

# SENATE BILL NO. 888

May 30, 2024, Introduced by Senator BAYER and referred to the Committee on Finance, Insurance, and Consumer Protection.

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.

1 ~~The term~~ **Agency** includes an institution of higher education of this  
 2 state. ~~The term~~ **Agency** does not include a circuit, probate,  
 3 district, or municipal court.

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

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

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

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

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

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

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

24 (iii) Child care expenses.

25 (iv) Educational expenses.

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

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

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

3 (c) ~~(d)~~—"Credit card" means that term as defined in section  
4 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

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

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

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

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

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

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

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

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

28 (A) **The** consumer financial services act, 1988 PA 161, MCL  
29 487.2051 to 487.2072. ~~τ~~

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

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

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

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

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

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

11           **(A)** **The** home improvement finance act, 1965 PA 332, MCL  
12 445.1101 to 445.1431. ~~or the~~

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

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

17           **(i)** ~~(j)~~ "Financial transaction device" means that term as  
18 defined in section 157m of the Michigan penal code, 1931 PA 328,  
19 MCL 750.157m.

20           **(j)** ~~(k)~~ "Identity theft" means engaging in an act or conduct  
21 prohibited in section 5(1).

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

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

29           **(m)** ~~(n)~~ "Local registrar" means that term as defined in

1 section 2804 of the public health code, 1978 PA 368, MCL 333.2804.

2 (n) ~~(e)~~ "Medical records or information" includes, but is not  
3 limited to, medical and mental health histories, reports,  
4 summaries, diagnoses and prognoses, treatment and medication  
5 information, notes, entries, and ~~x-rays~~ **X-rays** and other imaging  
6 records.

7 (o) ~~(p)~~ "Person" means an individual, partnership,  
8 corporation, limited liability company, association, or other legal  
9 entity.

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

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

1 (i) ~~A Social security~~ **Security** number.

2 (ii) ~~Driver~~ **A driver** license number, ~~or~~ state personal  
3 identification card number, **passport number, or other unique**  
4 **identification number issued on a government document that is used**  
5 **to verify the identity of an individual.**

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

10 (iv) **Any medical records or information.**

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

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

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

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

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

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

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

1           (ii) A person that is otherwise permitted to access personal  
2 information owned or licensed by another person or agency in  
3 connection with providing services under an agreement with the  
4 other person or agency.

5           (x) ~~(v)~~—"Trade or commerce" means that term as defined in  
6 section 2 of the Michigan consumer protection act, ~~1971~~—1976 PA  
7 331, MCL 445.902.

8           (y) ~~(w)~~—"Vital record" means that term as defined in section  
9 2805 of the public health code, 1978 PA 368, MCL 333.2805.

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

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

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

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

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

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

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

28           (e) Contractually require each service provider of the person  
29 or agency to maintain appropriate safeguards for personal



1 information.

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

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

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

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

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

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

15 Sec. 11b. (1) If a person or an agency determines that a  
16 security breach has or may have occurred, the person or agency  
17 shall conduct a good-faith and prompt investigation that includes  
18 doing all of the following:

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

20 (b) Identifying the personal information that was involved in  
21 the security breach and the identity of the individuals whose  
22 personal information was involved in the security breach.

23 (c) Determining whether the personal information identified  
24 under subdivision (b) has been accessed or acquired or is  
25 reasonably believed to have been accessed or acquired by an  
26 unauthorized person.

27 (d) Identifying and implementing measures to restore the  
28 security and confidentiality of any system compromised in the  
29 security breach.

1 (2) All of the following indicate that personal information  
 2 has been accessed or acquired by an unauthorized person under  
 3 subsection (1) (c):

4 (a) The personal information is or could be in the physical  
 5 possession and control of an unauthorized person, including, but  
 6 not limited to, under circumstances where a computer or other  
 7 device containing personal information is reported lost or stolen.

8 (b) The personal information has been downloaded or copied by  
 9 an unauthorized person.

10 (c) The personal information was used in an unlawful manner by  
 11 an unauthorized person, including, but not limited to,  
 12 circumstances under which a fraudulent account is opened using the  
 13 personal information or a report of identity theft.

14 (d) The personal information is publicly displayed.

15 Sec. 12. (1) If, on or after the effective date of the  
 16 amendatory act that amended this subsection, a third-party agent  
 17 discovers a security breach that involves data that is owned or  
 18 licensed by another person or agency, the third-party agent shall,  
 19 immediately after the discovery, provide a notice of the security  
 20 breach to the person or agency, and shall provide any other  
 21 information that is necessary for the person or agency to comply  
 22 with the notice requirements under subsections (2) and (3).

23 (2) ~~(1) Unless the person or agency determines that the~~  
 24 ~~security breach has not or is not likely to cause substantial loss~~  
 25 ~~or injury to, or result in identity theft with respect to, 1 or~~  
 26 ~~more residents of this state, Subject to subsections (5) to (9), a~~  
 27 person or **an** agency that owns or licenses data that ~~are~~**is** included  
 28 in a database that discovers a security breach **on or after the**  
 29 **effective date of the amendatory act that amended subsection (1),**

1 or receives notice of a security breach under subsection ~~(2)~~, **(1)**  
2 **on or after the effective date of the amendatory act that amended**  
3 **subsection (1)**, shall provide a notice of the security breach to  
4 each resident of this state who meets 1 or more of the following  
5 **criteria, if the person or agency knows, should know, or should**  
6 **have known that the security breach has or could result in identity**  
7 **theft or fraud affecting the resident:**

8 (a) ~~That~~**The** resident's unencrypted and unredacted personal  
9 information was **or may have been** accessed ~~and~~**or** acquired by an  
10 unauthorized person.

11 (b) ~~That~~**The** resident's personal information was **or may have**  
12 **been** accessed ~~and~~**or** acquired in encrypted form by a person with  
13 unauthorized access to the encryption key.

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

22 ~~(3) In determining whether a security breach is not likely to~~  
23 ~~cause substantial loss or injury to, or result in identity theft~~  
24 ~~with respect to, 1 or more residents of this state under subsection~~  
25 ~~(1) or (2), a person or agency shall act with the care an~~  
26 ~~ordinarily prudent person or agency in like position would exercise~~  
27 ~~under similar circumstances.~~

28 **(3) Subject to subsection (8), if a person or an agency is**  
29 **required to provide notice under subsection (2) to 100 or more**

1 residents of this state, the person or agency must also provide  
 2 written notice of the security breach to the attorney general not  
 3 later than 45 days after the discovery of the security breach or  
 4 receipt of notice under subsection (1).

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

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

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

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

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

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

14 (f) A description of any services related to the security  
 15 breach that the person or agency is offering under subsection

16 (7) (h) and a description of the information being provided under  
 17 subsection (7) (i) and (j).

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

21 (5) ~~(4) A~~ Except as otherwise provided in this subsection, a  
 22 person or ~~an~~ agency shall provide ~~any a~~ notice required under ~~this~~  
 23 ~~section~~ subsection (2) without unreasonable delay, ~~—A~~ but not  
 24 later than 45 days after the discovery of the breach. The person or  
 25 agency may delay providing notice without violating this subsection  
 26 if either of the following is met:

27 (a) A delay is necessary ~~in order for the person or agency to~~  
 28 ~~take any measures necessary to determine~~ discover the scope of the  
 29 security breach ~~and or~~ restore the ~~reasonable~~ integrity of the

1 ~~database. **Computer system.**~~ However, the ~~agency or person shall~~  
 2 ~~provide the notice~~ required under this subsection ~~without~~  
 3 ~~unreasonable delay~~ **must be provided as soon as possible** after the  
 4 ~~person or agency completes the measures necessary to determine~~  
 5 **discovery of** the scope of the security breach and ~~restore or the~~  
 6 **restoration of** the ~~reasonable integrity of the database. **Computer**~~  
 7 **system.**

8 (b) A law enforcement agency ~~determines and advises the agency~~  
 9 ~~or person that providing a notice~~ **requests to delay disclosure**  
 10 **because the disclosure** will impede a criminal or civil  
 11 investigation or jeopardize ~~homeland or national security.~~ However,  
 12 ~~the agency or person shall provide the notice~~ required under this  
 13 ~~section without unreasonable delay~~ **subsection must be provided as**  
 14 **soon as possible** after the law enforcement agency determines that  
 15 providing the notice will no longer impede the investigation or  
 16 jeopardize ~~homeland or national security.~~

17 (6) ~~(5)~~ Except as provided in subsection ~~(11)~~, ~~an agency or~~  
 18 ~~(12)~~, a person **or an agency** shall provide ~~any a~~ notice required  
 19 under ~~this section~~ **subsection (2)** by providing 1 or more of the  
 20 following to the recipient:

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

23 (b) Written notice sent electronically to the recipient if any  
 24 of the following are met:

25 (i) The recipient has expressly consented to receive electronic  
 26 notice.

27 (ii) The person or agency has an existing business relationship  
 28 with the recipient that includes periodic ~~electronic mail~~ **email**  
 29 communications and based on those communications the person or

1 agency reasonably believes that ~~it~~**the person or agency** has the  
2 recipient's current ~~electronic mail~~**email** address.

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

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

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

10 (ii) The recipient has expressly consented to receive notice by  
11 telephone, or if the recipient has not expressly consented to  
12 receive notice by telephone, the person or agency also provides  
13 notice under subdivision (a) or (b) if the notice by telephone does  
14 not result in a live conversation between the individual  
15 representing the person or agency and the recipient ~~within~~**not**  
16 **later than** 3 business days after the initial attempt to provide  
17 telephonic notice.

18 (d) Substitute notice, if the person or agency demonstrates  
19 that the cost of providing notice under subdivision (a), (b), or  
20 (c) will exceed \$250,000.00 or that the person or agency has to  
21 provide notice to more than 500,000 residents of this state. A  
22 person or agency provides substitute notice under this subdivision  
23 by doing all of the following:

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

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

29 (iii) Notifying major statewide media. A notification under this

1 subparagraph ~~shall~~**must** include a telephone number or a website  
2 address that a person may use to obtain additional assistance and  
3 information.

4 ~~(7) (6)~~A notice under ~~this section shall do~~**subsection (2)**  
5 **must meet** all of the following **requirements, as applicable:**

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

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

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

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

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

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

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

25 (h) **If the Social Security number or tax payer identification**  
26 **number of a resident was accessed or acquired, or is reasonably**  
27 **believed to have been accessed or acquired, in the security breach,**  
28 **it must offer appropriate identity theft prevention services and,**  
29 **if applicable, identity theft mitigation services, which must be**

1 provided at no charge to the resident for not less than 24 months.

2 (i) It must provide any information that is necessary for a  
3 resident described in subdivision (h) to enroll in the identity  
4 theft prevention services and identity theft mitigations services,  
5 as applicable.

6 (j) It must provide information on how a resident described in  
7 subdivision (h) can place a credit freeze on the resident's credit  
8 file.

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

15 (9) ~~(8)~~ Except as provided in this subsection, **and subject to**  
16 **subsection (8),** after a person or **an** agency provides a notice under  
17 ~~this section, subsection (2),~~ the person or agency shall notify  
18 each consumer reporting agency that compiles and maintains files on  
19 consumers on a nationwide basis, as defined in 15 USC 1681a(p), of  
20 the security breach without unreasonable delay. A notification  
21 under this subsection ~~shall~~ **must** include the number of notices that  
22 the person or agency provided to residents of this state **under**  
23 **subsection (2)** and the timing of those notices. This subsection  
24 does not apply if either of the following is met:

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

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

29 (10) ~~(9)~~ A financial institution that is subject to, and has



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

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

17 (12) ~~(11)~~ A public utility that sends monthly billing or  
 18 account statements to the postal address of ~~its~~ **the public**  
 19 **utility's** customers may provide notice of a security breach to ~~its~~  
 20 customers in the manner described in subsection ~~(5),~~ **(6)**, or  
 21 alternatively by providing all of the following:

22 (a) As applicable, notice as described in subsection  
 23 ~~(5)(b).~~ **(6) (b)** .

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

26 (c) Conspicuous posting of the notice of the security breach  
 27 on the website of the public utility.

28 (d) Written notice sent in conjunction with the monthly  
 29 billing or account statement to the customer at the customer's

1 postal address in the records of the public utility.

2       **(13)** ~~(12)~~ A person that provides notice of a security breach  
3 in the manner described in this section when a security breach has  
4 not occurred, with the intent to defraud, is guilty of a  
5 misdemeanor punishable as follows:

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

9           (b) For a second violation, by imprisonment for not more than  
10 93 days or a fine of not more than \$500.00 for each violation, or  
11 both.

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

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

21       ~~(14) The aggregate liability of a person for civil fines under~~  
22 ~~subsection (13) for multiple violations of subsection (13) that~~  
23 ~~arise from the same security breach shall not exceed \$750,000.00.~~

24       **(14)** ~~(15) Subsections (12) and (13) do~~ **Subsection (13) does**  
25 not affect the availability of any civil remedy for a violation of  
26 state or federal law.

27       ~~(16) This section applies to the discovery or notification of~~  
28 ~~a breach of the security of a database that occurs on or after July~~  
29 ~~2, 2006.~~

1           **(15)** ~~(17)~~—This section does not apply to the access or  
 2 acquisition by a person or **an** agency of federal, state, or local  
 3 government records or documents lawfully made available to the  
 4 general public.

5           **(16)** ~~(18)~~—This section deals with subject matter that is of  
 6 statewide concern, and any charter, ordinance, resolution,  
 7 regulation, rule, or other action by a municipal corporation or  
 8 other political subdivision of this state to regulate, directly or  
 9 indirectly, any matter expressly set forth in this section is  
 10 preempted.

11           **(17) For purposes of this section, residency must be**  
 12 **determined by the principal mailing address of an individual, as**  
 13 **determined by a record of the person or agency.**

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

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

22           (3) A person who knowingly or intentionally violates this  
 23 section is guilty of a misdemeanor punishable as follows:

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

27           (b) For a second violation, by imprisonment for not more than  
 28 93 days or a fine of not more than \$2,000.00 for each violation, or  
 29 both.

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

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

7 **Sec. 20. (1) If the attorney general has authority to**  
8 **institute a civil action or proceeding under this act, the attorney**  
9 **general may accept an assurance of discontinuance of a method, act,**  
10 **or practice that is alleged to be unlawful from the person or**  
11 **agency that is alleged to have engaged, be engaging, or be about to**  
12 **engage in the method, act, or practice.**

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

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

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

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

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

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

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

1 assurance of discontinuance.

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

5 Sec. 20a. (1) If the attorney general has reasonable cause to  
6 believe that a person or an agency has information or is in  
7 possession, custody, or control of any document or object that is  
8 relevant to an investigation of a violation of this act, the  
9 attorney general may, before bringing any action under this act,  
10 serve the person with a written demand to do 1 or more of the  
11 following:

12 (a) Appear and be examined under oath.

13 (b) Answer interrogatories.

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

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

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

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

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

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

22 (ii) A notice that the person may file an objection to or  
23 reason for not complying with the demand with the attorney general  
24 on or before the time described in subparagraph (i).

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

27 (i) A copy of the written interrogatories.

28 (ii) A reasonable time within which the person must answer the  
29 written interrogatories.

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

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

6           (i) A description of the document or object with sufficient  
7 definiteness to permit the document or object to be fairly  
8 identified by the person.

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

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

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

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

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

21           (b) Modify the demand.

22           (c) Set aside the demand.

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

27           (5) If a person does not secure a protective order under  
28 subsection (3) and the person does not comply with the demand by  
29 the return date, the attorney general, with notice to the person,

1 may apply to a court for an order compelling the person's  
2 compliance with the demand.

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

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

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

17 (7) A person subject to a demand or court order under this  
18 section, that with the intent to avoid, evade, or prevent  
19 compliance with the demand or order, in whole or in part, removes,  
20 conceals, withholds, destroys, mutilates, falsifies, or by any  
21 other means alters any document or object in the possession,  
22 custody, or control of the person may be ordered to pay a civil  
23 fine of not more than \$25,000.00.

24 (8) Except as otherwise provided in subsection (9), any  
25 testimony, answer, document, or object received by the attorney  
26 general in accordance with a demand or order under this section is  
27 confidential and not subject to disclosure until the time that an  
28 enforcement action is brought by the attorney general under this  
29 act.

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

4           (a) The person subject to the demand.

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

6           (10) As used in this section:

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

8           (b) "Return date" means the date specified in subsection

9 (2) (c) (ii), (d) (iii), or (e) (iii).

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

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

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

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

22           (c) Knowingly conceals relevant information.

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

29           Sec. 20c. (1) If the attorney general has reasonable cause to



1 believe that a person or an agency has violated this act, the  
2 attorney general may bring a civil action seeking 1 or more of the  
3 following, as applicable, together with reasonable attorney fees  
4 and costs of investigation and litigation:

5 (a) Injunctive relief.

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

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

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

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

22 Enacting section 1. Sections 15 and 17 of the identity theft  
23 protection act, 2004 PA 452, MCL 445.75 and 445.77, are repealed.