

HOUSE BILL No. 6103

May 8, 2008, Introduced by Reps. Johnson, Palmer, Scott, Melton, Constan, Hammel, Hammon, Gonzales, Virgil Smith, Jackson, Bieda, Lemmons, Corriveau, Angerer, Simpson and Dean and referred to the Committee on Judiciary.

A bill to amend 2004 PA 452, entitled
"Identity theft protection act,"
(MCL 445.61 to 445.77) by adding section 12d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 12D. (1) IF A PERSON OR AGENCY THAT MAINTAINS A DATABASE
2 THAT INCLUDES PERSONAL IDENTIFYING INFORMATION REGARDING MULTIPLE
3 INDIVIDUALS RECEIVES PERSONAL IDENTIFYING INFORMATION CONCERNING A
4 RESIDENT OF THIS STATE FOR INCLUSION IN THAT DATABASE, THE PERSON
5 OR AGENCY SHALL PROVIDE A NOTICE TO THAT RESIDENT THAT IDENTIFIES
6 THAT PERSON OR AGENCY, DESCRIBES THE PERSONAL IDENTIFYING
7 INFORMATION THE PERSON OR AGENCY IS INCLUDING IN THE DATABASE AND
8 HOW THE PERSON OR AGENCY USES THAT PERSONAL IDENTIFYING
9 INFORMATION, AND INCLUDES A TELEPHONE NUMBER OR OTHER CONTACT

1 INFORMATION THAT THE RESIDENT MAY USE TO NOTIFY THE PERSON OR
2 AGENCY CONCERNING ANY ERRORS IN HIS OR HER PERSONAL IDENTIFYING
3 INFORMATION OR TO REQUEST REMOVAL OF HIS OR HER PERSONAL
4 IDENTIFYING INFORMATION FROM THE DATABASE.

5 (2) AN AGENCY OR PERSON SHALL PROVIDE A NOTICE REQUIRED UNDER
6 THIS SECTION BY PROVIDING 1 OR MORE OF THE FOLLOWING TO THE
7 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 ELECTRONIC
13 NOTICE.

14 (ii) THE PERSON OR AGENCY HAS AN EXISTING BUSINESS RELATIONSHIP
15 WITH THE RECIPIENT THAT INCLUDES PERIODIC ELECTRONIC MAIL
16 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 BY
27 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 (3) A NOTICE UNDER THIS SECTION SHALL MEET ALL OF THE
8 FOLLOWING:

9 (A) FOR A NOTICE PROVIDED UNDER SUBSECTION (2) (A) OR (B), BE
10 WRITTEN IN A CLEAR AND CONSPICUOUS MANNER AND CONTAIN THE CONTENT
11 REQUIRED UNDER SUBSECTION (2).

12 (B) FOR A NOTICE PROVIDED UNDER SUBSECTION (2) (C), CLEARLY
13 COMMUNICATE THE CONTENT REQUIRED UNDER SUBSECTION (2) TO THE
14 RECIPIENT OF THE TELEPHONE CALL.

15 (4) SUBJECT TO SUBSECTION (5), A PERSON THAT KNOWINGLY FAILS
16 TO PROVIDE ANY NOTICE REQUIRED UNDER SUBSECTION (1) MAY BE ORDERED
17 TO PAY A CIVIL FINE OF NOT MORE THAN \$250.00 FOR EACH FAILURE TO
18 PROVIDE NOTICE. THE ATTORNEY GENERAL OR A PROSECUTING ATTORNEY MAY
19 BRING AN ACTION TO RECOVER A CIVIL FINE UNDER THIS SECTION.

20 (5) THE AGGREGATE LIABILITY OF A PERSON FOR CIVIL FINES UNDER
21 SUBSECTION (4) FOR MULTIPLE VIOLATIONS OF SUBSECTION (4) THAT ARISE
22 FROM THE SAME RECEIPT OF INFORMATION FOR INCLUSION IN A DATABASE
23 SHALL NOT EXCEED \$750,000.00.

24 (6) SUBSECTIONS (3) AND (4) DO NOT AFFECT THE AVAILABILITY OF
25 ANY CIVIL REMEDY FOR A VIOLATION OF STATE OR FEDERAL LAW.

26 Enacting section 1. This amendatory act does not take effect
27 unless all of the following bills of the 94th Legislature are

1 enacted into law:

2 (a) Senate Bill No.____ or House Bill No. 6099(request no.
3 05635'07).

4 (b) Senate Bill No.____ or House Bill No. 6100(request no.
5 05636'07).

6 (c) Senate Bill No.____ or House Bill No. 6101(request no.
7 05637'07).

8 (d) Senate Bill No.____ or House Bill No. 6102(request no.
9 05638'07).

10 (e) Senate Bill No.____ or House Bill No. 6104(request no.
11 05979'07).

12 (f) Senate Bill No.____ or House Bill No. 6105(request no.
13 05980'07).

14 (g) Senate Bill No.____ or House Bill No. 6106(request no.
15 05981'07).

16 (h) Senate Bill No.____ or House Bill No. 6107(request no.
17 05982'07).