

HOUSE BILL No. 5020

September 27, 2017, Introduced by Rep. Lucido and referred to the Committee on Communications and Technology.

A bill to regulate the protection and disclosure of personal information by private entities; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "right
2 to know act".

3 Sec. 3. As used in this act:

4 (a) "Categories of personal information" includes, but is not
5 limited to, each of the following:

6 (i) Identity information, including, but not limited to, real
7 name, alias, nickname, and user name.

8 (ii) Address information, including, but not limited to,
9 postal or electronic mail.

10 (iii) Telephone number.

11 (iv) Account name.

1 (v) Social Security number or other government-issued
2 identification number, including, but not limited to, Social
3 Security number, driver license number, identification card number,
4 or passport number.

5 (vi) Birth date or age.

6 (vii) Physical characteristic information, including, but not
7 limited to, height and weight.

8 (viii) Sexual information, including, but not limited to,
9 sexual orientation, sex, gender status, gender identity, or gender
10 expression.

11 (ix) Race or ethnicity.

12 (x) Religious affiliation or activity.

13 (xi) Political affiliation or activity.

14 (xii) Professional or employment-related information.

15 (xiii) Educational information.

16 (xiv) Medical information, including, but not limited to,
17 medical conditions or drugs, therapies, mental health, or medical
18 products or equipment used.

19 (xv) Financial information, including, but not limited to,
20 credit, debit, or account numbers, account balances, payment
21 history, or information related to assets, liabilities, or general
22 creditworthiness.

23 (xvi) Commercial information, including, but not limited to,
24 records of property, products or services provided, obtained, or
25 considered, or other purchasing or consumer histories or
26 tendencies.

27 (xvii) Location information.

1 (xviii) Internet or mobile activity information, including,
2 but not limited to, internet protocol addresses or information
3 concerning the access or use of any internet or mobile-based site
4 or service.

5 (xix) Content, including text, photographs, audio or video
6 recordings, or other material generated by or provided by the
7 customer.

8 (xx) Any of the categories of information described in
9 subparagraphs (i) to (xix) as they pertain to a child of a
10 customer.

11 (b) "Customer" means an individual who resides in this state
12 and who provides, either knowingly or unknowingly, personal
13 information to a private entity, with or without an exchange of
14 consideration, in the course of purchasing, viewing, accessing,
15 renting, leasing, or otherwise using real or personal property, or
16 any interest in real or personal property, or obtaining a product
17 or service from the private entity, including responding to
18 advertising or any other content.

19 (c) "Designated request address" means an electronic mail
20 address or toll-free telephone number a customer may use to request
21 or obtain the information described in section 5(a) to (c).

22 (d) "Disclose" means to disclose, release, transfer, share,
23 disseminate, make available, or otherwise communicate orally, in
24 writing, or by electronic or any other means to any third party.
25 The term does not include any of the following:

26 (i) Disclosure of personal information by a private entity to
27 a third party under a written contract that authorizes the third

1 party to utilize the personal information to perform services on
2 behalf of the private entity, including, but not limited to,
3 maintaining or servicing accounts, providing customer service,
4 processing or fulfilling orders and transactions, verifying
5 customer information, processing payments, providing financing, or
6 similar services, but only if both of the following are met:

7 (A) The contract prohibits the third party from using the
8 personal information for any reason other than performing the
9 specified service or services on behalf of the private entity and
10 from disclosing any of the personal information to additional third
11 parties.

12 (B) The private entity effectively enforces the prohibitions
13 described in sub-subparagraph (A).

14 (ii) Disclosure of personal information by a business to a
15 third party based on a good-faith belief that disclosure is
16 required to comply with applicable law, regulation, legal process,
17 or court order.

18 (iii) Disclosure of personal information by a private entity
19 to a third party that is reasonably necessary to address fraud,
20 security, or technical issues; to protect the disclosing private
21 entity's rights or property; or to protect customers or the public
22 from illegal activities as required or permitted by law.

23 (e) "Operator" means any individual or entity that owns a
24 website located on the internet or an online service that collects
25 and maintains personal information from a customer who resides in
26 this state and who uses or visits the website or online service if
27 the website or online service is operated for commercial purposes.

1 The term does not include any third party that operates, hosts, or
2 manages, but does not own, a website or online service on the
3 owner's behalf or by processing information on behalf of the owner.

4 (f) "Personal information" means any of the following:

5 (i) Information that identifies, relates to, describes, or is
6 capable of being associated with, a particular individual,
7 including, but not limited to, his or her name, signature, physical
8 characteristics or description, address, telephone number, passport
9 number, driver license or state identification card number,
10 insurance policy number, education, employment, employment history,
11 bank account number, credit card number, debit card number, or any
12 other financial information.

13 (ii) Data or information pertaining to an individual's income,
14 assets, liabilities, purchases, leases, or rentals of goods,
15 services, or real property, if that information is disclosed, or is
16 intended to be disclosed, with any identifying information, such as
17 the individual's name, address, telephone number, or Social
18 Security number.

19 (g) "Third party" means any of the following:

20 (i) A private entity that is a separate legal entity from the
21 private entity that has disclosed personal information.

22 (ii) A private entity that does not share common ownership or
23 common corporate control with the private entity that has disclosed
24 personal information.

25 (iii) A private entity that does not share a brand name or
26 common branding with the private entity that has disclosed personal
27 information that would make the affiliate relationship clear to a

1 customer.

2 Sec. 5. An operator of a commercial website or online service
3 that collects personal information through the internet about
4 individual customers who reside in this state and who use or visit
5 its commercial website or online service shall do all of the
6 following in its customer agreement or in an incorporated addendum:

7 (a) Identify all categories of personal information that the
8 operator collects through the website or online service about
9 individual customers who use or visit its commercial website or
10 online service.

11 (b) Identify all categories of third party individuals or
12 entities to which the operator may disclose that personal
13 information.

14 (c) Provide a description of a customer's rights under section
15 9 accompanied by 1 or more designated request addresses.

16 Sec. 7. (1) An operator that discloses a customer's personal
17 information to a third party shall make the following information
18 available to the customer free of charge:

19 (a) All categories of personal information that were
20 disclosed.

21 (b) The names of each third party that received the customer's
22 personal information.

23 (2) This section applies only to personal information
24 disclosed after the effective date of this act.

25 Sec. 9. (1) An operator that is subject to section 7 shall
26 make the required information available by providing a designated
27 request address in its customer agreement or incorporated addendum,

1 and, on receipt of a request under this section, shall provide the
2 customer with the information required under section 7 for all
3 disclosures occurring in the preceding 12 months.

4 (2) An operator that receives a request from a customer under
5 subsection (1) at a designated address shall provide a response to
6 the customer within 30 days.

7 Sec. 11. An individual who is aggrieved by a violation of this
8 act has a right of action against an offending party and shall
9 recover all of the following in that action:

10 (a) Liquidated damages of \$10.00, or actual damages, whichever
11 is greater.

12 (b) Injunctive relief, if appropriate.

13 (c) Reasonable attorney fees, costs, and expenses.

14 Sec. 13. A waiver of any of the provisions of this act is void
15 and unenforceable. An agreement that does not comply with the
16 applicable provisions of this act is void and unenforceable.

17 Sec. 15. (1) This act shall not be construed to conflict with
18 the health insurance portability and accountability act of 1996,
19 Public Law 104-191, or the regulations promulgated under that act.

20 (2) This act shall not be considered to apply in any manner to
21 a financial institution or an affiliate of a financial institution
22 that is subject to subtitle A of title V of the Gramm-Leach-Bliley
23 act, 15 USC 6801 to 6809, or the regulations promulgated under that
24 act.

25 (3) This act shall not be considered to apply to the
26 activities of an individual or entity to the extent that those
27 activities are subject to 47 USC 222 or 47 USC 551.

1 (4) This act shall not be construed to apply to a contractor,
2 subcontractor, or agent of a state agency or local unit of
3 government when working for that state agency or local unit of
4 government.

5 Enacting section 1. This act takes effect 90 days after the
6 date it is enacted into law.