

**SUBSTITUTE FOR
SENATE BILL NO. 611**

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to provide for the confidentiality of certain library
records; ~~and to provide for certain exceptions to the~~
confidentiality of those library records; to provide for the
selection and use of library materials; **and to provide remedies.**

Sec. 2. As used in this act:

(a) "Computer" means any connected, directly interoperable or



1 interactive device, equipment, or facility that uses a computer
 2 program or other instructions to perform specific operations,
 3 including logical, arithmetic, or memory functions with or on
 4 computer data or a computer program, and that can store, retrieve,
 5 alter, or communicate the results of the operations ~~to~~ to a person,
 6 computer program, computer, computer system, or computer network.

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

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

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

18 (e) **"Crime" means that term as defined in section 5 of the**
 19 **Michigan penal code, 1931 PA 328, MCL 750.5.**

20 (f) ~~(e)~~ "Device" includes, but is not limited to, an
 21 electronic, magnetic, electrochemical, biochemical, hydraulic,
 22 optical, or organic object that performs input, output, or storage
 23 functions by the manipulation of electronic, magnetic, or other
 24 impulses.

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

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



1 (i) "Law enforcement officer" means an individual licensed
 2 under the Michigan commission on law enforcement standards act,
 3 1965 PA 203, MCL 28.601 to 28.615.

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

10 (k) ~~(i)~~—"Library record" means a document, record, or other
 11 method of storing information retained by a library that contains
 12 information that personally identifies a library patron, including
 13 the patron's name, address, or telephone number, or that identifies
 14 a person as having requested or obtained specific materials from a
 15 library. Library record does not include ~~nonidentifying~~ either of
 16 the following:

17 (i) Nonidentifying material that may be retained for the
 18 purpose of studying or evaluating the circulation of library
 19 materials in general.

20 (ii) Recorded video surveillance images made solely for
 21 security purposes that do not include images of any activity or any
 22 other document or record that identifies a person as having
 23 requested or lawfully obtained specific services, materials, or
 24 information resources from a library.

25 (l) ~~(j)~~—"Minor" means an individual who is less than 18 years
 26 of age.

27 (m) ~~(k)~~—"Obscene" means that term as ~~it is~~ defined in section
 28 2 of 1984 PA 343, MCL 752.362.

29 (n) ~~(l)~~—"Sexually explicit matter" means that term as ~~it is~~



1 defined in section 3 of 1978 PA 33, MCL 722.673.

2 (o) ~~(m)~~ "Terminal" means a device used to access the internet
3 or a computer, computer program, computer network, or computer
4 system.

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

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

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

20 (b) **The release or disclosure is permitted under subsection**
21 **(5).**

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

24 (4) A library may appear and be represented by counsel at a
25 hearing described in subsection ~~(2)~~. **(2) (a).**

26 (5) **A library or an employee or agent of a library may**
27 **disclose library records without a court order or the written**
28 **consent described in subsection (2) under either of the following**
29 **circumstances:**



1 (a) The library or an employee or agent of the library may
 2 report information about the delinquent account of a patron who
 3 obtains materials from the library to a collection agency under
 4 contract with the library. The library or an employee or agent of
 5 the library shall provide the collection agency with only the
 6 library records necessary to seek the return of overdue or stolen
 7 materials or to collect fines from the patron.

8 (b) The library or an employee or agent of the library may
 9 disclose library records to another library or library cooperative
 10 for the purpose of conducting interlibrary loans. The library
 11 records must be limited to those required for providing
 12 interlibrary loans.

13 (6) This section does not prohibit an employee or agent of a
 14 library from providing a sworn statement or testimony to a law
 15 enforcement officer based solely on the personal knowledge of the
 16 employee or agent of the library regarding a crime alleged to have
 17 occurred at the library.

18 (7) As used in this section and section 4, "employee or agent"
 19 includes an employee of a library, a member of the governing body
 20 of a library, an individual who is specifically designated as a
 21 volunteer and who is acting solely on behalf of a library, and any
 22 other person who is lawfully performing services on behalf of a
 23 library under a written contract.

24 Sec. 4. (1) ~~A~~ ~~If~~ a library or an **employee or agent** ~~or employee~~
 25 of a library ~~which violates section 3, shall be liable~~ **the library**
 26 **is subject to liability** to the person identified in a **library**
 27 record that is improperly released or disclosed. The person
 28 identified **in the library record** may bring a civil action **against**
 29 **the library** for actual damages or \$250.00, whichever is greater, +



1 reasonable attorney fees, ~~+~~ and the costs of bringing the action. A
2 court also may grant equitable relief to a person under this
3 subsection.

4 (2) If an employee or agent of a library knowingly violates
5 section 3, the employee or agent is subject to liability to the
6 person identified in a library record that is improperly released
7 or disclosed. The person identified in the library record may bring
8 a civil action against the employee or agent for actual damages or
9 \$250.00, whichever is greater, reasonable attorney fees, and the
10 costs of bringing the action. A court also may grant equitable
11 relief to a person under this subsection.

12 (3) A civil action brought under this section by or on behalf
13 of a person identified in a library record must be brought within
14 180 days after the date that the person first knew or had reason to
15 know of the release or disclosure of the record giving rise to the
16 civil action.

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

