

***** Act 455 of 1982 THIS TITLE, BEGINNING WITH THE FIRST INSTANCE OF "AN ACT", IS AMENDED EFFECTIVE MARCH 29, 2021: THIS AMENDED TITLE, BEGINNING WITH THE SECOND INSTANCE OF "AN ACT", IS EFFECTIVE MARCH 29, 2021 *****

THE LIBRARY PRIVACY ACT
Act 455 of 1982

AN ACT to provide for the confidentiality of certain library records; and to provide for the selection and use of library materials. AN ACT to provide for the confidentiality of certain library records; to provide for certain exceptions to the confidentiality of those library records; to provide for the selection and use of library materials; and to provide remedies.

History: 1982, Act 455, Eff. Mar. 30, 1983;—Am. 2020, Act 315, Eff. Mar. 29, 2021.

The People of the State of Michigan enact:

397.601 Short title.

Sec. 1. This act shall be known and may be cited as "the library privacy act".

History: 1982, Act 455, Eff. Mar. 30, 1983.

***** 397.602 THIS SECTION IS AMENDED EFFECTIVE MARCH 29, 2021: See 397.602.amended *****

397.602 Definitions.

Sec. 2. As used in this act:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program, and that can store, retrieve, alter, or communicate the results of the operations, to a person, computer program, computer, computer system, or computer network.

(b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(f) "Harmful to minors" means that term as it is defined in section 4 of 1978 PA 33, MCL 722.674.

(g) "Internet" means that term as defined in section 230 of title II of the communications act of 1934, chapter 652, 110 Stat. 137, 47 U.S.C. 230.

(h) "Library" includes a library that is established by the state; a county, city, township, village, school district, or other local unit of government or authority or combination of local units of governments and authorities; a community college district; a college or university; or any private library open to the public.

(i) "Library record" means a document, record, or other method of storing information retained by a library that contains information that personally identifies a library patron, including the patron's name, address, or telephone number, or that identifies a person as having requested or obtained specific materials from a library. Library record does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general.

(j) "Minor" means an individual who is less than 18 years of age.

(k) "Obscene" means that term as it is defined in section 2 of 1984 PA 343, MCL 752.362.

(l) "Sexually explicit matter" means that term as it is defined in section 3 of 1978 PA 33, MCL 722.673.

(m) "Terminal" means a device used to access the internet or a computer, computer program, computer network, or computer system.

History: 1982, Act 455, Eff. Mar. 30, 1983;—Am. 1998, Act 7, Imd. Eff. Feb. 6, 1998;—Am. 1999, Act 37, Eff. Aug. 1, 1999.

***** 397.602.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 29, 2021 *****

397.602.amended Definitions.

Sec. 2. As used in this act:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations, including logical, arithmetic, or memory functions with or on computer data or a computer program, and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Crime" means that term as defined in section 5 of the Michigan penal code, 1931 PA 328, MCL 750.5.

(f) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(g) "Harmful to minors" means that term as defined in section 4 of 1978 PA 33, MCL 722.674.

(h) "Internet" means that term as defined in 47 USC 230.

(i) "Law enforcement officer" means an individual licensed under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615.

(j) "Library" means a library that is established by this state or by a county, city, township, village, school district, or other local unit of government or authority or combination of local units of governments and authorities, a community college district, or a college or university, or a private library open to the public.

(k) "Library record" means a document, record, or other method of storing information retained by a library that contains information that personally identifies a library patron, including the patron's name, address, or telephone number, or that identifies a person as having requested or obtained specific materials from a library. Library record does not include either of the following:

(i) Nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general.

(ii) Recorded video surveillance images made solely for security purposes that do not include images of any activity or any other document or record that identifies a person as having requested or lawfully obtained specific services, materials, or information resources from a library.

(l) "Minor" means an individual who is less than 18 years of age.

(m) "Obscene" means that term as defined in section 2 of 1984 PA 343, MCL 752.362.

(n) "Sexually explicit matter" means that term as defined in section 3 of 1978 PA 33, MCL 722.673.

(o) "Terminal" means a device used to access the internet or a computer, computer program, computer network, or computer system.

History: 1982, Act 455, Eff. Mar. 30, 1983;—Am. 1998, Act 7, Imd. Eff. Feb. 6, 1998;—Am. 1999, Act 37, Eff. Aug. 1, 1999;—Am. 2020, Act 315, Eff. Mar. 29, 2021.

***** 397.603 THIS SECTION IS AMENDED EFFECTIVE MARCH 29, 2021: See 397.603.amended *****

397.603 Library record not subject to disclosure requirements; release or disclosure of library record without consent prohibited; exception; procedure and form of written consent; hearing.

Sec. 3. (1) Except as provided in subsection (2), a library record is not subject to the disclosure requirements of the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) Unless ordered by a court after giving the affected library notice of the request and an opportunity to be heard on the request, a library or an employee or agent of a library shall not release or disclose a library record or portion of a library record to a person without the written consent of the person liable for payment for or return of the materials identified in that library record.

(3) The procedure and form of giving written consent described in subsection (2) may be determined by the library.

(4) A library may appear and be represented by counsel at a hearing described in subsection (2).

History: 1982, Act 455, Eff. Mar. 30, 1983;—Am. 1996, Act 188, Imd. Eff. May 8, 1996.

***** 397.603.amended *THIS AMENDED SECTION IS EFFECTIVE MARCH 29, 2021* *****

397.603.amended Library record not subject to disclosure requirements; release or disclosure of library record without consent prohibited; exception; procedure and form of written consent; hearing; disclosure exception.

Sec. 3. (1) A library record is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) A library or an employee or agent of a library shall not release or disclose a library record or portion of a library record to a person without the written consent of the person liable for payment for or return of the materials identified in that library record, unless 1 of the following applies:

(a) A court has ordered the release or disclosure after giving the affected library notice of the request and an opportunity to be heard on the request.

(b) The release or disclosure is permitted under subsection (5).

(3) The procedure and form of giving the written consent described in subsection (2) may be determined by the library.

(4) A library may appear and be represented by counsel at a hearing described in subsection (2)(a).

(5) A library or an employee or agent of a library may disclose library records without a court order or the written consent described in subsection (2) under either of the following circumstances:

(a) The library or an employee or agent of the library may report information about the delinquent account of a patron who obtains materials from the library to a collection agency under contract with the library. The library or an employee or agent of the library shall provide the collection agency with only the library records necessary to seek the return of overdue or stolen materials or to collect fines from the patron.

(b) The library or an employee or agent of the library may disclose library records to another library or library cooperative for the purpose of conducting interlibrary loans. The library records must be limited to those required for providing interlibrary loans.

(6) This section does not prohibit an employee or agent of a library from providing a sworn statement or testimony to a law enforcement officer based solely on the personal knowledge of the employee or agent of the library regarding a crime alleged to have occurred at the library.

(7) As used in this section and section 4, "employee or agent" includes an employee of a library, a member of the governing body of a library, an individual who is specifically designated as a volunteer and who is acting solely on behalf of a library, and any other person who is lawfully performing services on behalf of a library under a written contract, including a collection agency.

History: 1982, Act 455, Eff. Mar. 30, 1983;—Am. 1996, Act 188, Imd. Eff. May 8, 1996;—Am. 2020, Act 315, Eff. Mar. 29, 2021.

***** 397.604 *THIS SECTION IS AMENDED EFFECTIVE MARCH 29, 2021: See 397.604.amended* *****

397.604 Violation of MCL 397.603; liability; civil action; damages; attorney fees and costs.

Sec. 4. A library or an agent or employee of a library which violates section 3 shall be liable to the person identified in a record that is improperly released or disclosed. The person identified may bring a civil action for actual damages or \$250.00, whichever is greater; reasonable attorney fees; and the costs of bringing the action.

History: 1982, Act 455, Eff. Mar. 30, 1983.

***** 397.604.amended *THIS AMENDED SECTION IS EFFECTIVE MARCH 29, 2021* *****

397.604.amended Violation of MCL 397.603; liability; civil action; damages; attorney fees and costs; equitable relief.

Sec. 4. (1) If a library or an employee or agent of a library violates section 3, the library is subject to liability to the person identified in a library record that is improperly released or disclosed. The person identified in the library record may bring a civil action against the library for actual damages or \$250.00, whichever is greater, reasonable attorney fees, and the costs of bringing the action. A court also may grant equitable relief to a person under this subsection.

(2) If an employee or agent of a library knowingly violates section 3, the employee or agent is subject to liability to the person identified in a library record that is improperly released or disclosed. The person identified in the library record may bring a civil action against the employee or agent for actual damages or

\$250.00, whichever is greater, reasonable attorney fees, and the costs of bringing the action. A court also may grant equitable relief to a person under this subsection.

(3) A civil action brought under this section by or on behalf of a person identified in a library record must be brought within 180 days after the date that the person first knew or had reason to know of the release or disclosure of the record giving rise to the civil action.

History: 1982, Act 455, Eff. Mar. 30, 1983;—Am. 2020, Act 315, Eff. Mar. 29, 2021.

397.605 Selection and use of library materials.

Sec. 5. (1) Except as otherwise provided by statute or by a regulation adopted by the governing body of the library, the selection of library materials for inclusion in a library's collection shall be determined only by an employee of the library.

(2) Except as otherwise provided by law or by a regulation adopted by the governing body of the library, the use of library materials shall be determined only by an employee of the library.

History: 1982, Act 455, Eff. Mar. 30, 1983.

397.606 Restriction of internet access to minors; immunity from liability; exceptions.

Sec. 6. (1) If a library offers use of the internet or a computer, computer program, computer network, or computer system to the public, the governing body of that library shall adopt and require enforcement of a policy that restricts access to minors by providing the use of the internet or a computer, computer program, computer network, or computer system in 1 of the following ways:

(a) Both of the following:

(i) By making available, to individuals of any age, 1 or more terminals that are restricted from receiving obscene matter or sexually explicit matter that is harmful to minors.

(ii) By reserving, to individuals 18 years of age or older or minors who are accompanied by their parent or guardian, 1 or more terminals that are not restricted from receiving any material.

(b) By utilizing a system or method that is designed to prevent a minor from viewing obscene matter or sexually explicit matter that is harmful to minors.

(2) A governing body of a library, member of a governing body of a library, library, or an agent or employee of a governing body of a library or library, is immune from liability in a civil action as provided in section 7 of the revised judicature act of 1961, 1961 PA 236, MCL 691.1407.

(3) This section does not apply to a library established by a community college district, a college or university, or a private library open to the public.

History: Add. 1999, Act 37, Eff. Aug. 1, 1999;—Am. 2000, Act 212, Eff. Oct. 1, 2000.