

SENATE BILL No. 633

October 17, 2017, Introduced by Senator BOOHER and referred to the Committee on Banking and Financial Institutions.

A bill to amend 2004 PA 452, entitled "Identity theft protection act," by amending sections 11 and 12 (MCL 445.71 and 445.72), as amended by 2010 PA 315.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11. (1) A person shall not do any of the following in the
2 conduct of trade or commerce:

3 (a) Deny credit or public utility service to or reduce the
4 credit limit of a consumer solely because the consumer was a victim
5 of identity theft, if the person had prior knowledge that the
6 consumer was a victim of identity theft. A consumer is presumed to
7 be a victim of identity theft for the purposes of this subdivision
8 if he or she provides both of the following to the person:

9 (i) A copy of a police report evidencing the claim of the
10 victim of identity theft.

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

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

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

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

11 **(E) IF THE PERSON COLLECTS PERSONAL IDENTIFYING INFORMATION IN**
12 **THE REGULAR COURSE OF BUSINESS AND STORES THAT INFORMATION IN A**
13 **COMPUTERIZED DATABASE, FAIL OR NEGLECT TO STORE THAT INFORMATION IN**
14 **THE DATABASE IN AN ENCRYPTED FORM.**

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

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

20 (b) For a second violation, by imprisonment for not more than
21 93 days or a fine of not more than \$2,000.00, or both.

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

25 (3) Subsection (2) does not prohibit a person from being
26 liable for any civil remedy for a violation of this act, the
27 Michigan consumer protection act, 1976 PA 331, MCL 445.901 to

1 445.922, or any other state or federal law.

2 Sec. 12. (1) ~~Unless the person or agency determines that the~~
3 ~~security breach has not or is not likely to cause substantial loss~~
4 ~~or injury to, or result in identity theft with respect to, 1 or~~
5 ~~more residents of this state, a~~ **A** person or agency that owns or
6 licenses data that are included in a database that discovers a
7 security breach, or receives notice of a security breach under
8 subsection (2), shall provide a notice of the security breach to
9 **ALL OF THE FOLLOWING:**

10 **(A) EACH FINANCIAL INSTITUTION THAT ISSUED A CREDIT CARD OR**
11 **DEBIT CARD THAT IS COMPROMISED BY THE BREACH.**

12 **(B) UNLESS THE PERSON OR AGENCY DETERMINES THAT THE SECURITY**
13 **BREACH HAS NOT OR IS NOT LIKELY TO CAUSE SUBSTANTIAL LOSS OR INJURY**
14 **TO, OR RESULT IN IDENTITY THEFT WITH RESPECT TO, 1 OR MORE**
15 **RESIDENTS OF THIS STATE, TO** each resident of this state who meets 1
16 or more of the following:

17 **(i)** ~~(a)~~ That resident's unencrypted and unredacted personal
18 information was accessed and acquired by an unauthorized person.

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

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

1 shall provide a notice to the owner or licensor of the information
2 of the security breach.

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

9 (4) **A PERSON OR AGENCY THAT IS REQUIRED TO GIVE NOTICE OF A**
10 **SECURITY BREACH UNDER SUBSECTION (1) TO A FINANCIAL INSTITUTION**
11 **DESCRIBED IN SUBSECTION (1) (A) SHALL PROVIDE THAT NOTICE WITHIN 3**
12 **BUSINESS DAYS AFTER THE DATE THE PERSON OR AGENCY DISCOVERS THE**
13 **SECURITY BREACH.** A person or agency shall provide any **OTHER** notice
14 required under this section without unreasonable delay. A person or
15 agency may delay providing notice without violating this subsection
16 if either of the following is met:

17 (a) A delay is necessary in order for the person or agency to
18 take any measures necessary to determine the scope of the security
19 breach and restore the reasonable integrity of the database.
20 However, the agency or person shall provide the notice required
21 under this subsection without unreasonable delay after the person
22 or agency completes the measures necessary to determine the scope
23 of the security breach and restore the reasonable integrity of the
24 database.

25 (b) A law enforcement agency determines and advises the agency
26 or person that providing a notice will impede a criminal or civil
27 investigation or jeopardize homeland or national security. However,

1 the agency or person shall provide the notice required under this
2 section without unreasonable delay after the law enforcement agency
3 determines that providing the notice will no longer impede the
4 investigation or jeopardize homeland or national security.

5 (5) Except as provided in subsection (11), an agency or person
6 shall provide any notice required under this section by providing 1
7 or more of the following to the recipient:

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

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

12 (i) The recipient has expressly consented to receive
13 electronic notice.

14 (ii) The person or agency has an existing business
15 relationship with the recipient that includes periodic electronic
16 mail communications and based on those communications the person or
17 agency reasonably believes that it has the recipient's current
18 electronic mail address.

19 (iii) The person or agency conducts its business primarily
20 through internet account transactions or on the internet.

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

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

26 (ii) The recipient has expressly consented to receive notice
27 by telephone, or if the recipient has not expressly consented to

1 receive notice by telephone, the person or agency also provides
2 notice under subdivision (a) or (b) if the notice by telephone does
3 not result in a live conversation between the individual
4 representing the person or agency and the recipient within 3
5 business days after the initial attempt to provide telephonic
6 notice.

7 (d) Substitute notice, if the person or agency demonstrates
8 that the cost of providing notice under subdivision (a), (b), or
9 (c) will exceed \$250,000.00 or that the person or agency has to
10 provide notice to more than 500,000 residents of this state. A
11 person or agency provides substitute notice under this subdivision
12 by doing all of the following:

13 (i) If the person or agency has electronic mail addresses for
14 any of the residents of this state who are entitled to receive the
15 notice, providing electronic notice to those residents.

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

18 (iii) Notifying major statewide media. A notification under
19 this subparagraph shall include a telephone number or a website
20 address that a person may use to obtain additional assistance and
21 information.

22 (6) A notice under this section shall do all of the following:

23 (a) For a notice provided under subsection (5)(a) or (b), be
24 written in a clear and conspicuous manner and contain the content
25 required under subdivisions (c) to ~~(g)~~ **(J)**.

26 (b) For a notice provided under subsection (5)(c), clearly
27 communicate the content required under subdivisions (c) to ~~(g)~~ **(J)**

1 to the recipient of the telephone call.

2 (C) IF THE INFORMATION IS POSSIBLE TO DETERMINE AT THE TIME
3 THE NOTICE IS PROVIDED, INCLUDE 1 OF THE FOLLOWING, AS APPLICABLE:

4 (i) THE DATE OF THE BREACH.

5 (ii) THE ESTIMATED DATE OF THE BREACH.

6 (iii) THE DATE RANGE WITHIN WHICH THE BREACH OCCURRED.

7 (D) INCLUDE THE DATE OF THE NOTICE.

8 (E) STATE WHETHER NOTIFICATION WAS DELAYED AS A RESULT OF AN
9 INVESTIGATION BY A LAW ENFORCEMENT AGENCY, IF THAT INFORMATION IS
10 POSSIBLE TO DETERMINE AT THE TIME THE NOTICE IS PROVIDED.

11 (F) ~~(e)~~—Describe the security breach in general terms.

12 (G) ~~(d)~~—Describe the type of personal information that is the
13 subject of the unauthorized access or use.

14 (H) ~~(e)~~—If applicable, generally describe what the agency or
15 person providing the notice has done to protect data from further
16 security breaches.

17 (I) ~~(f)~~—Include a telephone number where a notice recipient
18 may obtain assistance or additional information.

19 (J) ~~(g)~~—Remind notice recipients of the need to remain
20 vigilant for incidents of fraud and identity theft.

21 (K) IF THE PERSON OR AGENCY PROVIDING THE NOTIFICATION WAS THE
22 SOURCE OF THE BREACH, AND THE PERSON OR AGENCY IS PROVIDING THE
23 NOTICE TO A RESIDENT OF THIS STATE UNDER SUBSECTION (1) OR (2),
24 INCLUDE AN OFFER TO PROVIDE APPROPRIATE IDENTITY THEFT PREVENTION
25 AND MITIGATION SERVICES, IF ANY, AT NO COST TO THE AFFECTED
26 RESIDENT FOR AT LEAST 12 MONTHS, AND INCLUDE ALL INFORMATION
27 NECESSARY FOR THE RESIDENT TO ACCEPT THE OFFER.

1 (7) A person or agency may provide any notice required under
2 this section ~~pursuant to~~ **UNDER** an agreement between that person or
3 agency and another person or agency, if the notice provided
4 ~~pursuant to~~ **UNDER** the agreement does not conflict with ~~any~~
5 ~~provision of~~ this section.

6 (8) Except as provided in this subsection, after a person or
7 agency provides a notice under this section, the person or agency
8 shall notify each consumer reporting agency that compiles and
9 maintains files on consumers on a nationwide basis, as defined in
10 15 USC 1681a(p), of the security breach without unreasonable delay.
11 A notification under this subsection shall include the number of
12 notices that the person or agency provided to residents of this
13 state and the timing of those notices. This subsection does not
14 apply if either of the following is met:

15 (a) The person or agency is required under this section to
16 provide notice of a security breach to 1,000 or fewer residents of
17 this state.

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

19 (9) A financial institution that is subject to, and has
20 notification procedures in place that are subject to examination by
21 the financial institution's appropriate regulator for compliance
22 with, the interagency guidance on response programs for
23 unauthorized access to customer information and customer notice
24 prescribed by the ~~board of governors of the federal reserve system~~
25 **BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM** and the other
26 federal bank and thrift regulatory agencies, or similar guidance
27 prescribed and adopted by the ~~national credit union administration,~~

1 **NATIONAL CREDIT UNION ADMINISTRATION** and its affiliates, is
2 considered to be in compliance with this section.

3 (10) A person or agency that is subject to and complies with
4 the health insurance portability and accountability act of 1996,
5 Public Law 104-191, and with regulations promulgated under that
6 act, 45 CFR parts 160 and 164, for the prevention of unauthorized
7 access to customer information and customer notice is considered to
8 be in compliance with this section.

9 (11) A public utility that sends monthly billing or account
10 statements to the postal address of its customers may provide
11 notice of a security breach to its customers in the manner
12 described in subsection (5), or alternatively by providing all of
13 the following:

14 (a) As applicable, notice as described in subsection (5)(b).

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

17 (c) Conspicuous posting of the notice of the security breach
18 on the website of the public utility.

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

22 (12) A person that provides notice of a security breach in the
23 manner described in this section when a security breach has not
24 occurred, with the intent to defraud, is guilty of a misdemeanor
25 punishable as follows:

26 (a) Except as otherwise provided under subdivisions (b) and
27 (c), by imprisonment for not more than 93 days or a fine of not

1 more than \$250.00 for each violation, or both.

2 (b) For a second violation, by imprisonment for not more than
3 93 days or a fine of not more than \$500.00 for each violation, or
4 both.

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

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

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

17 (15) Subsections (12) and (13) do not affect the availability
18 of any civil remedy for a violation of state or federal law.

19 **(16) IF A PERSON MAINTAINS A COMPUTERIZED DATABASE THAT**
20 **INCLUDES PERSONAL IDENTIFYING INFORMATION ABOUT A DEPOSITORY**
21 **INSTITUTION'S CUSTOMERS, AND A SECURITY BREACH OF THE COMPUTERIZED**
22 **DATABASE OCCURS, THE DEPOSITORY INSTITUTION MAY BRING A CIVIL**
23 **ACTION AGAINST THAT PERSON FOR ANY ACTUAL DAMAGES TO THE DEPOSITORY**
24 **INSTITUTION, INCLUDING, BUT NOT LIMITED TO, THE DEPOSITORY**
25 **INSTITUTION'S COSTS INCURRED IN CONNECTION WITH ANY OF THE**
26 **FOLLOWING:**

27 **(A) THE CANCELLATION OR REISSUANCE OF ANY CREDIT OR DEBIT**

1 CARDS AFFECTED BY THE SECURITY BREACH.

2 (B) CLOSING ANY DEPOSIT, TRANSACTION, SHARE DRAFT, OR OTHER
3 ACCOUNTS AFFECTED BY THE SECURITY BREACH AND ANY ACTION TO STOP
4 PAYMENTS OR BLOCK TRANSACTIONS WITH RESPECT TO THE ACCOUNTS.

5 (C) OPENING OR REOPENING ANY DEPOSIT, TRANSACTION, SHARE
6 DRAFT, OR OTHER ACCOUNTS AFFECTED BY THE SECURITY BREACH.

7 (D) ANY REFUND OR CREDIT MADE TO A CREDIT OR DEBIT CARDHOLDER
8 TO COVER THE COST OF ANY UNAUTHORIZED TRANSACTION RELATING TO THE
9 SECURITY BREACH.

10 (E) NOTIFYING ANY CUSTOMERS OF THE DEPOSITORY INSTITUTION
11 AFFECTED BY THE SECURITY BREACH.

12 (17) ~~(16)~~—This section applies to the discovery or
13 notification of a breach of the security of a database that occurs
14 on or after July 2, 2006.

15 (18) ~~(17)~~—This section does not apply to the access or
16 acquisition by a person or agency of federal, state, or local
17 government records or documents lawfully made available to the
18 general public.

19 (19) ~~(18)~~—This section deals with subject matter that is of
20 statewide concern, and any charter, ordinance, resolution,
21 regulation, rule, or other action by a municipal corporation or
22 other political subdivision of this state to regulate, directly or
23 indirectly, any matter expressly set forth in this section is
24 preempted.

25 Enacting section 1. This amendatory act takes effect 90 days
26 after the date it is enacted into law.

27 Enacting section 2. This amendatory act does not take effect

1 unless Senate Bill No. 632

2 of the 99th Legislature is enacted into law.