

**SUBSTITUTE FOR
SENATE BILL NO. 669**

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending section 2 (MCL 15.232), as amended by 2018 PA 68.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Cybersecurity assessment" means an investigation
3 undertaken by a person, governmental body, or other entity to
4 identify vulnerabilities in cybersecurity plans.

5 (b) "Cybersecurity incident" includes, but is not limited to,
6 a computer network intrusion or attempted intrusion; a breach of
7 primary computer network controls; unauthorized access to programs,
8 data, or information contained in a computer system; or actions by
9 a third party that materially affect component performance or,

1 because of impact to component systems, prevent normal computer
2 system activities.

3 (c) "Cybersecurity plan" includes, but is not limited to,
4 information about a person's information systems, network security,
5 encryption, network mapping, access control, passwords,
6 authentication practices, computer hardware or software, or
7 response to cybersecurity incidents.

8 (d) "Cybersecurity vulnerability" means a deficiency within
9 computer hardware or software, or within a computer network or
10 information system, that could be exploited by unauthorized parties
11 for use against an individual computer user or a computer network
12 or information system.

13 (e) "Field name" means the label or identification of an
14 element of a computer database that contains a specific item of
15 information, and includes but is not limited to a subject heading
16 such as a column header, data dictionary, or record layout.

17 (f) "FOIA coordinator" means either of the following:

18 (i) An individual who is a public body.

19 (ii) An individual designated by a public body in accordance
20 with section 6 to accept and process requests for public records
21 under this act.

22 (g) **"Legislator" means a member of the senate or the house of**
23 **representatives of this state.**

24 (h) ~~(g)~~ "Person" means an individual, corporation, limited
25 liability company, partnership, firm, organization, association,
26 governmental entity, or other legal entity. Person does not include
27 an individual serving a sentence of imprisonment in a state or
28 county correctional facility in this state or any other state, or
29 in a federal correctional facility.

1 (i) ~~(h)~~—"Public body" means any of the following:

2 (i) A state officer, employee, agency, department, division,
3 bureau, board, commission, council, authority, or other body in the
4 executive branch of the state government. ~~, but does not include~~
5 ~~the governor or lieutenant governor, the executive office of the~~
6 ~~governor or lieutenant governor, or employees thereof.~~

7 (ii) ~~An agency, board, commission, or council in the~~
8 ~~legislative branch of the state government.~~ **A state officer,**
9 **legislator, employee, agency, department, division, bureau, board,**
10 **commission, committee, council, authority, or other body in the**
11 **legislative branch of the state government. Public body does not**
12 **include the legislative service bureau, the senate fiscal agency,**
13 **or the house fiscal agency.**

14 (iii) A county, city, township, village, intercounty, intercity,
15 or regional governing body, council, school district, special
16 district, or municipal corporation, or a board, department,
17 commission, council, or agency thereof.

18 (iv) Any other body that is created by state or local authority
19 or is primarily funded by or through state or local authority,
20 except that **public body does not include** the judiciary ~~, including~~
21 **or** the office of the county clerk and its employees when acting in
22 the capacity of clerk to the circuit court. ~~, is not included in~~
23 ~~the definition of public body.~~ **For purposes of this subparagraph,**
24 **revenue earned by a body pursuant to a fee-for-service transaction**
25 **with a governmental entity does not count as funds provided by or**
26 **through state or local authority.**

27 (j) ~~(i)~~—"Public record" means a writing prepared, owned, used,
28 in the possession of, or retained by a public body in the
29 performance of an official function, from the time it is created.

1 Public record does not include computer software. **Public record**
 2 **does not include notes taken or made by a member of a public body,**
 3 **including notes taken or made during a meeting of the public body,**
 4 **if the notes are for that member's personal use, are not circulated**
 5 **among other members, are not used in the creation of any meeting**
 6 **minutes, and are retained or destroyed at that member's sole**
 7 **discretion.** This act separates public records into the following 2
 8 classes:

9 (i) Those that are exempt from disclosure under section 13.

10 (ii) All public records that are not exempt from disclosure
 11 under section 13 and that are subject to disclosure under this act.

12 (k) ~~(j)~~—"Software" means a set of statements or instructions
 13 that when incorporated in a machine usable medium is capable of
 14 causing a machine or device having information processing
 15 capabilities to indicate, perform, or achieve a particular
 16 function, task, or result. Software does not include computer-
 17 stored information or data, or a field name if disclosure of that
 18 field name does not violate a software license.

19 (l) ~~(k)~~—"Unusual circumstances" means any 1 or a combination of
 20 the following, but only to the extent necessary for the proper
 21 processing of a request:

22 (i) The need to search for, collect, or appropriately examine
 23 or review a voluminous amount of separate and distinct public
 24 records pursuant to a single request.

25 (ii) The need to collect the requested public records from
 26 numerous field offices, facilities, or other establishments ~~which~~
 27 **that** are located apart from the particular office receiving or
 28 processing the request.

29 (m) ~~(l)~~—"Writing" means handwriting, typewriting, printing,

1 photostating, photographing, photocopying, and every other means of
2 recording, and includes letters, words, pictures, sounds, or
3 symbols, or combinations thereof, and papers, maps, magnetic or
4 paper tapes, photographic films or prints, microfilm, microfiche,
5 magnetic or punched cards, discs, drums, hard drives, solid state
6 storage components, **hybrid drives, cloud storage, quantum networks**
7 **and computing systems**, or other means of recording or retaining
8 meaningful content.

9 **(n)** ~~(m)~~ "Written request" means a writing that asks for
10 information, and includes a writing transmitted by facsimile,
11 ~~electronic mail, email~~, or other electronic means.

12 Enacting section 1. This amendatory act takes effect on
13 January 1 of the first odd-numbered year that begins at least 6
14 months after the date it is enacted into law.

15 Enacting section 2. This amendatory act does not take effect
16 unless Senate Bill No. 670 of the 102nd Legislature is enacted into
17 law.