

SENATE No. 2304

Senate, February 14, 2018 -- Substituted by amendment by the Senate (Senator L'Italien) as a new draft for Senate, No. 130

The Commonwealth of Massachusetts

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

An Act relative to consumer protection from security breaches.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to enhance consumers’ ability to protect their credit reports, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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, as appearing in the 2016 Official Edition, is
2 hereby amended by striking out the definition of “Consumer”, and inserting in place thereof the
3 following 2 definitions:–

4 “Consumer”, an individual.

5 “Breach of security”, shall have the same meaning as in section 1 of chapter 93H.

6 SECTION 2. Said section 50 of said chapter 93, as so appearing, is hereby further
7 amended by inserting after the definition of “Person” the following definition:–

8 “Personal information”, shall have the same meaning as in section 1 of chapter 93H.

9 SECTION 3. Chapter 93 is hereby amended by inserting after section 51A the following
10 new section:-

11 Section 51B. A user shall not obtain, use or seek the consumer report or credit score of a
12 consumer unless the user: (i) obtains the written consent of the consumer in a document that
13 consists solely of the consent and does so each time that the user seeks to obtain the consumer
14 report or credit score of a consumer; and (ii) discloses the user's reason for accessing the
15 consumer report or credit score to the consumer or applicant in writing.

16 A waiver of this section shall be void and a user shall not require or request that a
17 consumer waive it.

18 Failure to comply with this section shall constitute an unfair practice under clause (a) of
19 section 2 of chapter 93A.

20 SECTION 4. Section 59 of said chapter 93, as so appearing, is hereby amended by
21 inserting at the end thereof, the following 3 subsections:-

22 (f) In addition to the requirements of subsection (d), and for the purpose of preventing or
23 mitigating identify theft or financial fraud, when a consumer is informed through notice under
24 section 93H that the consumer's personal information was acquired or used by an unauthorized
25 person or used for an unauthorized purpose, or that the consumer was the subject of a breach of
26 security, then the consumer shall be entitled to not less than 3 free copies of a consumer report
27 from each consumer reporting agency which compiles and maintains files on consumers on a
28 nationwide basis.

29 (g) If a consumer receives the notice under subsection (f) or is the subject of a breach of
30 security, and the consumer's personal information was held by a consumer reporting agency,
31 then that consumer reporting agency shall offer to provide appropriate identity theft prevention
32 and mitigation services at no cost to the consumer for not less than 60 months. The consumer
33 reporting agency shall provide the consumer with information necessary to take advantage of the
34 offer.

35 (h) A consumer reporting agency shall not require a consumer to waive his or her right to
36 a private right of action as a condition of exercising any of the provisions of this chapter.

37 SECTION 5. Section 62A of said chapter 93, as so appearing, is hereby amended by
38 striking out the eleventh paragraph and inserting in place thereof the following 3 paragraphs:-

39 A consumer reporting agency shall not charge a fee to any consumer, including a minor,
40 who elects to freeze, lift or remove a security freeze from a consumer report.

41 If a consumer requests a security freeze from a consumer reporting agency which
42 compiles and maintains files on consumers on a nationwide basis, then the consumer shall have
43 the option to have said security freeze applicable to any other consumer reporting agency which
44 compiles and maintains files on consumers on a nationwide basis. A consumer reporting agency
45 shall not charge a fee to a consumer who selects this option.

46 SECTION 6. Subsection (a) of section 2 of chapter 93H, as so appearing, is hereby
47 amended by inserting at the end thereof the following:-

48 Such regulations shall require each such person who owns or licenses the information of
49 not less than 1,000 residents of the commonwealth to encrypt, to the extent technologically

50 feasible, personal information transmitted by the person and held by the person; or, if encryption
51 is not technologically feasible, that each such person develop, implement and maintain
52 alternative compensating controls consistent with industry standards and the person's assessment
53 of risk, to protect the security, confidentiality and integrity of the personal information.

54 SECTION 7. The department of consumer affairs and business regulation shall
55 promulgate regulations implementing section 6 of this act not later than 12 months after the
56 effective date of this act.