment, or facility that uses a computer
5 program or other instructions to perform specific operations
6 including logical, arithmetic, or memory functions with or on
7 computer data or a computer program, and that can store, retrieve,
8 alter, or communicate the results of the operations, to a person,
9 computer program, computer, computer system, or computer network.

10 (b) "Computer network" means the interconnection of hardware
11 or wireless communication lines with a computer through remote
12 terminals, or a complex consisting of 2 or more interconnected
13 computers.

14 (c) "Computer program" means a series of internal or external
15 instructions communicated in a form acceptable to a computer that
16 directs the functioning of a computer, computer system, or computer
17 network in a manner designed to provide or produce products or
18 results from the computer, computer system, or computer network.

19 (d) "Computer system" means a set of related, connected or
20 unconnected, computer equipment, devices, software, or hardware.

21 **(e) "Criminal activity alleged to have occurred at the**
22 **library" means any activity or alleged activity that would**
23 **constitute a violation of any law or ordinance that occurs in the**
24 **library building, on library property, or using library property,**
25 **materials, or resources.**

26 (f) ~~(e)~~—"Device" includes, but is not limited to, an
27 electronic, magnetic, electrochemical, biochemical, hydraulic,
28 optical, or organic object that performs input, output, or storage
29 functions by the manipulation of electronic, magnetic, or other

1 impulses.

2 (g) ~~(f)~~ "Harmful to minors" means that term as ~~it is~~ defined
3 in section 4 of 1978 PA 33, MCL 722.674.

4 (h) ~~(g)~~ "Internet" means that term as defined in ~~section 230~~
5 ~~of title II of the communications act of 1934, chapter 652, 110~~
6 ~~Stat. 137, 47 U.S.C. USC 230.~~

7 (i) ~~(h)~~ "Library" ~~includes~~ **means** a library that is established
8 by ~~the~~ **this** state ~~;~~ **or** by a county, city, township, village, school
9 district, or other local unit of government or authority or
10 combination of local units of governments and authorities, ~~;~~ a
11 community college district, ~~;~~ **or** a college or university, ~~;~~ **or** any
12 a private library open to the public.

13 (j) ~~(i)~~ "Library record" means a document, record, or other
14 method of storing information retained by a library that contains
15 information that personally identifies a library patron, including
16 the patron's name, address, or telephone number, or that identifies
17 a person as having requested or obtained specific materials from a
18 library. Library record does not include nonidentifying material
19 that may be retained for the purpose of studying or evaluating the
20 circulation of library materials in general.

21 (k) ~~(j)~~ "Minor" means an individual who is less than 18 years
22 of age.

23 (l) ~~(k)~~ "Obscene" means that term as ~~it is~~ defined in section 2
24 of 1984 PA 343, MCL 752.362.

25 (m) ~~(l)~~ "Sexually explicit matter" means that term as ~~it is~~
26 defined in section 3 of 1978 PA 33, MCL 722.673.

27 (n) ~~(m)~~ "Terminal" means a device used to access the internet
28 or a computer, computer program, computer network, or computer
29 system.

1 Sec. 3. (1) ~~Except as provided in subsection (2), a~~ **A** library
2 record is not subject to the disclosure requirements of the freedom
3 of information act, ~~Act No. 442 of the Public Acts of~~ **442 PA** 1976,
4 ~~being sections MCL 15.231 to 15.246. of the Michigan Compiled Laws.~~

5 (2) ~~Unless ordered by a court after giving the affected~~
6 ~~library notice of the request and an opportunity to be heard on the~~
7 ~~request, a~~ **A** library or an employee or agent of a library shall not
8 release or disclose a library record or portion of a library record
9 to a person without the written consent of the person liable for
10 payment for or return of the materials identified in that library
11 record, **unless 1 of the following exceptions applies:**

12 **(a) A court has ordered the release or disclosure after giving**
13 **the affected library notice of the request and an opportunity to be**
14 **heard on the request.**

15 **(b) The release or disclosure is permitted under subsection**
16 **(5).**

17 (3) The procedure and form of giving **the** written consent
18 described in subsection (2) may be determined by the library.

19 (4) A library may appear and be represented by counsel at a
20 hearing described in subsection (2).

21 **(5) A library may disclose library records without a court**
22 **order or the written consent described in subsection (2) under any**
23 **of the following circumstances:**

24 **(a) Upon the request of a law enforcement officer who is**
25 **investigating criminal activity alleged to have occurred at the**
26 **library or if the library requests the assistance of a law**
27 **enforcement officer regarding criminal activity alleged to have**
28 **occurred at the library, the library may disclose to the law**
29 **enforcement officer any library record pertinent to the alleged**

1 criminal activity. The library director and any other person
2 designated by the library board or commission is authorized to
3 determine whether to disclose library records subject to this
4 subdivision. The library is not required to release library records
5 under this subdivision and may require the law enforcement officer
6 to obtain written consent or an order of the court as required in
7 subsection (2).

8 (b) The library may report information about the delinquent
9 account of a patron who borrows or uses the library's materials,
10 resources, or services to a collection agency under contract with
11 the library. The library shall provide only the library records
12 necessary to return overdue or stolen materials or collect fines.

13 (c) The library may disclose library records to other
14 libraries or to library cooperatives for the purpose of conducting
15 interlibrary loans. The library records must be limited to those
16 required for providing interlibrary loans.

17 Sec. 4. A library or an agent ~~or employee~~ of a library which
18 **that** violates section 3 ~~shall be liable~~ **is subject to liability** to
19 the person identified in a record that is improperly released or
20 disclosed. The person identified may bring a civil action **against**
21 **the library or agent** for actual damages or \$250.00, whichever is
22 greater; reasonable attorney fees; and the costs of bringing the
23 action. **If the violation is committed by an employee of the library**
24 **acting in the scope of his or her duties, the person identified may**
25 **bring the action against the library only, and the damages, fees,**
26 **and costs are to be assessed against the library and are not to be**
27 **assessed against the employee personally. A civil action under this**
28 **section must be brought within 180 days of the release or**
29 **disclosure.**