

HOUSE No. 3427

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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
2 amended by inserting after the definition “user” the following definition:

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

10 “Reviewing the account" or "account review" includes activities related to account
11 maintenance, monitoring, credit line increases, and account upgrades and enhancements

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

14 Section 51B Consumer Report Security Freeze

15 A consumer may elect to place a “security freeze” on his or her credit report by:

16 making a request by mail,

17 making a request by telephone by providing certain personal identification, or

18 making a request directly to the consumer reporting agency through a secure electronic
19 mail connection if such connection is made available by the agency. Credit reporting agencies
20 shall make a secure electronic mail method of requesting a security freeze available within 180
21 days of this Act’s effective date.

22 A consumer reporting agency shall place a security freeze on a consumer’s credit report
23 no later than five business days after receiving a written or telephone request from the consumer
24 or three business days after receiving a secure electronic mail request. Within one year of this
25 Act’s effective date, a consumer reporting agency shall place a security freeze on a consumer’s
26 credit report no later than 3 business days after receiving a written or telephone request from the
27 consumer or one business day after receiving a secure electronic mail request. Within two years
28 of this Act’s effective date, a consumer reporting agency shall place a security freeze on a
29 consumer’s credit reporting agency no later than one business day after receiving a written or
30 telephone request.

31 The consumer reporting agency shall send a written confirmation of the security freeze to
32 the consumer within five business days of placing the freeze and at the same time shall provide
33 the consumer with a unique personal identification number or password to be used by the

34 consumer when providing authorization for the release of his or her credit for a specific party or
35 period of time, or when permanently lifting the freeze.

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

40 proper identification,

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

43 the proper information regarding the third party who is to receive the credit report or the
44 time period for which the report shall be available to users of the credit report.

45 A consumer reporting agency that receives a request from a consumer to temporarily lift
46 a freeze on a credit report pursuant to paragraph (4) of subsection (B) shall comply with the
47 request no later than three business days after receiving the request. Within one year of this
48 Act's effective date, a consumer reporting agency shall honor such a request no later than one
49 business day after receiving the request. Within two years of this Act's effective date, a
50 consumer reporting agency shall honor such a request made by electronic mail or by telephone
51 within fifteen minutes of receiving the request.

52 A consumer reporting agency shall develop procedures involving the use of telephone,
53 fax, or, upon the consent of the consumer in the manner required by the Electronic Signatures in
54 Global and National Commerce Act [E-Sign] for legally required notices, by the Internet, e-mail,

55 or other electronic media to receive and process a request from a consumer to temporarily lift a
56 freeze on a credit report pursuant to paragraph (4) of subsection (B) in an expedited manner.

57 A consumer reporting agency shall remove or temporarily lift a freeze placed on a
58 consumer's credit report only in the following cases:

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

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

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

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

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

75 proper identification, and

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

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

80 A consumer reporting agency shall require proper identification of the person making a
81 request to place or remove a security freeze.

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

84 The provisions of this section do not apply to the use of a consumer credit report by any
85 of the following:

86 a person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer
87 has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the
88 purposes of reviewing the account or collecting the financial obligation owing for the account,
89 contract, or debt.

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

93 any person acting pursuant to a court order, warrant, or subpoena.

94 a State or local agency which administers a program for establishing and enforcing child
95 support obligations.

96 the [state health department] or its agents or assigns acting to investigate fraud.

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

99 a person for the purposes of prescreening as defined by the federal Fair Credit Reporting
100 Act.

101 any person or entity administering a credit file monitoring subscription service to which
102 the consumer has subscribed.

103 any person or entity for the purpose of providing a consumer with a copy of his or her
104 credit report upon the consumer's request.

105 14) A consumer reporting agency shall not charge a consumer any fee to place a security
106 freeze or for temporary or permanent removal of the security freeze on a consumer report. A
107 consumer reporting agency may charge up to \$5 for a replacement of the personal identification
108 number or password provided by the consumer reporting agency when the security freeze was
109 requested. There shall be no such fees if a consumer:—

110 provides the consumer reporting agency with a copy of a police incident report or
111 criminal complaint alleging identity theft;

112 is 62 years or older; or

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

116 is a veteran of the United States armed services or a person who receives veteran's
117 benefits.

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

121 Massachusetts Consumers Have the Right to Obtain a Security Freeze

122 You may obtain a security freeze on your credit report at no charge to protect your
123 privacy and ensure that credit is not granted in your name without your knowledge. You have a
124 right to place a "security freeze" on your credit report pursuant to [State law].

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

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

134 The unique personal identification number or password provided by the consumer
135 reporting agency.

136 Proper identification to verify your identity.

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

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

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

146 If you are actively seeking a new credit, loan, utility, telephone, or insurance account,
147 you should understand that the procedures involved in lifting a security freeze may slow your
148 own applications for credit. You should plan ahead and lift a freeze – either completely if you are
149 shopping around, or specifically for a certain creditor – with enough advance notice before you
150 apply for new credit for the lifting to take effect. Until [date], you should lift the freeze at least 3
151 business days before applying; between [date] and [date] you should lift the freeze at least one
152 business day before applying; and after [date] you should lift the freeze at least 15 minutes
153 before applying for a new account.

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

157 Subsection D. Violations; Penalties.

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

161 Notification within five business days of the release of the information, including
162 specificity as to the information released and the third party recipient of the information.

163 File a complaint with the Federal Trade Commission and the state Attorney General and
164 the office of Consumer Affairs and Business Regulation.

165 In a civil action against the consumer reporting agency recover:

166 injunctive relief to prevent or restrain further violation of the security freeze, and/or

167 a civil penalty in an amount not to exceed \$1,000 for each violation plus any damages
168 available under other civil laws, and

169 reasonable expenses, court costs, investigative costs, and attorney's fees.

170 Each violation of the security freeze shall be counted as a separate incident for purposes
171 of imposing penalties under this section.

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

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

176 1) "Data Collector" may include but is not limited to government agencies, public and
177 private universities, privately and publicly held corporations, financial institutions, retail

178 operators, and any other entity which, for any purpose, whether by automated collection or
179 otherwise, handles, collects, disseminates, or otherwise deals with personal information.

180 2) “Personal information,” means an individual’s last name, address, or phone number
181 in combination with any one or more of the following data elements, when either the name or the
182 data elements are not encrypted or redacted, or encrypted with an encryption key that was also
183 acquired:

184 a) Social Security number.

185 b) Driver’s license number or state identification card number.

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

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

189 e) Biometric data

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

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

196 3) “Security Breach”, the unauthorized acquisition of computerized or non-computerized
197 data that compromises the security, confidentiality, or integrity of personal information

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

204 Section 2. Notice of Breach.

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

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

215 For purposes of this section, “notice” to consumers may be provided by one of the
216 following methods:

217 Written notice.

218 Electronic notice, if the notice provided is consistent with the provisions regarding
219 electronic records and signatures, for notices legally required to be in writing, set forth in Section
220 7001 of Title 15 of the United States Code.

221 Substitute notice, if the agency demonstrates that the cost of providing notice would
222 exceed two hundred fifty thousand dollars (\$250,000) or that the affected class of subject persons
223 to be notified exceeds 500,000, or the agency does not have sufficient contact information.
224 Substitute notice shall consist of all of the following:

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

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

230 4) Content of Notice

231 Such notice shall include—

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

235 b) a toll-free number—

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

238 2. from which the individual may learn—

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

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

242 c) the toll-free contact telephone numbers and addresses for the major credit reporting
243 agencies.

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

246 6) Additional Obligation Following Breach -- A person required to provide notification
247 under Subsection A shall provide or arrange for the provision of, to each individual to whom
248 notification is provided under subsection and on request and at no cost to such individual,
249 consumer credit reports from at least one of the major credit reporting agencies beginning not
250 later than 2 months following a breach of security and continuing on a quarterly basis for a
251 period of 2 years thereafter.

252 Subsection C. Remedies.

253 Violations of any provision of this section shall constitute an unfair and deceptive trade
254 practice pursuant to the provisions of chapter ninety-three A.

255 Section 3. Social Security Numbers.

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

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

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

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

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

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

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

271 Section 4. Disposal of Personal Information.

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

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

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

281 SECTION 4. Penalties

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

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

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

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

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

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

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

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

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

309 (b) Whoever, with fraudulent intent, knowingly and intentionally poses as another person,
310 living or dead, as a representative of an organization, or as being authorized to act on behalf of
311 an organization, and uses such person's or organization's identifying information to obtain or to
312 attempt to obtain money, credit, goods, services, anything of value, any identification card or
313 other evidence of such person's or organization's identity, to harass another person or
314 organization, to commit an illegal act, or to avoid identification, apprehension or prosecution for
315 a crime shall be guilty of the crime of identity fraud and shall be punished for an initial offense
316 by a fine of not more than \$5,000 or imprisonment in a house of correction for not more than two
317 and one-half years, or by both such fine and imprisonment and for a second and subsequent
318 offense by a fine of not more than \$25,000 or imprisonment in the state prison for not more than

319 five years or a house of correction for not more than two and one half years, or both such fine
320 and imprisonment.

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

333 (d) Whoever commits an offense described in this section by using the identifying
334 information of a person sixty-five years or older or a person with a disability shall be punished
335 by a fine of not more than \$10,000 or imprisonment in the state prison for not more than five
336 years, or in jail for not more than two and one half years, or both and for a second and
337 subsequent offense by a fine of not more than \$25,000 or imprisonment in the state prison for not
338 more than ten years or a house of correction for not more than two and one half years, or both
339 such fine and imprisonment.

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

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

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

359 (h) A person found guilty of violating any provisions of this section shall, in addition to
360 any other punishment, be ordered to make restitution for financial loss sustained by a victim as a
361 result of such violation. Financial loss may include any costs incurred by such victim in

362 correcting the credit history of such victim or any costs incurred in connection with any civil or
363 administrative proceeding to satisfy any debt or other obligation of such victim, including lost
364 wages and attorney's fees.

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

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