

SENATE BILL No. 878

December 4, 2003, Introduced by Senators GARCIA, CASSIS, KUIPERS, SWITALSKI, SCOTT, BROWN, GOSCHKA and VAN WOERKOM and referred to the Committee on Judiciary.

A bill to establish the rights of victims of identity theft; to make information available to those victims; to provide a means of allowing victims of identity theft to establish their identity and keep a record of that identity on file with the department of state police; to impose duties on licensed collection agencies; to designate certain practices as unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce; 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
2 "identity theft victim's rights act".

3 Sec. 2. As used in this act:

4 (a) "Consumer reporting agency" means a person that, for
5 profit or on a cooperative nonprofit basis, regularly engages in
6 the practice of assembling or evaluating consumer credit

1 information or other information on consumers for the purpose of
2 furnishing consumer reports to third parties.

3 (b) "Financial information" means any of the following
4 information identifiable to a person related to the person's
5 assets, liabilities, or credit:

6 (i) An account number.

7 (ii) An account balance.

8 (iii) Information about transactions on an account.

9 (iv) A code.

10 (v) A password.

11 (vi) Other information used or intended to be used to access
12 an account or initiate a transaction.

13 (c) "Financial information repository" means a person engaged
14 in the business of providing services to customers who have a
15 credit, deposit, trust, stock, or other financial account or
16 relationship with the person.

17 (d) "Identity theft" means conduct that is a violation of
18 section 285 of the Michigan penal code, 1931 PA 328, MCL
19 750.285.

20 (e) "Means of identification" means information that does not
21 describe finances or credit but identifies a person, including,
22 but not limited to:

23 (i) A current or former name, address, telephone number, or
24 electronic address.

25 (ii) Information relating to a change in name, address,
26 telephone number, or electronic address.

27 (iii) A social security number.

1 (iv) A tax identification number.

2 (v) A driver license number.

3 (vi) A state identification number.

4 (vi) Biometric data.

5 (vii) Information that identifies a relative, whether living
6 or dead.

7 (f) "Merchant" means a person primarily engaged in the retail
8 sale of goods or services.

9 (g) "Person" means an individual, partnership, corporation,
10 association, or other legal entity.

11 (h) "Victim" means a person whose means of identification or
12 financial information has been used or transferred with the
13 intent to commit, or to aid or abet, any unlawful activity.

14 Sec. 3. (1) A person that possesses information relating to
15 identity theft or potential identity theft and that has or may
16 have entered into a transaction with, provided credit, goods, or
17 services to, accepted payment from, or otherwise done business
18 with a person who has used a victim's means of identification
19 shall, on written request by the victim, provide the victim with
20 copies of all records in the person's possession related to the
21 identity theft or potential identity theft. The person is not
22 required to disclose information under this section if the person
23 is prohibited by law from disclosing the information to the
24 victim.

25 (2) Unless a person from whom a victim requests information
26 under subsection (1) is willing to verify the victim's
27 identification in another manner, the victim shall do all of the

1 following when making the request:

2 (a) Show the person a government-issued photo identification
3 card or, if providing proof by mail, a copy of a
4 government-issued photo identification card.

5 (b) Provide a copy of a filed police report evidencing the
6 victim's claim.

7 (c) Provide a written statement from the department of state
8 police that documentation of the victim's identity under section
9 4 is on file with the state police.

10 (3) A person that provides information under subsection (1)
11 may require compensation for the reasonable cost of providing the
12 information requested.

13 (4) A person is not liable for providing information
14 regarding identity theft or potential identity theft to another
15 if all of the following apply:

16 (a) The information was provided to 1 or more of the
17 following:

18 (i) A financial information repository.

19 (ii) A financial service provider.

20 (iii) A merchant.

21 (iv) A law enforcement authority.

22 (v) A victim.

23 (vi) A person who claims to be a victim and who complies with
24 subsection (2).

25 (b) The information was provided in good faith for 1 or more
26 of the following purposes:

27 (i) To identify or prosecute an individual alleged to have

1 committed identity theft.

2 (ii) To assist a victim to recover fines or restitution,
3 rehabilitate the victim's credit record, or obtain other
4 appropriate relief.

5 (5) A person may decline to provide information requested
6 under subsection (1) if, in the exercise of good faith and
7 reasonable judgment, the person believes this section does not
8 require disclosure of the information.

9 (6) This section does not require a person to make or keep
10 records.

11 Sec. 4. (1) An individual who is a resident of this state
12 and who claims to be a victim may request a county sheriff or
13 police agency for the county in which he or she resides to take
14 an impression of his or her fingerprints under section 1 of 1935
15 PA 120, MCL 28.271, and advise the sheriff or police agency that
16 he or she claims to be a victim as defined in this act. The
17 sheriff or police agency shall identify the copy forwarded to the
18 central records division of the department of state police under
19 section 1 of 1935 PA 120, MCL 28.271, as fingerprints taken from
20 a claimed victim as defined in this act. On request of the
21 individual, the central records division of the department of
22 state police and the sheriff or police agency shall return the
23 fingerprint cards to the individual.

24 (2) On receipt of a fingerprint card identified as being from
25 a claimed victim as defined by this act, the central records
26 division of the department of state police shall provide a
27 statement to the victim that the victim's fingerprints have been

1 filed with the division. The statement shall state clearly in
2 12-point print:

3 "The person holding this statement has claimed to be a victim
4 of identity theft. Under section 3 of the identity theft
5 victim's rights act, a business is required by law to provide
6 this victim with copies of all records related to the transaction
7 being alleged as identity theft or potential identity theft. A
8 business must provide this information once the victim makes a
9 request in writing, shows any government-issued photo
10 identification card, and provides this statement and a copy of a
11 related police report."

12 Sec. 5. (1) A collection agency licensed under article 9 of
13 the occupational code, 1980 PA 299, MCL 339.901 to 339.920, shall
14 not initiate oral contact with a person more than 1 time in an
15 attempt to collect a debt from the person if all of the following
16 are true:

17 (a) Within the previous 180 days, in response to the
18 collection agency's initial attempt to collect the debt assigned
19 to the collection agency, the person notified the collection
20 agency in writing that the debt is the result of identity theft.

21 (b) The credit bureau has received from the person a copy of
22 a police report referring to the identity theft that the person
23 claims resulted in the debt.

24 (c) The written notification to the collection agency or the
25 police report identifies the financial service provider or
26 merchant to whom the victim claims his or her means of
27 identification or financial information was unlawfully provided,

1 the account number, and other information that identifies the
2 transaction or item that the victim claims resulted from identity
3 theft.

4 (d) The person provided the collection agency, within the
5 previous 180 days, a legible copy of a government-issued photo
6 identification that contains the person's signature and was
7 issued before the date of the identity theft identified in the
8 police report.

9 (e) The identification information provided by the person
10 under subdivision (c) matches identification information the
11 collection agency has about the debt.

12 (2) A collection agency that initiates oral contact with a
13 person more than 1 time in an attempt to collect a debt arising
14 from an identified series of dishonored checks, automated
15 clearinghouse transactions on a demand deposit account, or other
16 preprinted written instruments does not violate this section if 1
17 or more of the following apply:

18 (a) The collection agency, acting in good faith and reliance
19 on the agency's established practices and procedures for
20 batching, recording, or packeting debtor accounts, inadvertently
21 initiated oral contact with the person in an attempt to collect a
22 debt in the identified series.

23 (b) The contact is a follow-up to collection of a debt
24 assigned to the collection agency and the person previously
25 requested more information from the collection agency regarding
26 the debt.

27 (c) The person has notified the collection agency that the

1 person disputes some but not all of the debts arising from the
2 identified series of dishonored checks, automated clearinghouse
3 transactions on a demand deposit account, or other preprinted
4 written instruments and the additional contact is only concerning
5 a debt that the person acknowledges does not arise from stolen or
6 fraudulently created checks or written instruments.

7 (d) The contact is in the context of a judicial,
8 administrative, arbitration, mediation, or similar proceeding.

9 (e) The contact is made to investigate, confirm, or
10 authenticate information received from the person, to provide
11 additional information to the person, or to request additional
12 information from the person that is needed by the collection
13 agency to accurately record the person's information in the
14 agency's records.

15 Sec. 7. If a consumer reporting agency receives proof of a
16 person's identity and a copy of a police report evidencing the
17 person's claim to be a victim, the consumer reporting agency may
18 block the reporting of information in the person's credit report
19 that the person identifies as being in the report as a result of
20 identity theft. The consumer reporting agency shall promptly
21 notify an entity that gave the agency the information contained
22 in the credit report that a police report has been filed, that a
23 block has been requested, that it has decided to block the
24 information, and the effective date of the block.

25 Sec. 9. A violation of section 3(1) is an unfair,
26 unconscionable, or deceptive method, act, or practice in the
27 conduct of trade or commerce as prohibited by section 3 of the

1 Michigan consumer protection act, 1976 PA 331, MCL 445.903.

2 Enacting section 1. This act does not take effect unless
3 all of the following bills of the 92nd Legislature are enacted
4 into law:

5 (a) Senate Bill No. 879.

6

7 (b) Senate Bill No. 880.

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