

SENATE No. 2062

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. Creem

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 adoption of the accompanying bill:

An Act relative to internet service providers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>4/14/2017</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	<i>4/18/2017</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>4/18/2017</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>4/18/2017</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>4/18/2017</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>4/18/2017</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>4/18/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>4/18/2017</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>4/20/2017</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>4/19/2017</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>4/19/2017</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>4/19/2017</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>4/19/2017</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>4/20/2017</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>	<i>4/20/2017</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	<i>4/20/2017</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>4/21/2017</i>

<i>Walter F. Tamily</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>4/21/2017</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>	<i>4/25/2017</i>

SENATE No. 2062

By Ms. Creem, a petition (accompanied by bill, Senate, No. 2062) (subject to Joint Rule 12) of Cynthia S. Creem, James B. Eldridge, Jennifer E. Benson, Kay Khan and other members of the General Court for legislation relative to internet service providers. Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to internet service providers.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect the internet privacy of the residents of the commonwealth, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

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 1 of chapter 93H of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting after the definition of “Breach of security” the
3 following 3 definitions:-

4 “Broadband internet access service” or “BIAS”, a mass-market retail service by wire or
5 radio that provides the capability to transmit data to and receive data from all or substantially all
6 internet endpoints, including any capabilities that are incidental to and enable the operation of
7 the communications service, but excluding dial-up internet access service; provided, that
8 “broadband internet access service” shall also include any service that the Federal

9 Communications Commission finds to be providing a functional equivalent of the service
10 described in this definition.

11 “Customer”, a current or former subscriber to an internet service in the commonwealth or
12 an applicant for an internet service in the commonwealth.

13 “Customer’s proprietary information”, the customer’s information which is protected
14 under this chapter, including the following 3 types of information collected by
15 telecommunications carriers through the provision of broadband or other telecommunications
16 services that are not mutually exclusive: (i) individually identifiable customer proprietary
17 network information, CPNI, as defined in 47 U.S.C. 222 (h)(1), including, but not limited to,
18 website browsing history and application usage; (ii) personally identifiable information, PII; and
19 (iii) content of communications.

20 SECTION 2. Said section 1 of said chapter 93H, as so appearing, is hereby further
21 amended by inserting after the definition of “Encrypted” the following definition:-

22 “Internet service provider” or “BIAS provider”, a person who provides BIAS to
23 customers in the commonwealth.

24 SECTION 3. Said section 1 of said chapter 93H, as so appearing, is hereby further
25 amended by inserting after the definition of “Notice” the following definition:-

26 “Opt-in approval”, a method for obtaining customer consent to collect, use, disclose or
27 permit third-party access to customer proprietary information; provided, however, that the
28 approval method shall require that the internet service provider obtain from the customer
29 affirmative, expressed consent allowing the requested collection, usage, disclosure or access to

30 the customer's proprietary information after the customer is provided appropriate notification of
31 the internet service provider's request as required by this chapter.

32 SECTION 4. Said chapter 93H is hereby further amended by inserting after section 6 the
33 following 3 sections:-

34 Section 7. (a) An internet service provider shall be subject to all the data security
35 regulations and data breach reporting requirements of this chapter.

36 (b) An internet service provider may not collect, use, disclose or permit third-party access
37 to a customer's proprietary information except as described in subsection (c) or with the opt-in
38 approval of a customer under subsection (d).

39 (c) An internet service provider may collect, use, disclose or permit third-party access to
40 a customer's proprietary information without customer approval for the following purposes: (i)
41 to provide internet service from which such information is derived or to provide services
42 necessary to or used in the provision of such internet service; (ii) to initiate, render, bill or collect
43 payment for internet service; (iii) to protect the rights or property of the internet service provider
44 or to protect users of the internet service and other internet service providers from fraudulent,
45 abusive or unlawful use of the service; (iv) to provide any inbound marketing, referral or
46 administrative services to the customer for the duration of a real-time interaction, if such
47 interaction was initiated by the customer; (v) to provide location information or other customer
48 proprietary information to: (1) a public safety answering point, emergency medical service
49 provider or emergency dispatch provider, public safety, fire service, law enforcement official or
50 hospital emergency or trauma care facility, in order to respond to the customer's request for
51 emergency services; or (2) providers of information or database management services solely to

52 assist in the delivery of emergency services in response to an emergency; or (vi) as otherwise
53 required or authorized by law.

54 (d) Except as otherwise provided in this section, an internet service provider shall obtain
55 opt-in approval from a customer to: (i) collect, use, disclose or permit third-party access to a
56 customer's proprietary information for any purpose not authorized under subsection (c); or (ii)
57 when making a material, retroactive change that would result in a use, disclosure or permission
58 of third-party access to the customer's proprietary information previously collected by the
59 internet service provider for which the customer did not previously grant approval for such use,
60 disclosure or permission of access.

61 (e) An internet service provider shall, at a minimum, solicit customer opt-in approval
62 pursuant to subsection (d), as applicable, at the point of sale and when making a material change
63 to a privacy policy. The request for customer approval shall be clear and conspicuous and shall
64 not be misleading. The request for customer approval shall disclose: (i) the type of proprietary
65 information that the internet service provider is seeking customer approval to collect, use,
66 disclose or permit third-party access to; (ii) the purpose for which the customer's proprietary
67 information will be used; and (iii) the type of entity that the internet service provider intends to
68 disclose or grant access to the customer's proprietary information. The request for customer
69 approval shall be translated into a language other than English if the internet service provider
70 transacts business with the customer in that other language.

71 (f) An internet service provider shall make available a simple, easy-to-use mechanism for
72 customers to grant, deny or withdraw opt-in approval at any time. The mechanism to grant, deny
73 or withdraw opt-in approval shall be clear and conspicuous, and shall not be misleading and shall

74 be made available at no additional cost to the customer. Such mechanism shall be available at all
75 times (i) on or through the internet service provider's website, (ii) in the internet service
76 provider's application, if it provides an application for account management purposes, and (iii)
77 any functional equivalent to the internet service provider's homepage or application. If an
78 internet service provider does not have a website, the internet service provider shall provide a
79 mechanism by another means that is available at all times including, but not limited to, a toll-free
80 telephone number. The customer's grant, denial or withdrawal of approval shall take effect
81 immediately and remain in effect until the customer revokes or limits such grant, denial or
82 withdrawal of approval.

83 (g) An internet service provider shall not add a surcharge for service to customers that do
84 not provide opt-in approval and shall not refuse to provide services to a customer on the grounds
85 that the customer refused to give opt-in approval. An internet service provider shall not offer a
86 financial incentive in exchange for a customer's opt-in approval.

87 (h) An internet service provider shall provide a customer with an itemized list of all of the
88 proprietary information associated with that customer's account within 30 days of a written and
89 signed request by the customer.

90 Section 8. A customer may bring an action pursuant to section 9 of chapter 93A against
91 an internet service provider to remedy violations of this chapter and for other relief that may be
92 appropriate. An internet service provider shall not require binding arbitration of disputes that
93 arise under this chapter.

94 Section 9. Notwithstanding section 6A of chapter 25C, the department of
95 telecommunications and cable shall have the authority to promulgate regulations to effectuate
96 this chapter.

97 SECTION 5. This act shall apply to all existing customers of an internet service provider
98 as well as future customers. This act shall apply to all customer proprietary information that has
99 already been collected by an internet service provider. An internet service provider shall seek
100 opt-in approval from existing customers for purposes other than those authorized under
101 subsection (c) of section 7 of chapter 93H of the General Laws not later than 30 days after the
102 effective date of this act.