

HOUSE No. 00126

The Commonwealth of Massachusetts

PRESENTED BY:

William M. Straus

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to identity theft protection..

PETITION OF:

NAME:

William M. Straus

DISTRICT/ADDRESS:

10th Bristol

HOUSE No. 00126

By Mr. Straus of Mattapoisett, petition (accompanied by [legType], House, No. 00126) of [petitioners] relative to the protection of personal information in consumer transactions. Joint Committee on Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 3427 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to identity theft protection..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 50 of chapter 93 of the General Laws, as so appearing, is hereby amended
2 by inserting after the definition “user” the following definition:

3

4 “Security freeze”, a notice, at the request of the consumer and subject to certain exceptions, that
5 prohibits the consumer reporting agency from releasing all or any part of the consumer’s credit
6 report or any information derived from it without the express authorization of the consumer. If a
7 security freeze is in place, such a report or information may not be released to a third party
8 without prior express authorization from the consumer. This subdivision does not prevent a

9 consumer reporting agency from advising a third party that a security freeze is in effect with
10 respect to the consumer's credit report.

11

12 "Reviewing the account" or "account review" includes activities related to account maintenance,
13 monitoring, credit line increases, and account upgrades and enhancements

14

15 SECTION 2. Said chapter 93 is hereby amended by inserting after section 51A the following
16 section:-

17 Section 51B Consumer Report Security Freeze

18 1) A consumer may elect to place a "security freeze" on his or her credit r e port by:

19 a) making a request by mail,

20 b) making a request by telephone by providing certain personal identification, or

21 c) making a request directly to the consumer reporting agency through a secure electronic

22 mail connection if such connection is made available by the agency. Credit reporting agencies

23 shall make a secure electronic mail method of requesting a security freeze available within 180

24 days of this Act's effective date.

25 2) A consumer reporting agency shall place a security freeze on a consumer's credit report

26 no later than five business days after receiving a written or telephone request from the consumer

27 or three business days after receiving a secure electronic mail request. Within one year of this

28 Act's effective date, a consumer reporting agency shall place a security freeze on a consumer's

29 credit report no later than 3 business days after receiving a written or telephone request from the
30 consumer or one business day after receiving a secure electronic mail request. Within two years
31 of this Act's effective date, a consumer reporting agency shall place a security freeze on a
32 consumer's credit reporting agency no later than one business day after receiving a written or
33 telephone request.

34 3) The consumer reporting agency shall send a written confirmation of the security freeze to
35 the consumer within five business days of placing the freeze and at the same time shall provide
36 the consumer with a unique personal identification number or password to be used by the
37 consumer when providing authorization for the release of his or her credit for a specific party or
38 period of time, or when permanently lifting the freeze.

39 4) If the consumer wishes to allow his or her credit report to be accessed for a specific party
40 or period of time while a freeze is in place, he or she shall contact the consumer reporting agency
41 via telephone, mail, or secure electronic mail, with a request that the freeze be temporarily lifted,
42 and provide the following:

43 a) proper identification,

44 b) the unique personal identification number or password provided by the consumer
45 reporting agency pursuant to paragraph (3) of subsection B, and

46 c) the proper information regarding the third party who is to receive the credit report or the
47 time period for which the report shall be available to users of the credit report.

48 5) A consumer reporting agency that receives a request from a consumer to temporarily lift
49 a freeze on a credit report pursuant to paragraph (4) of subsection (B) shall comply with the

50 request no later than three business days after receiving the request. Within one year of this
51 Act's effective date, a consumer reporting agency shall honor such a request no later than one
52 business day after receiving the request. Within two years of this Act's effective date, a
53 consumer reporting agency shall honor such a request made by electronic mail or by telephone
54 within fifteen minutes of receiving the request.

55 6) A consumer reporting agency shall develop procedures involving the use of telephone,
56 fax, or, upon the consent of the consumer in the manner required by the Electronic Signatures in
57 Global and National Commerce Act [E-Sign] for legally required notices, by the Internet, e-mail,
58 or other electronic media to receive and process a request from a consumer to temporarily lift a
59 freeze on a credit report pursuant to paragraph (4) of subsection (B) in an expedited manner.

60 7) A consumer reporting agency shall remove or temporarily lift a freeze placed on a
61 consumer's credit report only in the following cases:

62 a) upon consumer request, pursuant to paragraph (4) or paragraph (10) of subsection (B);

63 b) if the consumer's credit report was frozen due to a material misrepresentation of fact by
64 the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's
65 credit report pursuant to this paragraph, the consumer reporting agency shall notify the consumer
66 in writing five business days prior to removing the freeze on the consumer's credit report.

67 8) If a third party requests access to a consumer credit report on which a security freeze is in
68 effect, and this request is in connection with an application for credit or any other use, and the
69 consumer does not allow his or her credit report to be accessed for that specific party or period of
70 time, the third party may treat the application as incomplete.

71 9) If a third party requests access to a consumer credit report on which a security freeze is in
72 effect for the purpose of receiving, extending, or otherwise utilizing the credit therein, and not
73 for the sole purpose of account review, the consumer credit report agency must notify the
74 consumer that an attempt has been made to access the credit report.

75 10) A security freeze shall remain in place until the consumer requests that the security freeze
76 be removed. A consumer reporting agency shall remove a security freeze within three business
77 days of receiving a request for removal from the consumer, who provides both of the following:

78 a) proper identification, and

79 b) the unique personal identification number or password provided by the consumer
80 reporting agency pursuant to paragraph (3) of subsection (B).

81 Not later than one year after the effective date of this Act, a consumer reporting agency shall
82 remove a security freeze within one business day after receiving such a request.

83 11) A consumer reporting agency shall require proper identification of the person making a
84 request to place or remove a security freeze.

85 12) A consumer reporting agency may not suggest or otherwise state or imply to a third party
86 that the consumer's security freeze reflects a negative credit score, history, report or rating.

87 13) The provisions of this section do not apply to the use of a consumer credit report by any
88 of the following:

89 a) a person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer
90 has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the

91 purposes of reviewing the account or collecting the financial obligation owing for the account,
92 contract, or debt.

93 b) a subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom
94 access has been granted under paragraph (4) of subsection (B) for purposes of facilitating the
95 extension of credit or other permissible use.

96 c) any person acting pursuant to a court order, warrant, or subpoena.

97 d) a State or local agency which administers a program for establishing and enforcing child
98 support obligations.

99 e) the [state health department] or its agents or assigns acting to investigate fraud.

100 f) the [state tax authority] or its agents or assigns acting to investigate or collect delinquent
101 taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

102 g) a person for the purposes of prescreening as defined by the federal Fair Credit Reporting
103 Act.

104 h) any person or entity administering a credit file monitoring subscription service to which
105 the consumer has subscribed.

106 i) any person or entity for the purpose of providing a consumer with a copy of his or her
107 credit report upon the consumer's request.

108 14) A consumer reporting agency shall not charge a consumer any fee to place a security
109 freeze or for temporary or permanent removal of the security freeze on a consumer report. A
110 consumer reporting agency may charge up to \$5 for a replacement of the personal identification

111 number or password provided by the consumer reporting agency when the security freeze was
112 requested. There shall be no such fees if a consumer:—

113 a) provides the consumer reporting agency with a copy of a police incident report or
114 criminal complaint alleging identity theft;

115 b) is 62 years or older; or

116 c) is a person with a disability, as defined in section 1 of chapter 123B, or who is otherwise
117 mentally or physically disabled and as a result of such mental or physical disability is wholly or
118 partially dependent on another person or persons to meet his daily living needs.

119 d) is a veteran of the United States armed services or a person who receives veteran's
120 benefits.

121 Subsection C. Notice of Rights. At any time that a consumer is required to receive a summary of
122 rights required under Section 609 of the federal Fair Credit Reporting Act the following notice
123 shall be included:

124 Massachusetts Consumers Have the Right to Obtain a Security Freeze

125 You may obtain a security freeze on your credit report at no charge to protect your privacy and
126 ensure that credit is not granted in your name without your knowledge. You have a right to place
127 a “security freeze” on your credit report pursuant to [State law].

128 The security freeze will prohibit a consumer reporting agency from releasing any information in
129 your credit report without your express authorization or approval.

130 The security freeze is designed to prevent credit, loans, and services from being approved in your
131 name without your consent. When you place a security freeze on your credit report, within five
132 business days (and by [date], no later than one business day) you will be provided a personal
133 identification number or password to use if you choose to remove the freeze on your credit report
134 or to temporarily authorize the release of your credit report for a specific party, parties or period
135 of time after the freeze is in place. To provide that authorization, you must contact the
136 consumer reporting agency and provide all of the following:

137 1. The unique personal identification number or password provided by the consumer
138 reporting agency.

139 2. Proper identification to verify your identity.

140 3. The proper information regarding the third party or parties who are to receive the credit
141 report or the period of time for which the report shall be available to users of the credit report.

142 A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze
143 on a credit report shall comply with the request no later than three business days after receiving
144 the request (By [date] the consumer reporting agency must temporarily lift the freeze within 15
145 minutes of receiving the request.)

146 A security freeze does not apply to circumstances where you have an existing account
147 relationship and a copy of your report is requested by your existing creditor or its agents or
148 affiliates for certain types of account review, collection, fraud control or similar activities.

149 If you are actively seeking a new credit, loan, utility, telephone, or insurance account, you should
150 understand that the procedures involved in lifting a security freeze may slow your own

151 applications for credit. You should plan ahead and lift a freeze – either completely if you are
152 shopping around, or specifically for a certain creditor – with enough advance notice before you
153 apply for new credit for the lifting to take effect. Until [date], you should lift the freeze at least 3
154 business days before applying; between [date] and [date] you should lift the freeze at least one
155 business day before applying; and after [date] you should lift the freeze at least 15 minutes
156 before applying for a new account.

157 You have a right to bring a civil action against someone who violates your rights under the credit
158 reporting laws. The action can be brought against a consumer reporting agency or a user of your
159 credit report.”

160 Subsection D. Violations; Penalties.

161 If a consumer reporting agency erroneously, whether by accident or design, violates the security
162 freeze by releasing credit information that has been placed under a security freeze, the affected
163 consumer is entitled to:

164 1) Notification within five business days of the release of the information, including
165 specificity as to the information released and the third party recipient of the information.

166 2) File a complaint with the Federal Trade Commission and the state Attorney General and
167 the office of Consumer Affairs and Business Regulation.

168 3) In a civil action against the consumer reporting agency recover:

169 a) injunctive relief to prevent or restrain further violation of the security freeze, and/or

170 b) a civil penalty in an amount not to exceed \$1,000 for each violation plus any damages

171 available under other civil laws, and

172 c) reasonable expenses, court costs, investigative costs, and attorney's fees.

173 4) Each violation of the security freeze shall be counted as a separate incident for purposes
174 of imposing penalties under this section.

175 SECTION 3. The General Laws are amended to create a new Chapter 66B entitled "Consumer
176 Breach Notification" and providing as follows:--

177 Section 1. Definitions. For the purposes of this chapter, the following terms shall have the
178 following meanings:

179 1) "Data Collector" may include but is not limited to government agencies, public and
180 private universities, privately and publicly held corporations, financial institutions, retail
181 operators, and any other entity which, for any purpose, whether by automated collection or
182 otherwise, handles, collects, disseminates, or otherwise deals with personal information.

183 2) "Personal information," means an individual's last name, address, or phone number in
184 combination with any one or more of the following data elements, when either the name or the
185 data elements are not encrypted or redacted, or encrypted with an encryption key that was also
186 acquired:

187 a) Social Security number.

188 b) Driver's license number or state identification card number.

189 c) Account number, credit or debit card number, if circumstances exist wherein such a
190 number could be used without additional identifying information, access codes, or passwords.

191 d) Account passwords or personal identification numbers (PINs) or other access codes.

192 e) Biometric data

193 f) Any of items (a)-(e) when not in connection with the individual's last name, address or
194 phone number if the information compromised would be sufficient to perform or attempt to
195 perform identity theft against the person whose information was compromised.

196 "Personal information" does not include publicly available information that is lawfully made
197 available to the general public from federal, state, or local government records and in the
198 possession of a data receiver.

199 3) "Security Breach", the unauthorized acquisition of computerized or non-computerized
200 data that compromises the security, confidentiality, or integrity of personal information
201 maintained by the data collector. Good faith acquisition of personal information by an employee
202 or agent of the data collector for a legitimate purpose of the data collector is not a breach of the
203 security of the data, provided that the personal information is not used for a purpose unrelated to
204 the data collector or subject to further unauthorized disclosure. Breach of the security of non-
205 computerized data may include but is not limited to unauthorized photocopying, facsimiles, or
206 other paper-based transmittal of documents.

207 Section 2. Notice of Breach.

208 1) Any data collector that owns or uses personal information in any form (whether
209 computerized, paper, or otherwise) that includes personal information concerning a
210 Massachusetts resident shall notify the resident that there has been a breach of the security of the
211 data following discovery or notification of the breach. The disclosure notification shall be made
212 in the most expedient time possible and without unreasonable delay, consistent with the
213 legitimate needs of law enforcement, as provided in paragraph (2) of subsection B, or with any

214 measures necessary to determine the scope of the breach and restore the reasonable integrity,
215 security and confidentiality of the data system.

216 2) The notification required by this section may be delayed if a law enforcement agency
217 determines in writing that the notification may seriously impede a criminal investigation.

218 3) For purposes of this section, “notice” to consumers may be provided by one of the
219 following methods:

220 a) Written notice.

221 b) Electronic notice, if the notice provided is consistent with the provisions regarding
222 electronic records and signatures, for notices legally required to be in writing, set forth in Section
223 7001 of Title 15 of the United States Code.

224 c) Substitute notice, if the agency demonstrates that the cost of providing notice would
225 exceed two hundred fifty thousand dollars (\$250,000) or that the affected class of subject persons
226 to be notified exceeds 500,000, or the agency does not have sufficient contact information.

227 Substitute notice shall consist of all of the following:

228

229 1. Conspicuous posting of the notice on the Internet site of the agency or person, if the
230 agency or person maintains a public Internet site; and

231 2. Notification to major statewide media. The notice to media shall include a toll-free
232 phone number where an individual can learn whether or not that individual’s personal data is
233 included in the security breach.

234 4) Content of Notice

235 Such notice shall include —

236 a) to the extent possible, a description of the categories of information that was, or is
237 reasonably believed to have been, acquired by an unauthorized person, including social security
238 numbers, driver's license or State identification numbers and financial data;

239 b) a toll-free number —

240 1. that the individual may use to contact the agency or person, or the agent of the agency or
241 person; and

242 2. from which the individual may learn —

243 (a) what types of information the agency or person maintained about that individual or about
244 individuals in general; and

245 (b) whether or not the agency or person maintained information about that individual; and

246 (c) the toll-free contact telephone numbers and addresses for the major credit reporting
247 agencies.

248 5) The notification required by this section may be delayed if a law enforcement agency
249 determines, in writing, that the notification may impede a criminal investigation.

250 6) Additional Obligation Following Breach -- A person required to provide notification
251 under Subsection A shall provide or arrange for the provision of, to each individual to whom
252 notification is provided under subsection and on request and at no cost to such individual,
253 consumer credit reports from at least one of the major credit reporting agencies beginning not

254 later than 2 months following a breach of security and continuing on a quarterly basis for a
255 period of 2 years thereafter.

256 Subsection C. Remedies.

257 1) Violations of any provision of this section shall constitute and unfair and deceptive trade
258 practice pursuant to the provisions of chapter ninety-three A.

259 Section 3. Social Security Numbers.

260 No person or data collector operating in the commonwealth shall:

261 (1) intentionally communicate or otherwise make available to the general public an
262 individual's Social Security number;

263 (2) print an individual's Social Security number on any card required for the individual to
264 access products or services provided by the person or data collector;

265 (3) require an individual to transmit his or her Social Security number over the Internet,
266 unless the connection is secure or the Social Security number is encrypted;

267 (4) require an individual to use his or her Social Security number to access an Internet Web
268 site, unless a password or unique personal identification number or other authentication device is
269 also required to access the Internet Web site;

270 (5) print an individual's Social Security number on any materials that are mailed to the
271 individual, unless required by law;

272 (6) sell, lease, loan, trade, rent, or otherwise disclose an individual's Social Security number
273 to a third party for any purpose without written consent to the disclosure from the individual.

274 Section 4. Disposal of Personal Information.

275 A data collector shall take all reasonable measures to protect against unauthorized access to or
276 use of personal information in connection with, or after its disposal including, but not limited to:

277 (a) Implementing and monitoring compliance with policies and procedures that require the
278 burning, pulverizing or shredding of papers containing personal information so that the
279 information cannot practicably be read or reconstructed; and

280 (b) Implementing and monitoring compliance with policies and procedures that require the
281 destruction or erasure of electronic media and other non-paper media containing personal
282 information so that the information cannot practicably be read or reconstructed.

283 SECTION 5. Penalties

284 Chapter 266 of the General Laws is hereby amended by striking out Section 37E and inserting in
285 its place the following:-

286

287 Section 37E. Use of personal identification of another; identity fraud; penalty; restitution

288 (a) For purposes of this section, the following words shall have the following meanings: —

289 “Harass”, willfully and maliciously engage in an act directed at a specific person or persons, or at
290 a specific organization or organizations, which act seriously alarms or annoys such person or
291 persons or any person or persons employed by or associated with such organization or
292 organizations, and would cause a reasonable person to suffer substantial emotional distress.

293 “Identifying information”, any name or number that may be used, alone or in conjunction with
294 any other information, to assume the identity of an individual or organization including any
295 name, address, telephone number, driver's license number, social security number, place of
296 employment, employee identification number, tax identification number, mother's maiden name,
297 demand deposit account number, savings account number, credit card number, computer
298 password identification or other identifying information.

299 “Organization”, any corporation, partnership, joint venture, firm, sole proprietorship, association
300 of individuals, or any other professional or business entity.

301 “Person with a disability”, a person who is mentally retarded, as defined by section one of
302 chapter one hundred and twenty-three B or who is otherwise mentally or physically disabled and
303 as a result of such mental or physical disability is wholly or partially dependent on another
304 person or persons to meet his daily living needs.

305 “Pose”, to falsely represent oneself, directly or indirectly, as another person, persons, or
306 organization.

307 “Victim”, any person who, or organization that, has suffered financial loss or any entity that
308 provided money, credit, goods, services or anything of value and has suffered financial loss as a
309 direct result of the commission or attempted commission of a violation of this section.

310 (b) Whoever, with fraudulent intent, knowingly and intentionally poses as another person,
311 living or dead, as a representative of an organization, or as being authorized to act on behalf of
312 an organization, and uses such person's or organization's identifying information to obtain or to
313 attempt to obtain money, credit, goods, services, anything of value, any identification card or
314 other evidence of such person's or organization's identity, to harass another person or

315 organization, to commit an illegal act, or to avoid identification, apprehension or prosecution for
316 a crime shall be guilty of the crime of identity fraud and shall be punished for an initial offense
317 by a fine of not more than \$5,000 or imprisonment in a house of correction for not more than two
318 and one-half years, or by both such fine and imprisonment and for a second and subsequent
319 offense by a fine of not more than \$25,000 or imprisonment in the state prison for not more than
320 five years or a house of correction for not more than two and one half years, or both such fine
321 and imprisonment.

322 (c) Whoever, with fraudulent intent, knowingly and intentionally obtains identifying
323 information about another person, living or dead, or an organization, with the intent to pose as
324 such person, or as a representative of such organization, or as being authorized to act on behalf
325 of an organization in order to obtain money, credit, goods, services, anything of value, any
326 identification card or other evidence of such person's or organization's identity, to harass another
327 person or organization, or to avoid identification, apprehension or prosecution for a crime shall
328 be guilty of the crime of identity fraud and shall be punished for an initial offense by a fine of not
329 more than \$5,000 or imprisonment in a house of correction for not more than two and one-half
330 years, or by both such fine and imprisonment and for a second and subsequent offense by a fine
331 of not more than \$25,000 or imprisonment in the state prison for not more than five years or a
332 house of correction for not more than two and one half years, or both such fine and
333 imprisonment.

334 (d) Whoever commits an offense described in this section by using the identifying
335 information of a person sixty-five years or older or a person with a disability shall be punished
336 by a fine of not more than \$10,000 or imprisonment in the state prison for not more than five
337 years, or in jail for not more than two and one half years, or both and for a second and

338 subsequent offense by a fine of not more than \$25,000 or imprisonment in the state prison for not
339 more than ten years or a house of correction for not more than two and one half years, or both
340 such fine and imprisonment.

341 (e) Whoever knowingly and intentionally manufactures, sells, purchases, transfers, gives,
342 trades, loans, delivers, or possesses five or more items containing the identifying information of
343 the same person or organization, or the identifying information of five or more separate persons
344 or organizations with the intent to commit an offense described in this section or to assist another
345 to commit an offense described in this section shall be guilty of the crime of trafficking in stolen
346 identities and shall be punished by a fine of not more than \$25,000 or imprisonment in the state
347 prison for not more than five years, or in jail for not more than two and one half years, or both
348 and for a second and subsequent offense by a fine of not more than \$50,000 or imprisonment in
349 the state prison for not more than ten years or a house of correction for not more than two and
350 one half years, or both such fine and imprisonment.

351 (f) The knowledge or intent of the person alleged to have committed any of the crimes
352 within this section may be proved by direct or circumstantial evidence and the testimony of the
353 individual or a representative on behalf of the organization whose identifying information or
354 item containing identifying information was obtained or used to commit any of the crimes within
355 this section shall not be required to find a person guilty of those crimes.

356 (g) An offense under this section may be prosecuted in any county in which an element of
357 the offense was committed or in the county of residence of the person or organization whose
358 identifying information was allegedly used in the commission of the crimes of identity fraud or
359 of trafficking in stolen identities as defined in this section.

360 (h) A person found guilty of violating any provisions of this section shall, in addition to any
361 other punishment, be ordered to make restitution for financial loss sustained by a victim as a
362 result of such violation. Financial loss may include any costs incurred by such victim in
363 correcting the credit history of such victim or any costs incurred in connection with any civil or
364 administrative proceeding to satisfy any debt or other obligation of such victim, including lost
365 wages and attorney's fees.

366 (i) A victim who reasonably believes that his or her personal identifying information has
367 been unlawfully used in violation of this section may initiate a law enforcement investigation by
368 contacting the local law enforcement agency that has jurisdiction over his or her actual residence
369 or by contacting a local law enforcement agency that has jurisdiction over any location where his
370 or her personal identifying information has been unlawfully used. Said law enforcement agency
371 shall provide the victim with a written report of the incident and may begin an investigation of
372 the facts or, if the suspected crime was committed in a different jurisdiction, refer the matter to
373 the law enforcement agency where the suspected crime was committed for an investigation of the
374 facts. Nothing in this section shall interfere with the discretion of a local police department to
375 allocate resources for investigations of crimes and a complaint filed under this section shall not
376 be counted as an open case for the purpose compiling open case statistics.

377 (j) A law enforcement officer may arrest without warrant any person he has probable cause
378 to believe has committed the offense of identity fraud or trafficking in stolen identities as defined
379 in this section.