HOUSE DOCKET, NO. 58 FILED ON: 1/6/2011

HOUSE . . . . . No. 126

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 adoption of the accompanying bill:

An Act relative to identity theft protection..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William M. Straus	*10th Bristol*

HOUSE DOCKET, NO. 58 FILED ON: 1/6/2011

HOUSE . . . . . No. 126

By Mr. Straus of Mattapoisett, a petition (accompanied by bill, House, No. 126) of William M. Straus relative to the protection of personal information in consumer transactions. 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:

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

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

11

12 “Reviewing the account" or "account review" includes activities related to account
13 maintenance, 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
16 following 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
22 electronic mail connection if such connection is made available by the agency. Credit reporting
23 agencies shall make a secure electronic mail method of requesting a security freeze available
24 within 180 days of this Act’s effective date.

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

31 Within two years of this Act's effective date, a consumer reporting agency shall place a security
32 freeze on a consumer's credit reporting agency no later than one business day after receiving a
33 written or telephone request.

34 3) The consumer reporting agency shall send a written confirmation of the security
35 freeze to the consumer within five business days of placing the freeze and at the same time shall
36 provide the consumer with a unique personal identification number or password to be used by
37 the consumer when providing authorization for the release of his or her credit for a specific party
38 or 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
40 specific party or period of time while a freeze is in place, he or she shall contact the consumer
41 reporting agency via telephone, mail, or secure electronic mail, with a request that the freeze be
42 temporarily lifted, 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
47 or the 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
49 temporarily lift a freeze on a credit report pursuant to paragraph (4) of subsection (B) shall
50 comply with the request no later than three business days after receiving the request. Within one
51 year of this Act's effective date, a consumer reporting agency shall honor such a request no later

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

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

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

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

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

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

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

82 a) proper identification, and

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

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

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

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

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

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

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

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

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

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

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

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

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

111 i) any person or entity for the purpose of providing a consumer with a copy of his or
112 her credit report upon the consumer’s request.

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

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

120 b) is 62 years or older; or

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

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

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

129 Massachusetts Consumers Have the Right to Obtain a Security Freeze

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

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

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

142 1. The unique personal identification number or password provided by the consumer
143 reporting agency.

144 2. Proper identification to verify your identity.

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

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

152 A security freeze does not apply to circumstances where you have an existing account
153 relationship and a copy of your report is requested by your existing creditor or its agents or
154 affiliates for certain types of account r e view, collection, fraud control or similar activities.

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

163 You have a right to bring a civil action against someone who violates your rights under
164 the credit reporting laws. The action can be brought against a consumer reporting agency or a
165 user of your credit report."

166 Subsection D. Violations; Penalties.

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

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

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

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

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

177 b) a civil penalty in an amount not to exceed $1,000 for each violation plus any
178 damages available under other civil laws, and

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

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

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

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

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

190 2) ''Personal information,'' means an individual's last name, address, or phone
191 number in combination with any one or more of the following data elements, when either the

192 name or the data elements are not encrypted or redacted, or encrypted with an encryption key
193 that was also acquired:

194 a) Social Security number.

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

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

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

200 e) Biometric data

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

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

207 3) "Security Breach", the unauthorized acquisition of computerized or non-
208 computerized data that compromises the security, confidentiality, or integrity of personal
209 information maintained by the data collector. Good faith acquisition of personal information by
210 an employee or agent of the data collector for a legitimate purpose of the data collector is not a
211 breach of the security of the data, provided that the personal information is not used for a
212 purpose unrelated to the data collector or subject to further unauthorized disclosure. Breach of

213 the security of non-computerized data may include but is not limited to unauthorized
214 photocopying, facsimiles, or other paper-based transmittal of documents.

215 Section 2. Notice of Breach.

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

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

226 3) For purposes of this section, ‘‘notice’’ to consumers may be provided by one of
227 the following methods:

228 a) Written notice.

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

232 c) Substitute notice, if the agency demonstrates that the cost of providing notice
233 would exceed two hundred fifty thousand dollars ($250,000) or that the affected class of subject

234 persons to be notified exceeds 500,000, or the agency does not have sufficient contact
235 information. Substitute notice shall consist of all of the following:

236

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

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

242 4) Content of Notice

243 Such notice shall include —

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

247 b) a toll-free number —

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

250 2. from which the individual may learn —

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

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

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

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

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

265 Subsection C. Remedies.

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

268 Section 3. Social Security Numbers.

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

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

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

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

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

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

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

284 Section 4. Disposal of Personal Information.

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

288 (a) Implementing and monitoring compliance with polices and procedures that
289 require the burning, pulverizing or shredding of papers containing personal information so that
290 the information cannot practicably by read or reconstructed; and

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

294 SECTION 5. Penalties

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

297

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

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

302 "Harass", willfully and maliciously engage in an act directed at a specific person or
303 persons, or at a specific organization or organizations, which act seriously alarms or annoys such
304 person or persons or any person or persons employed by or associated with such organization or
305 organizations, and would cause a reasonable person to suffer substantial emotional distress.

306 "Identifying information", any name or number that may be used, alone or in conjunction
307 with any other information, to assume the identity of an individual or organization including any
308 name, address, telephone number, driver's license number, social security number, place of
309 employment, employee identification number, tax identification number, mother's maiden name,
310 demand deposit account number, savings account number, credit card number, computer
311 password identification or other identifying information.

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

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

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

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

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

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

335 (c) Whoever, with fraudulent intent, knowingly and intentionally obtains identifying
336 information about another person, living or dead, or an organization, with the intent to pose as
337 such person, or as a representative of such organization, or as being authorized to act on behalf
338 of an organization in order to obtain money, credit, goods, services, anything of value, any
339 identification card or other evidence of such person's or organization's identity, to harass another
340 person or organization, or to avoid identification, apprehension or prosecution for a crime shall
341 be guilty of the crime of identity fraud and shall be punished for an initial offense by a fine of not
342 more than $5,000 or imprisonment in a house of correction for not more than two and one-half
343 years, or by both such fine and imprisonment and for a second and subsequent offense by a fine
344 of not more than $25,000 or imprisonment in the state prison for not more than five years or a
345 house of correction for not more than two and one half years, or both such fine and
346 imprisonment.

347 (d) Whoever commits an offense described in this section by using the identifying
348 information of a person sixty-five years or older or a person with a disability shall be punished
349 by a fine of not more than $10,000 or imprisonment in the state prison for not more than five
350 years, or in jail for not more than two and one half years, or both and for a second and
351 subsequent offense by a fine of not more than $25,000 or imprisonment in the state prison for not
352 more than ten years or a house of correction for not more than two and one half years, or both
353 such fine and imprisonment.

354 (e) Whoever knowingly and intentionally manufactures, sells, purchases, transfers,
355 gives, trades, loans, delivers, or possesses five or more items containing the identifying
356 information of the same person or organization, or the identifying information of five or more
357 separate persons or organizations with the intent to commit an offense described in this section
358 or to assist another to commit an offense described in this section shall be guilty of the crime of
359 trafficking in stolen identities and shall be punished by a fine of not more than $25,000 or
360 imprisonment in the state prison for not more than five years, or in jail for not more than two and
361 one half years, or both and for a second and subsequent offense by a fine of not more than
362 $50,000 or imprisonment in the state prison for not more than ten years or a house of correction
363 for not more than two and one half years, or both such fine and imprisonment.

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

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

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

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

379 (i) A victim who reasonably believes that his or her personal identifying information
380 has been unlawfully used in violation of this section may initiate a law enforcement investigation
381 by contacting the local law enforcement agency that has jurisdiction over his or her actual
382 residence or by contacting a local law enforcement agency that has jurisdiction over any location
383 where his or her personal identifying information has been unlawfully used. Said law
384 enforcement agency shall provide the victim with a written report of the incident and may begin
385 an investigation of the facts or, if the suspected crime was committed in a different jurisdiction,
386 refer the matter to the law enforcement agency where the suspected crime was committed for an
387 investigation of the facts. Nothing in this section shall interfere with the discretion of a local
388 police department to allocate resources for investigations of crimes and a complaint filed under
389 this section shall not be counted as an open case for the purpose compiling open case statistics.

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