

# HOUSE BILL No. 6327

July 21, 2010, Introduced by Rep. Robert Jones and referred to the Committee on Judiciary.

A bill to create the electronic mail fraud regulatory act; to prohibit certain conduct used to obtain identifying information; to prescribe the powers and duties of certain state and local officials; and to provide penalties and remedies.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Sec. 1. This act shall be known and may be cited as the  
2 "electronic mail fraud regulatory act".

3           Sec. 2. As used in this act:

4           (a) "Ascertainable loss" means an identifiable deprivation,  
5 detriment, or injury arising from identity theft or from any  
6 unfair, misleading, or deceptive act or practice even when the  
7 precise amount of the loss is not known. Whenever a violation of  
8 this act has occurred, an ascertainable loss is presumed to exist.

9           (b) "Department" means the department of energy, labor, and

1 economic growth.

2 (c) "Electronic mail message" means a message sent to a unique  
3 destination, commonly expressed as a string of characters,  
4 consisting of a unique user name or mailbox, commonly referred to  
5 as the "local part", and a reference to an internet domain,  
6 commonly referred to as the "domain part", whether or not  
7 displayed, to which an electronic message can be sent or delivered.

8 (d) "Identification documents" means any card, certificate, or  
9 document that identifies or purports to identify the bearer of that  
10 document, whether or not intended for use as identification, and  
11 includes, but is not limited to, any document purporting to be a  
12 driver license or enhanced driver license, a state personal  
13 identification card or enhanced personal identification card, a  
14 birth certificate, a marriage certificate, a divorce certificate, a  
15 passport, an immigration document, a social security card, an  
16 employee identification card, any card issued by the government to  
17 provide benefits of any sort, a health care benefit card, or a  
18 health benefit organization, insurance company, or managed care  
19 organization card for the purpose of identifying a person eligible  
20 for services.

21 (e) "Identifying information" means, with respect to an  
22 individual, any of the following:

- 23 (i) A social security number.  
24 (ii) A driver license number.  
25 (iii) A bank account number.  
26 (iv) A credit card or debit card number.  
27 (v) A personal identification number (PIN).

1 (vi) Any biometric data.

2 (vii) Any private medical information (PMI).

3 (viii) Fingerprints.

4 (ix) An account password.

5 (x) Any other piece of information that can be used to access  
6 an individual's financial accounts or obtain identification, act as  
7 identification, or obtain goods or services.

8 (f) "Internet" means the global information system that is  
9 logically linked together by a globally unique address space based  
10 on the internet protocol (IP), or its subsequent extensions, and  
11 that is able to support communications using the transmission  
12 control protocol/internet protocol (TCP/IP) suite, or its  
13 subsequent extensions, or other IP-compatible protocols, and that  
14 provides, uses, or makes accessible, either publicly or privately,  
15 high-level services layered on communications and related  
16 infrastructure.

17 (g) "Person" means an individual, governmental agency,  
18 partnership, corporation, trust, estate, incorporated or  
19 unincorporated association, and any other legal or commercial  
20 entity however organized.

21 (h) "Webpage" means a location that has a single uniform  
22 resource locator or other single location with respect to the  
23 internet.

24 Sec. 3. (1) A person shall not represent himself or herself,  
25 either directly or by implication, to be another person, through  
26 the use of the internet, electronic mail messages, or any other  
27 electronic means, including wireless communication, to solicit,

1 request, or take any action to induce a person in this state to  
2 provide identifying information or identification documents.

3 (2) A person shall not, with the intent to defraud, for that  
4 person's own use or the use of a third person, or to sell or  
5 distribute the information to another, do or attempt to do any of  
6 the following:

7 (a) Fraudulently obtain, record, or access identifying  
8 information that would assist in accessing financial resources,  
9 obtaining identification documents, or obtaining benefits of that  
10 other person.

11 (b) Obtain goods or services through the use of identifying  
12 information of that other person.

13 (c) Obtain identification documents in that other person's  
14 name.

15 (3) A person shall not, with the intent to defraud, do any of  
16 the following:

17 (a) Knowingly duplicate or mimic all or any portion of the  
18 website or webpage.

19 (b) Direct or redirect to an electronic mail message from the  
20 IP address of a person to any other IP address.

21 (c) Use any trademark, logo, name, or copyright of another  
22 person on a webpage.

23 (d) Create an apparent but false link to a webpage of a person  
24 that is directed or redirected to a webpage or IP address other  
25 than that of the person represented.

26 Sec. 4. (1) The following people may bring an action against a  
27 person who violates or is in violation of section 3:

1 (a) A person who meets the following criteria:

2 (i) Is engaged in the business of providing internet access  
3 service to the public, owns a webpage, or owns a trademark.

4 (ii) Suffers ascertainable loss by a violation of section 3. An  
5 action brought under this subparagraph may seek to recover actual  
6 damages or \$500,000.00, whichever is greater.

7 (b) A person other than a person described in subdivision (a)  
8 who suffers an ascertainable loss by a violation of section 3, but  
9 only against a person who has directly violated section 3. An  
10 action brought under this subdivision may seek to enjoin further  
11 violations of section 3 and to recover 3 times the amount of actual  
12 damages or \$5,000.00, per violation, whichever is greater.

13 (2) The attorney general or a county prosecuting attorney may  
14 bring an action against a person who violates section 3 to enjoin  
15 further violations of section 3 and to recover a civil fine of not  
16 more than \$2,500.00 per violation.

17 (3) In an action under this act, a court may, in addition, do  
18 1 or more of the following:

19 (a) Increase the recoverable damages to an amount up to 3  
20 times the damages otherwise recoverable under subsection (1) in  
21 cases in which the defendant has established a pattern and practice  
22 of violating section 3.

23 (b) Award costs of the suit and reasonable attorney fees to a  
24 prevailing plaintiff.

25 (4) The remedies provided in this act do not preclude the  
26 seeking of remedies, including criminal remedies, under any other  
27 applicable provision of the law.

1           (5) For purposes of subsection (2), multiple violations of  
2 section 3 resulting from any single action or conduct constitute a  
3 single violation.

4           (6) No provider of an interactive computer service may be held  
5 liable under this act for identifying, removing, or disabling  
6 access to content that resides on an internet webpage or other  
7 online location that the provider believes in good faith is used to  
8 engage in a violation of this act.

9           Sec. 5. A violation of this act is considered to be an unfair  
10 or deceptive act or practice affecting trade or commerce and is  
11 subject to the penalties and remedies set forth in the Michigan  
12 consumer protection act, 1976 PA 331, MCL 445.901 to 445.922, in  
13 addition to the penalties and remedies set forth in this act. If  
14 the department has reason to believe that any person has violated  
15 any provision of this act, the attorney general, at the request of  
16 the department, may institute a proceeding under this act.