

SENATE NO. 233

AN ACT TO PROTECT VICTIMS OF IDENTITY THEFT

*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. Chapter 266 of the General Laws is hereby amended by striking out Section 37E and
2 inserting in place thereof the following:-

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

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

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

9 “Identifying information”, any name or number that may be used, alone or in conjunction with any
10 other information, to assume the identity of an individual or organization including any name, address,
11 telephone number, driver's license number, social security number, place of employment, employee

12 identification number, tax identification number, mother's maiden name, demand deposit account
13 number, savings account number, credit card number, computer password identification or other
14 identifying information.

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

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

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

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

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

33 and imprisonment and for a second and subsequent offense by a fine of not more than \$25,000 or
34 imprisonment in the state prison for not more than five years or a house of correction for not more than
35 two and one half years, or both such fine and imprisonment.

36 (c) Whoever, with fraudulent intent, knowingly and intentionally obtains identifying information about
37 another person, living or dead, or an organization, with the intent to pose as such person, or as a
38 representative of such organization, or as being authorized to act on behalf of an organization in order
39 to obtain money, credit, goods, services, anything of value, any identification card or other evidence of
40 such person's or organization's identity, to harass another person or organization, or to avoid
41 identification, apprehension or prosecution for a crime shall be guilty of the crime of identity fraud and
42 shall be punished for an initial offense by a fine of not more than \$5,000 or imprisonment in a house of
43 correction for not more than two and one-half years, or by both such fine and imprisonment and for a
44 second and subsequent offense by a fine of not more than \$25,000 or imprisonment in the state prison
45 for not more than five years or a house of correction for not more than two and one half years, or both
46 such fine and imprisonment.

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

53 (e) Whoever knowingly and intentionally manufactures, sells, purchases, transfers, gives, trades, loans,
54 delivers, or possesses five or more items containing the identifying information of the same person or

55 organization, or the identifying information of five or more separate persons or organizations with the
56 intent to commit an offense described in this section or to assist another to commit an offense
57 described in this section shall be guilty of the crime of trafficking in stolen identities and shall be
58 punished by a fine of not more than \$25,000 or imprisonment in the state prison for not more than five
59 years, or in jail for not more than two and one half years, or both and for a second and subsequent
60 offense by a fine of not more than \$50,000 or imprisonment in the state prison for not more than ten
61 years or a house of correction for not more than two and one half years, or both such fine and
62 imprisonment.

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

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

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

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