

Act No. 246  
Public Acts of 2006  
Approved by the Governor  
June 30, 2006  
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June 30, 2006  
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**STATE OF MICHIGAN**  
**93RD LEGISLATURE**  
**REGULAR SESSION OF 2006**

Introduced by Senators Patterson, Hardiman, Birkholz, Garcia, Basham, Van Woerkom, Prusi and Jacobs

**ENROLLED SENATE BILL No. 1202**

AN ACT to amend 2004 PA 452, entitled "An act to prohibit certain acts and practices concerning identity theft; to provide for the powers and duties of certain state and local governmental officers and entities; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending section 5 (MCL 445.65) and by adding section 5a.

*The People of the State of Michigan enact:*

Sec. 5. (1) A person shall not do any of the following:

(a) With intent to defraud or violate the law, use or attempt to use the personal identifying information of another person to do either of the following:

(i) Obtain credit, goods, services, money, property, a vital record, a confidential telephone record, medical records or information, or employment.

(ii) Commit another unlawful act.

(b) By concealing, withholding, or misrepresenting the person's identity, use or attempt to use the personal identifying information of another person to do either of the following:

(i) Obtain credit, goods, services, money, property, a vital record, a confidential telephone record, medical records or information, or employment.

(ii) Commit another unlawful act.

(2) A person who violates subsection (1)(b)(i) may assert 1 or more of the following as a defense in a civil action or as an affirmative defense in a criminal prosecution, and has the burden of proof on that defense by a preponderance of the evidence:

(a) That the person gave a bona fide gift for or for the benefit or control of, or use or consumption by, the person whose personal identifying information was used.

(b) That the person acted in otherwise lawful pursuit or enforcement of a person's legal rights, including an investigation of a crime or an audit, collection, investigation, or transfer of a debt, child or spousal support obligation, tax liability, claim, receivable, account, or interest in a receivable or account.

(c) That the action taken was authorized or required by state or federal law, rule, regulation, or court order or rule.

(d) That the person acted with the consent of the person whose personal identifying information was used, unless the person giving consent knows that the information will be used to commit an unlawful act.

Sec. 5a. (1) As used in this act:

(a) "Confidential telephone record" means any of the following:

(i) Information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a service offered by a telecommunication provider subscribed to by any customer of that telecommunication provider.

(ii) Information that is made available to a telecommunication provider by a customer solely by virtue of the relationship between the telecommunication provider and the customer.

(iii) Information contained in any bill related to the product or service offered by a telecommunication provider and received by any customer of the telecommunication provider.

(b) "Covered specialized mobile radio service" means a commercial mobile radio service that offers real-time, 2-way switched voice or data service and is interconnected with the public switched network utilizing an in-network switching facility.

(c) "IP-enabled voice service" means an interconnected voice over internet protocol service that enables real-time, 2-way voice communications, requires a broadband connection from the user's location using internet protocol-compatible equipment, and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(d) "Telecommunication provider" means all of the following:

(i) A provider as that term is defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

(ii) A provider of IP-enabled voice service.

(iii) A provider of any telecommunication service.

(e) "Telecommunication service" means all of the following:

(i) A service as that term is defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

(ii) Cellular telephone service.

(iii) Broadband personal communication service.

(iv) Covered specialized mobile radio.

(2) A person shall not do any of the following:

(a) Knowingly procure, attempt to procure, or solicit or conspire with another to procure a confidential telephone record of any resident of this state without the authorization of the customer to whom the record pertains or by fraudulent, deceptive, or false means.

(b) Knowingly sell or attempt to sell a confidential telephone record of any resident of this state without the authorization of the customer to whom the record pertains.

(c) Receive a confidential telephone record of any resident of this state knowing that the record has been obtained without the authorization of the customer to whom the record pertains or by fraudulent, deceptive, or false means.

(3) This section does not prohibit any action by a law enforcement agency, or any officer, employee, or agent of such agency, from obtaining confidential telephone records in connection with the performance of the official duties of the agency.

(4) This section does not prohibit a telecommunication provider from obtaining, using, disclosing, or permitting access to any confidential telephone record, either directly or indirectly, through its agents, subcontractors, affiliates, or representatives in the normal course of business. This section does not expand the obligations and duties of a telecommunication provider to protect confidential telephone records beyond those obligations and duties otherwise established by federal and state law.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Jay E. Randall*

Clerk of the House of Representatives

Approved .....

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Governor