

**SUBSTITUTE FOR
SENATE BILL NO. 888**

A bill to amend 2004 PA 452, entitled
"Identity theft protection act,"
by amending sections 3, 12, and 12b (MCL 445.63, 445.72, and
445.72b), section 3 as amended by 2010 PA 318 and sections 12 and
12b as amended by 2010 PA 315, and by adding sections 11a, 11b, 20,
20a, 20b, and 20c; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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



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

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

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

12 ~~(iii) The employee or other individual did not misuse any~~
 13 ~~personal information or disclose any personal information to an~~
 14 ~~unauthorized person.~~

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

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

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

21 (iii) Child care expenses.

22 (iv) Educational expenses.

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

25 (vi) Repayment of genetic testing expenses ~~7~~ under the
 26 paternity act, 1956 PA 205, MCL 722.711 to 722.730.

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

29 **(c)** ~~(d)~~ "Credit card" means that term as defined in section



1 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

2 (d) ~~(e)~~—"Data" means computerized personal information **or**
3 **personal information contained in any other medium.**

4 (e) ~~(f)~~—"Depository institution" means a state or nationally
5 chartered bank or a state or federally chartered savings and loan
6 association, savings bank, or credit union.

7 (f) ~~(g)~~—"Encrypted" means transformation of data through the
8 use of an algorithmic process into a form in which there is a low
9 probability of assigning meaning without use of a confidential
10 process or key, or securing information by another method that
11 renders the data elements unreadable or unusable.

12 (g) ~~(h)~~—"False pretenses" includes, but is not limited to, a
13 false, misleading, or fraudulent representation, writing,
14 communication, statement, or message, communicated by any means to
15 another person, that the maker of the representation, writing,
16 communication, statement, or message knows or should have known is
17 false or fraudulent. The false pretense may be a representation
18 regarding a past or existing fact or circumstance or a
19 representation regarding the intention to perform a future event or
20 to have a future event performed.

21 (h) ~~(i)~~—"Financial institution" means ~~a~~**any of the following:**

22 (i) **A** depository institution. ~~an~~

23 (ii) **An** affiliate of a depository institution. ~~a~~

24 (iii) **A** licensee under **any of the following:**

25 (A) **The** consumer financial services act, 1988 PA 161, MCL
26 487.2051 to 487.2072. ~~τ~~

27 (B) 1984 PA 379, MCL 493.101 to 493.114. ~~the~~

28 (C) **The** motor vehicle sales finance act, 1950 (Ex Sess) PA 27,
29 MCL 492.101 to 492.141. ~~the~~



1 **(D) The** secondary mortgage loan act, 1981 PA 125, MCL 493.51
2 to 493.81. ~~the~~

3 **(E) The** mortgage brokers, lenders, and servicers licensing
4 act, 1987 PA 173, MCL 445.1651 to 445.1684. ~~or the~~

5 **(F) The** regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24.
6 ~~a~~

7 **(iv) A** seller under **either of the following:**

8 **(A) The** home improvement finance act, 1965 PA 332, MCL
9 445.1101 to 445.1431. ~~or the~~

10 **(B) The** retail installment sales act, 1966 PA 224, MCL 445.851
11 to 445.873. ~~or a~~

12 **(v) A** person subject to ~~subtitle A of title V of the Gramm-~~
13 ~~Leach-Bliley act,~~ 15 USC 6801 to 6809.

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

17 **(j) (k)-**"Identity theft" means engaging in an act or conduct
18 prohibited in section 5(1).

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

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

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

28 **(n) (o)-**"Medical records or information" includes, but is not
29 limited to, medical and mental health histories, reports,



1 summaries, diagnoses and prognoses, treatment and medication
 2 information, notes, entries, and ~~x-rays~~ **X-rays** and other imaging
 3 records.

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

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

23 (q) ~~(r)~~ "Personal information", **except as otherwise provided**
 24 **in subdivision (r)**, means the first name or first initial and last
 25 name linked to 1 or more of the following ~~data~~ elements of a
 26 resident of this state:

27 (i) **A** ~~social security~~ **Security** number.

28 (ii) ~~Driver~~ **A driver** license number, ~~or~~ state personal
 29 identification card number, **passport number, or other unique**



1 identification number issued on a government document that is used
2 to verify the identity of an individual.

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

7 (iv) **Any individually identifiable information contained in the**
8 **individual's current or historical record of medical history,**
9 **medical treatment, or diagnosis created by a health care**
10 **professional.**

11 (v) **A health insurance policy number or subscriber**
12 **identification number and any unique identifier used by a health**
13 **insurer to identify an individual.**

14 (vi) **A username or email address, in combination with a**
15 **password or security question and answer, that would permit access**
16 **to an online account that is reasonably likely to contain or is**
17 **used to obtain personal identifying information.**

18 (vii) **Any genetic information or biometric information that is**
19 **used to authenticate or ascertain the individual's identity, such**
20 **as a fingerprint, voice print, retina, or iris image.**

21 (r) **Personal information does not include either of the**
22 **following:**

23 (i) **Any information about an individual that has been lawfully**
24 **made public by a federal, state, or local government record or**
25 **widely distributed media.**

26 (ii) **Any information that is truncated, encrypted, secured, or**
27 **modified by any other method or technology that removes elements**
28 **that personally identify an individual or that otherwise renders**
29 **the information unusable, including encryption of the data or**



1 device containing the information, unless the person or agency
2 knows or reasonably believes that the encryption key or security
3 credential that could render the personal information readable or
4 usable has been accessed or acquired with the information.

5 (s) "Public utility" means that term as defined in section 1
6 of 1972 PA 299, MCL 460.111.

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

12 (u) "Security breach" means the unauthorized acquisition of
13 data that compromises the security or confidentiality of personal
14 information maintained by a person or agency. Security breach does
15 not include unauthorized access to data by an employee or other
16 individual if the access meets all of the following:

17 (i) The employee or other individual acted in good faith in
18 accessing the data.

19 (ii) The access was related to the activities of the agency or
20 person.

21 (iii) The employee or other individual did not misuse any
22 personal information or disclose any personal information to an
23 unauthorized person.

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

26 (w) "Third-party agent" means either of the following:

27 (i) A person that maintains a database that includes personal
28 information that the person does not own or license.

29 (ii) A person that is otherwise permitted to access personal



1 information owned or licensed by another person or agency in
 2 connection with providing services under an agreement with the
 3 other person or agency.

4 (x) ~~(v)~~—"Trade or commerce" means that term as defined in
 5 section 2 of the Michigan consumer protection act, ~~1971~~—1976 PA
 6 331, MCL 445.902.

7 (y) ~~(w)~~—"Vital record" means that term as defined in section
 8 2805 of the public health code, 1978 PA 368, MCL 333.2805.

9 (z) ~~(x)~~—"Webpage" means a location that has a uniform resource
 10 locator or URL with respect to the world wide web or another
 11 location that can be accessed on the internet.

12 **Sec. 11a. (1) A person or an agency that owns, possesses,**
 13 **collects, or accesses personal information shall implement and**
 14 **maintain reasonable security procedures to protect and safeguard**
 15 **personal information from unlawful use or disclosure.**

16 (2) The security procedures described in subsection (1) must
 17 do all of the following:

18 (a) Identify at least 1 owner, manager, or employee that will
 19 coordinate the person's or agency's security procedures.

20 (b) Identify internal and external risks for security
 21 breaches.

22 (c) Include appropriate safeguards for personal information
 23 that are designed to address the risks identified in subdivision
 24 (b) .

25 (d) Provide for assessments of the effectiveness of the
 26 safeguards described in subdivision (c) .

27 (e) Contractually require each service provider of the person
 28 or agency to maintain appropriate safeguards for personal
 29 information by adhering to the National Institute of Standards and



1 Technology's Cybersecurity Framework 2.0 or another industry
2 standard cybersecurity framework.

3 (f) Evaluate and adjust security procedures to account for
4 changes in circumstances affecting the security of personal
5 information.

6 (3) The reasonableness of the security procedures described in
7 subsection (1) must be determined considering all of the following:

8 (a) The size of the person or agency.

9 (b) The amount of personal information that is owned,
10 possessed, collected, or accessed by the person or agency.

11 (c) The type of activities for which the personal information
12 is owned, possessed, collected, or accessed by the person or
13 agency.

14 (d) The cost to implement and maintain the security procedures
15 compared to the person's or agency's resources.

16 (4) A person or agency that reasonably conforms to an industry
17 recognized cybersecurity framework is considered to be in
18 compliance with this section if either of the following are
19 satisfied:

20 (a) The cybersecurity program is the current version of the
21 National Institute of Standards and Technology's Cybersecurity
22 Framework 2.0.

23 (b) The person or agency is regulated by this state, the
24 federal government, or both, or is otherwise subject to the
25 requirements of and reasonably conforms to the entirety of the
26 current version of any of the following laws or regulations:

27 (i) The security requirements of the health insurance
28 portability and accountability act of 1996, Public Law 104-191,
29 promulgated under 45 CFR part 164 subpart C.



1 (ii) Title V of the Gramm-Leach-Bliley act, 15 USC 6801 to
2 6809.

3 (iii) The federal information security modernization act of
4 2014, Public Law 113-283.

5 (iv) The health information technology for economic and
6 clinical health act, 45 CFR part 162.

7 Sec. 11b. If a person or an agency that owns or licenses
8 personal information determines that a security breach has or is
9 reasonably believed to have occurred, the person or agency shall
10 conduct a good-faith and prompt investigation that includes doing
11 all of the following:

12 (a) Assessing the nature and scope of the security breach.

13 (b) Identifying the personal information that was involved in
14 the security breach and the identity of the individuals whose
15 personal information was involved in the security breach.

16 (c) Determining whether the personal information identified
17 under subdivision (b) has been acquired or is reasonably believed
18 to have been accessed or acquired by an unauthorized person.

19 (d) Identifying and implementing measures to restore the
20 security and confidentiality of any system compromised in the
21 security breach.

22 Sec. 12. (1) If, on or after the effective date of the 2024
23 amendatory act that amended this subsection, a third-party agent
24 discovers a security breach that involves data that is owned or
25 licensed by another person or agency, the third-party agent shall,
26 without unreasonable delay following discovery, provide a notice of
27 the security breach to the person or agency, and shall provide any
28 other information that is necessary for the person or agency to
29 comply with the notice requirements under subsections (2) and (3).



1 ~~(1)~~ ~~Unless the person or agency determines that the~~
2 security breach has not or is not likely to cause substantial loss
3 or injury to, or result in identity theft with respect to, 1 or
4 more residents of this state, **Subject to subsections (5) to (9), a**
5 person or **an** agency that owns or licenses data that ~~are~~**is** included
6 in a database that discovers a security breach **on or after the**
7 **effective date of the 2024 amendatory act that amended subsection**
8 **(1),** or receives notice of a security breach under subsection ~~(2),~~
9 **(1) on or after the effective date of the 2024 amendatory act that**
10 **amended subsection (1),** shall provide a notice of the security
11 breach to each resident of this state who meets 1 or more of the
12 following **criteria, if the person or agency knows, should know, or**
13 **should have known that the security breach has or could result in**
14 **identity theft or fraud affecting the resident:**

15 (a) ~~That~~**The** resident's unencrypted and unredacted personal
16 information was accessed ~~and~~**or** acquired by an unauthorized person.

17 (b) ~~That~~**The** resident's personal information was accessed ~~and~~
18 **or** acquired in encrypted form by a person with unauthorized access
19 to the encryption key.

20 ~~(2) Unless the person or agency determines that the security~~
21 ~~breach has not or is not likely to cause substantial loss or injury~~
22 ~~to, or result in identity theft with respect to, 1 or more~~
23 ~~residents of this state, a person or agency that maintains a~~
24 ~~database that includes data that the person or agency does not own~~
25 ~~or license that discovers a breach of the security of the database~~
26 ~~shall provide a notice to the owner or licensor of the information~~
27 ~~of the security breach.~~

28 ~~(3) In determining whether a security breach is not likely to~~
29 ~~cause substantial loss or injury to, or result in identity theft~~



1 ~~with respect to, 1 or more residents of this state under subsection~~
 2 ~~(1) or (2), a person or agency shall act with the care an~~
 3 ~~ordinarily prudent person or agency in like position would exercise~~
 4 ~~under similar circumstances.~~

5 (3) Subject to subsection (8), if a person or an agency is
 6 required to provide notice under subsection (2) to 100 or more
 7 residents of this state, the person or agency must also provide
 8 written notice of the security breach to the attorney general not
 9 later than the date notice is provided under subsection (2) or
 10 receipt of notice under subsection (1).

11 (4) The written notice described in subsection (3) must
 12 include all of the following:

13 (a) A synopsis of the events surrounding the security breach.

14 (b) The approximate number of residents of this state that the
 15 person or agency is required to notify under subsection (2).

16 (c) A description of the timing, distribution, and content of
 17 the notice required under subsection (2).

18 (d) The steps taken to investigate the security breach.

19 (e) The steps taken to prevent a similar security breach.

20 (f) A description of any services related to the security
 21 breach that the person or agency is offering under subsection
 22 (7) (h) and a description of the information being provided under
 23 subsection (7) (i) and (j).

24 (g) A description of how a resident of this state may obtain
 25 additional information about the security breach from the person or
 26 agency.

27 (5) ~~(4) A~~ Except as otherwise provided in this subsection, a
 28 person or ~~an~~ agency shall provide ~~any a~~ notice required under ~~this~~
 29 ~~section~~ subsection (2) without unreasonable delay, ~~A~~ but not



1 later than 45 days after the determination of the breach. The
 2 person or agency may delay providing notice without violating this
 3 subsection if either of the following is met:

4 (a) A delay is necessary ~~in order for the person or agency to~~
 5 ~~take any measures necessary to determine~~ **discover** the scope of the
 6 security breach ~~and or~~ restore the ~~reasonable~~ integrity of the
 7 database. ~~computer system~~. However, the agency or person shall
 8 ~~provide the notice required under this subsection without~~
 9 ~~unreasonable delay~~ **must be provided as soon as possible** after the
 10 person or agency completes the measures necessary to determine
 11 **discovery of** the scope of the security breach and ~~restore or the~~
 12 **restoration of** the ~~reasonable~~ integrity of the database. ~~computer~~
 13 **system**.

14 (b) A law enforcement agency ~~determines and advises the agency~~
 15 ~~or person that providing a notice~~ **requests to delay disclosure**
 16 **because the disclosure** will impede a criminal or civil
 17 investigation or jeopardize ~~homeland or~~ national security. However,
 18 ~~the agency or person shall provide the notice required under this~~
 19 ~~section without unreasonable delay~~ **subsection must be provided**
 20 **without unreasonable delay** after the law enforcement agency
 21 determines that providing the notice will no longer impede the
 22 investigation or jeopardize ~~homeland or~~ national security.

23 (6) ~~(5)~~ Except as provided in subsection ~~(11)~~, ~~an agency or~~
 24 **(12)**, a person **or an agency** shall provide ~~any a~~ notice required
 25 under ~~this section~~ **subsection (2)** by providing 1 or more of the
 26 following to the recipient:

27 (a) Written notice sent to the recipient at the recipient's
 28 postal address in the records of the agency or person.

29 (b) Written notice sent electronically to the recipient if **the**



1 **recipient's email account is not affected by the security breach**
 2 **and** any of the following are met:

3 (i) The recipient has expressly consented to receive electronic
 4 notice.

5 (ii) The person or agency has an existing business relationship
 6 with the recipient that includes periodic ~~electronic mail~~ **email**
 7 communications and based on those communications the person or
 8 agency reasonably believes that ~~it~~ **the person or agency** has the
 9 recipient's current ~~electronic mail~~ **email** address.

10 (iii) The person or agency conducts ~~its~~ business primarily
 11 through internet account transactions or on the internet.

12 (c) If not otherwise prohibited by state or federal law,
 13 notice given by telephone by an individual who represents the
 14 person or agency if all of the following are met:

15 (i) The notice is not given in whole or in part by use of a
 16 recorded message.

17 (ii) The recipient has expressly consented to receive notice by
 18 telephone, or if the recipient has not expressly consented to
 19 receive notice by telephone, the person or agency also provides
 20 notice under subdivision (a) or (b) if the notice by telephone does
 21 not result in a live conversation between the individual
 22 representing the person or agency and the recipient ~~within~~ **not**
 23 **later than** 3 business days after the initial attempt to provide
 24 telephonic notice.

25 (d) Substitute notice, if the person or agency demonstrates
 26 that the cost of providing notice under subdivision (a), (b), or
 27 (c) will exceed \$250,000.00 or that the person or agency has to
 28 provide notice to more than 500,000 residents of this state. A
 29 person or agency provides substitute notice under this subdivision



1 by doing all of the following:

2 (i) If the person or agency has ~~electronic mail~~ **email** addresses
3 for any of the residents of this state who are entitled to receive
4 the notice, providing electronic notice to those residents.

5 (ii) If the person or agency maintains a website, conspicuously
6 posting the notice on that website.

7 (iii) Notifying major statewide media. A notification under this
8 subparagraph ~~shall~~ **must** include a telephone number or a website
9 address that a person may use to obtain additional assistance and
10 information.

11 (7) ~~(6)~~ A notice under ~~this section shall do~~ **subsection (2)**
12 **must meet** all of the following **requirements, as applicable:**

13 (a) For a notice ~~provided under~~ **as described in** subsection
14 ~~(5)(a)~~ **(6) (a)** or (b), **it must** be written in a clear and conspicuous
15 manner and contain the content required under subdivisions (c) to
16 (g), **and (h), (i), and (j), if applicable.**

17 (b) For a notice ~~provided under~~ **as described in** subsection
18 ~~(5)(e)~~, **(6) (c)**, **it must** clearly communicate the content required
19 under subdivisions (c) to (g), **and (h), (i), and (j), if**
20 **applicable,** to the recipient of the telephone call.

21 (c) ~~Describe~~ **It must describe** the security breach in general
22 terms.

23 (d) ~~Describe~~ **It must describe** the type of personal information
24 that is the subject of the unauthorized access or use.

25 (e) If applicable, **it must** generally describe what the agency
26 or person providing the notice has done to protect data from
27 further security breaches.

28 (f) ~~Include~~ **It must include** a telephone number where a notice
29 recipient may obtain assistance or additional information.



1 (g) ~~Remind~~ **It must remind** notice recipients of the need to
2 remain vigilant for incidents of fraud and identity theft.

3 (h) **If the Social Security number or taxpayer identification**
4 **number of a resident was accessed or acquired, or is reasonably**
5 **believed to have been accessed or acquired, in the security breach,**
6 **it must offer appropriate identity theft prevention services and,**
7 **if applicable, identity theft mitigation services that must be**
8 **provided at no charge to the resident for not less than 24 months.**

9 (i) **It must provide any information that is necessary for a**
10 **resident described in subdivision (h) to enroll in the identity**
11 **theft prevention services and identity theft mitigations services,**
12 **as applicable.**

13 (j) **It must provide information on how a resident described in**
14 **subdivision (h) can place a credit freeze on the resident's credit**
15 **file.**

16 (8) ~~(7)~~ ~~A person or agency~~ **third-party agent** may provide any
17 notice required under ~~this section pursuant to~~ **subsection (2), (3),**
18 **or (9) in accordance with** an agreement between ~~that~~ **the third-party**
19 **agent and a person or agency, and another person or agency, if the
20 notice provided ~~pursuant to~~ **under** the agreement does not conflict
21 with any provision of this section.**

22 (9) ~~(8)~~ ~~Except as provided in this subsection, and subject to~~
23 **subsection (8),** after a person or **an** agency provides a notice under
24 ~~this section,~~ **subsection (2),** the person or agency shall notify
25 each consumer reporting agency that compiles and maintains files on
26 consumers on a nationwide basis, as defined in 15 USC 1681a(p), of
27 the security breach without unreasonable delay. A notification
28 under this subsection ~~shall~~ **must** include the number of notices that
29 the person or agency provided to residents of this state **under**



1 **subsection (2)** and the timing of those notices. This subsection
 2 does not apply if either of the following is met:

3 (a) The person or agency is required under ~~this section~~
 4 **subsection (2)** to provide notice of a security breach to 1,000 or
 5 fewer residents of this state.

6 (b) The person or agency is subject to 15 USC 6801 to 6809.

7 **(10)** ~~(9)~~—A financial institution that is subject to, and has
 8 notification procedures in place that are subject to examination by
 9 the financial institution's appropriate regulator for compliance
 10 with, the interagency guidance on response programs for
 11 unauthorized access to customer information and customer notice
 12 prescribed by the ~~board of governors of the federal reserve system~~
 13 **Board of Governors of the Federal Reserve System** and the other
 14 federal bank and thrift regulatory agencies, or similar guidance
 15 prescribed and adopted by the ~~national credit union administration,~~
 16 **National Credit Union Administration**, and its affiliates, is
 17 considered to be in compliance with this section.

18 **(11)** ~~(10)~~—A person or **an** agency that is subject to and
 19 complies with the health insurance portability and accountability
 20 act of 1996, Public Law 104-191, and with regulations promulgated
 21 under that act, 45 CFR parts 160 and 164, for the prevention of
 22 unauthorized access to customer information and customer notice is
 23 considered to be in compliance with this section.

24 **(12)** ~~(11)~~—A public utility that sends monthly billing or
 25 account statements to the postal address of ~~its~~ **the public**
 26 **utility's** customers may provide notice of a security breach to ~~its~~
 27 customers in the manner described in subsection ~~(5)~~, **(6)**, or
 28 alternatively by providing all of the following:

29 (a) As applicable, notice as described in subsection



1 ~~(5)(b)~~. **(6)(b)** .

2 (b) Notification to the media reasonably calculated to inform
3 the customers of the public utility of the security breach.

4 (c) Conspicuous posting of the notice of the security breach
5 on the website of the public utility.

6 (d) Written notice sent in conjunction with the monthly
7 billing or account statement to the customer at the customer's
8 postal address in the records of the public utility.

9 **(13)** ~~(12)~~—A person that provides notice of a security breach
10 in the manner described in this section when a security breach has
11 not occurred, with the intent to defraud, is guilty of a
12 misdemeanor punishable as follows:

13 (a) Except as otherwise provided under subdivisions (b) and
14 (c), by imprisonment for not more than 93 days or a fine of not
15 more than \$250.00 for each violation, or both.

16 (b) For a second violation, by imprisonment for not more than
17 93 days or a fine of not more than \$500.00 for each violation, or
18 both.

19 (c) For a third or subsequent violation, by imprisonment for
20 not more than 93 days or a fine of not more than \$750.00 for each
21 violation, or both.

22 ~~(13) Subject to subsection (14), a person that knowingly fails~~
23 ~~to provide any notice of a security breach required under this~~
24 ~~section may be ordered to pay a civil fine of not more than \$250.00~~
25 ~~for each failure to provide notice. The attorney general or a~~
26 ~~prosecuting attorney may bring an action to recover a civil fine~~
27 ~~under this section.~~

28 ~~(14) The aggregate liability of a person for civil fines under~~
29 ~~subsection (13) for multiple violations of subsection (13) that~~



1 ~~arise from the same security breach shall not exceed \$750,000.00.~~

2 **(14)** ~~(15) Subsections (12) and (13) do~~ **Subsection (13) does**
3 not affect the availability of any civil remedy for a violation of
4 state or federal law.

5 **(15)** ~~(16)~~ This section applies to the discovery or
6 notification of a **security** breach ~~of the security of a database~~
7 that occurs on or after July 2, 2006.

8 **(16)** ~~(17)~~ This section does not apply to the access or
9 acquisition by a person or **an** agency of federal, state, or local
10 government records or documents lawfully made available to the
11 general public.

12 **(17)** ~~(18)~~ This section deals with subject matter that is of
13 statewide concern, and any charter, ordinance, resolution,
14 regulation, rule, or other action by a municipal corporation or
15 other political subdivision of this state to regulate, directly or
16 indirectly, any matter expressly set forth in this section is
17 preempted.

18 **(18) For purposes of this section, residency must be**
19 **determined by the principal mailing address of an individual, as**
20 **determined by a record of the person or agency.**

21 Sec. 12b. (1) A person shall not distribute an advertisement
22 or make any other solicitation that misrepresents to the recipient
23 that a security breach has occurred that may affect the recipient.

24 (2) A person shall not distribute an advertisement or make any
25 other solicitation that is substantially similar to a notice
26 required under section ~~12(5)~~ **12 (2)**, or by federal law, if the form
27 of that notice is prescribed by state or federal law, rule, or
28 regulation.

29 (3) A person who knowingly or intentionally violates this



1 section is guilty of a misdemeanor punishable as follows:

2 (a) Except as otherwise provided in subdivisions (b) and (c),
3 by imprisonment for not more than 93 days or a fine of not more
4 than \$1,000.00 for each violation, or both.

5 (b) For a second violation, by imprisonment for not more than
6 93 days or a fine of not more than \$2,000.00 for each violation, or
7 both.

8 (c) For a third or subsequent violation, by imprisonment for
9 not more than 93 days or a fine of not more than \$3,000.00 for each
10 violation, or both.

11 (4) Subsection (3) does not affect the availability of any
12 civil remedy for a violation of this section or any other state or
13 federal law.

14 **Sec. 20. (1) If the attorney general has authority to**
15 **institute a civil action or proceeding under this act, the attorney**
16 **general may accept an assurance of discontinuance of a method, act,**
17 **or practice that is alleged to be unlawful from the person or**
18 **agency that is alleged to have engaged, be engaging, or be about to**
19 **engage in the method, act, or practice.**

20 (2) An assurance of discontinuance under subsection (1) does
21 not constitute an admission of guilt and may not be introduced in
22 any other proceeding.

23 (3) An assurance of discontinuance under subsection (1) may
24 include a stipulation for any of the following:

25 (a) The voluntary payment by the person for the costs of
26 investigation and reasonable attorney fees.

27 (b) An amount to be held in escrow pending the outcome of an
28 action.

29 (c) An amount for restitution to any aggrieved person.



1 (4) An assurance of discontinuance under subsection (1) must
 2 be in writing and may be filed with the Ingham County circuit
 3 court, and the clerk of the court shall maintain a record of the
 4 filings.

5 (5) Unless rescinded by the parties or voided by a court for
 6 good cause, the assurance of discontinuance under subsection (1)
 7 may be enforced in the circuit court by the parties to the
 8 assurance of discontinuance.

9 (6) The assurance of discontinuance under subsection (1) may
 10 be modified by the parties by a written agreement signed by all
 11 parties or by a court for good cause.

12 Sec. 20a. (1) If the attorney general has reasonable cause to
 13 believe that a person or an agency has information or is in
 14 possession, custody, or control of any document or object that is
 15 relevant to an investigation of a violation of this act, the
 16 attorney general may, before bringing any action under this act,
 17 serve the person with a written demand to do 1 or more of the
 18 following:

19 (a) Appear and be examined under oath.

20 (b) Answer interrogatories.

21 (c) Produce the document or object for inspection and copying.

22 (2) A demand must contain all of the following:

23 (a) A description of the conduct constituting the violation of
 24 this act being investigated by the attorney general.

25 (b) A summary of subsections (3) and (4).

26 (c) If the demand requires the appearance of the person, the
 27 demand must also include all of the following:

28 (i) A reasonable time and place for the appearance.

29 (ii) A notice that the person may file an objection to or



1 reason for not complying with the demand with the attorney general
2 on or before the time described in subparagraph (i).

3 (d) If the demand requires written interrogatories, the demand
4 must also include all of the following:

5 (i) A copy of the written interrogatories.

6 (ii) A reasonable time within which the person must answer the
7 written interrogatories.

8 (iii) A notice that the person may file an objection to or
9 reason for not complying with the demand with the attorney general
10 on or before the time described in subparagraph (ii).

11 (e) If the demand requires the production of a document or
12 object, the demand must also include all of the following:

13 (i) A description of the document or object with sufficient
14 definiteness to permit the document or object to be fairly
15 identified by the person.

16 (ii) A reasonable time and place for production of the document
17 or object.

18 (iii) A notice that the person may file an objection to or
19 reason for not complying with the demand with the attorney general
20 on or before the time described in subparagraph (ii).

21 (iv) The name of the person that will be the custodian of the
22 document or object.

23 (3) At any time before the return date or not later than 10
24 days after receiving the demand, whichever is earlier, a person
25 subject to the demand may petition the Ingham County circuit court
26 for a protective order to do any of the following:

27 (a) Extend the return date for a reasonable time.

28 (b) Modify the demand.

29 (c) Set aside the demand.



1 (4) If a person files a petition under subsection (3), the
2 person must give the attorney general not less than 10 days' notice
3 of any hearing on the petition and the attorney general must be
4 given an opportunity to respond to the petition.

5 (5) If a person does not secure a protective order under
6 subsection (3) and the person does not comply with the demand by
7 the return date, the attorney general, with notice to the person,
8 may apply to a court for an order compelling the person's
9 compliance with the demand.

10 (6) If the court contemplating the order under subsection (5)
11 finds that there is reasonable cause to believe that this act is
12 being, has been, or is about to be violated, that the person
13 subject to the demand is the person that is committing, has
14 committed, or is about to commit the violation or is the person
15 that possesses information, document, or object that is relevant to
16 the investigation by the attorney general, that the person has left
17 this state or is about to leave this state, and that the order is
18 necessary for the enforcement of this act, the court may do either
19 or both of the following:

20 (a) Require the person to comply with the demand.

21 (b) Forbid the removal, concealment, withholding, destruction,
22 mutilation, falsification, or alteration of any document or object
23 that is in the possession, custody, or control of the person.

24 (7) A person subject to a demand or court order under this
25 section, that with the intent to avoid, evade, or prevent
26 compliance with the demand or order, in whole or in part, removes,
27 conceals, withholds, destroys, mutilates, falsifies, or by any
28 other means alters any document or object in the possession,
29 custody, or control of the person may be ordered to pay a civil



1 fine of not more than \$25,000.00.

2 (8) Except as otherwise provided in subsection (9), any
3 testimony, answer, document, or object received by the attorney
4 general in accordance with a demand or order under this section is
5 confidential and not subject to disclosure until the time that an
6 enforcement action is brought by the attorney general under this
7 act.

8 (9) The attorney general may disclose any testimony, answer,
9 document, or object described in subsection (8) if confidentiality
10 is waived by both of the following:

11 (a) The person subject to the demand.

12 (b) The person being investigated by the attorney general.

13 (10) As used in this section:

14 (a) "Demand" means a demand under subsection (1).

15 (b) "Return date" means the date specified in subsection
16 (2) (c) (ii), (d) (iii), or (e) (iii).

17 Sec. 20b. (1) A person or agency to whom a written demand is
18 served under section 20a shall comply with the terms of the demand
19 unless otherwise provided by the order of the circuit court.

20 (2) A person that does any of the following may be ordered to
21 pay a civil fine of not more than \$25,000.00:

22 (a) Knowingly and without good cause fails to appear when
23 served with a demand.

24 (b) Knowingly avoids, evades, or prevents compliance, in whole
25 or in part, with an investigation, including, without limitation,
26 the removal from any place, concealment, destruction, mutilation,
27 alteration, or falsification of documentary material in the
28 possession, custody, or control of a person subject to the demand.

29 (c) Knowingly conceals relevant information.



1 (3) The attorney general may file a petition in the circuit
2 court of the county in which the person is established or conducts
3 business or, if the person is not established in this state, in the
4 Ingham County circuit court for an order to enforce compliance with
5 this section. A violation of a final order entered under this
6 section must be punished as civil contempt.

7 Sec. 20c. (1) If the attorney general has reasonable cause to
8 believe that a person or an agency has violated this act, the
9 attorney general may bring a civil action seeking 1 or more of the
10 following, as applicable, together with reasonable attorney fees
11 and costs of investigation and litigation:

12 (a) Injunctive relief.

13 (b) If the person or an agency knowingly fails to implement
14 and maintain reasonable security procedures under section 11a, a
15 civil fine of not more than \$2,000.00.

16 (c) If the person or an agency knowingly fails to investigate
17 a security breach under section 11b, a civil fine of not more than
18 \$2,000.00.

19 (d) If the person or an agency knowingly fails to provide a
20 notice of a security breach required under section 12, a civil fine
21 of not more than \$250.00 for each failure to provide the notice,
22 except that the aggregate liability under this subdivision for
23 multiple violations that arise from the same security breach may
24 not exceed \$750,000.00.

25 (2) On the petition of the attorney general, the circuit court
26 may enjoin a person from doing business in this state if the person
27 persistently and knowingly evades or prevents compliance with an
28 injunction issued under this act.

29 Enacting section 1. Sections 15 and 17 of the identity theft



1 protection act, 2004 PA 452, MCL 445.75 and 445.77, are repealed.

