

# SENATE BILL No. 1022

January 22, 2008, Introduced by Senator RICHARDVILLE 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), section 12 as added by 2006 PA 566.

**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

1 if he or she provides both of the following to the person:

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

4 (ii) Either a properly completed copy of a standardized  
5 affidavit of identity theft developed and made available by the  
6 federal trade commission pursuant to 15 USC 1681g or an affidavit  
7 of fact that is acceptable to the person for that purpose.

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

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

1 used by an unauthorized user and for any interest or finance  
2 charges assessed to the consumer.

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

13 **(E) IF THE PERSON COLLECTS PERSONAL IDENTIFYING INFORMATION IN**  
14 **THE REGULAR COURSE OF BUSINESS AND STORES THAT INFORMATION IN A**  
15 **COMPUTERIZED DATABASE, FAILING OR NEGLECTING TO STORE THAT**  
16 **INFORMATION IN THE DATABASE IN AN ENCRYPTED FORM, IN CONFORMITY**  
17 **WITH CURRENT INDUSTRY-STANDARD ENCRYPTION METHODS AND CAPABILITIES.**

18 (2) A person who knowingly or intentionally violates  
19 subsection (1) is guilty of a misdemeanor punishable by  
20 imprisonment for not more than 30 days or a fine of not more than  
21 \$1,000.00, or both. This subsection does not affect the  
22 availability of any civil remedy for a violation of this act, the  
23 Michigan consumer protection act, 1976 PA 331, MCL 445.901 to  
24 445.922, or any other state or federal law.

25 Sec. 12. (1) Unless the person or agency determines that the  
26 security breach has not or is not likely to cause substantial loss  
27 or injury to, or result in identity theft with respect to, 1 or

1 more residents of this state, a person or agency that owns or  
2 licenses data that are included in a database that discovers a  
3 security breach, or receives notice of a security breach under  
4 subsection (2), shall provide a notice of the security breach to  
5 each resident of this state who meets 1 or more of the following:

6 (a) That resident's unencrypted and unredacted personal  
7 information was accessed and acquired by an unauthorized person.

8 (b) That resident's personal information was accessed and  
9 acquired in encrypted form by a person with unauthorized access to  
10 the encryption key.

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

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

25 (4) A person or agency shall provide any notice required under  
26 this section without unreasonable delay. A person or agency may  
27 delay providing notice without violating this subsection if either

1 of the following is met:

2 (a) A delay is necessary in order for the person or agency to  
3 take any measures necessary to determine the scope of the security  
4 breach and restore the reasonable integrity of the database.

5 However, the agency or person shall provide the notice required  
6 under this subsection without unreasonable delay after the person  
7 or agency completes the measures necessary to determine the scope  
8 of the security breach and restore the reasonable integrity of the  
9 database.

10 (b) A law enforcement agency determines and advises the agency  
11 or person that providing a notice will impede a criminal or civil  
12 investigation or jeopardize homeland or national security. However,  
13 the agency or person shall provide the notice required under this  
14 section without unreasonable delay after the law enforcement agency  
15 determines that providing the notice will no longer impede the  
16 investigation or jeopardize homeland or national security.

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

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

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

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

26 (ii) The person or agency has an existing business relationship  
27 with the recipient that includes periodic electronic mail

1 communications and based on those communications the person or  
2 agency reasonably believes that it has the recipient's current  
3 electronic mail address.

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

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

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

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

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

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

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

3           (iii) Notifying major statewide media. A notification under this  
4 subparagraph shall include a telephone number or a website address  
5 that a person may use to obtain additional assistance and  
6 information.

7           (6) A notice under this section shall meet all of the  
8 following:

9           (a) For a notice provided under subsection (5) (a) or (b), be  
10 written in a clear and conspicuous manner and contain the content  
11 required under subdivisions (c) to (g).

12           (b) For a notice provided under subsection (5) (c), clearly  
13 communicate the content required under subdivisions (c) to (g) to  
14 the recipient of the telephone call.

15           (c) Describe the security breach in general terms.

16           (d) Describe the type of personal information that is the  
17 subject of the unauthorized access or use.

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

21           (f) Include a telephone number where a notice recipient may  
22 obtain assistance or additional information.

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

25           (7) A person or agency may provide any notice required under  
26 this section pursuant to an agreement between that person or agency  
27 and another person or agency, if the notice provided pursuant to

1 the agreement does not conflict with any provision of this section.

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

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

14 (b) The person or agency is subject to title V of the Gramm-  
15 Leach-Bliley act, 15 USC 6801 to 6809.

16 (9) A financial institution that is subject to, and has  
17 notification procedures in place that are subject to examination by  
18 the financial institution's appropriate regulator for compliance  
19 with, the interagency guidance on response programs for  
20 unauthorized access to customer information and customer notice  
21 prescribed by the board of governors of the federal reserve system  
22 and the other federal bank and thrift regulatory agencies, or  
23 similar guidance prescribed and adopted by the national credit  
24 union administration, and its affiliates, is considered to be in  
25 compliance with this section.

26 (10) A person or agency that is subject to and complies with  
27 the health insurance portability and accountability act of 1996,



1 Public Law 104-191, and with regulations promulgated under that  
2 act, 45 CFR parts 160 and 164, for the prevention of unauthorized  
3 access to customer information and customer notice is considered to  
4 be in compliance with this section.

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

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

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

13 (c) Conspicuous posting of the notice of the security breach  
14 on the website of the public utility.

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

18 (12) A person that provides notice of a security breach in the  
19 manner described in this section when a security breach has not  
20 occurred, with the intent to defraud, is guilty of a misdemeanor  
21 punishable by imprisonment for not more than 30 days or a fine of  
22 not more than \$250.00 for each violation, or both.

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

1 under this section.

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

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

7 (16) IF A PERSON MAINTAINS A COMPUTERIZED DATABASE THAT  
8 INCLUDES PERSONAL IDENTIFYING INFORMATION ABOUT A DEPOSITORY  
9 INSTITUTION'S CUSTOMERS, AND A SECURITY BREACH OF THE COMPUTERIZED  
10 DATABASE OCCURS, THE DEPOSITORY INSTITUTION MAY BRING A CIVIL  
11 ACTION AGAINST THAT PERSON FOR ANY ACTUAL DAMAGES TO THE DEPOSITORY  
12 INSTITUTION, INCLUDING, BUT NOT LIMITED TO, THE DEPOSITORY  
13 INSTITUTION'S COSTS INCURRED IN CONNECTION WITH ANY OF THE  
14 FOLLOWING:

15 (A) THE CANCELLATION OR REISSUANCE OF ANY CREDIT OR DEBIT  
16 CARDS AFFECTED BY THE SECURITY BREACH.

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

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

22 (D) ANY REFUND OR CREDIT MADE TO A CREDIT OR DEBIT CARDHOLDER  
23 TO COVER THE COST OF ANY UNAUTHORIZED TRANSACTION RELATING TO THE  
24 SECURITY BREACH.

25 (E) NOTIFYING ANY CUSTOMERS OF THE DEPOSITORY INSTITUTION  
26 AFFECTED BY THE SECURITY BREACH.

27 (17) ~~(16)~~ This section applies to the discovery or

1 notification of a breach of the security of a database that occurs  
2 on or after ~~the effective date of the amendatory act that added~~  
3 ~~this section~~ JULY 2, 2007.

4 (18) ~~(17)~~—This section does not apply to the access or  
5 acquisition by a person or agency of federal, state, or local  
6 government records or documents lawfully made available to the  
7 general public.

8 (19) ~~(18)~~—This section deals with subject matter that is of  
9 statewide concern, and any charter, ordinance, resolution,  
10 regulation, rule, or other action by a municipal corporation or  
11 other political subdivision of this state to regulate, directly or  
12 indirectly, any matter expressly set forth in this section is  
13 preempted.