

Senate, No. 2236

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**The Commonwealth of Massachusetts**

IN THE YEAR OF TWO THOUSAND AND SEVEN

1

2 SECTION 1. Section 50 of chapter 93 of the General Laws, as appearing in  
3 the 2004 Official Edition, is hereby amended by inserting after the definition of  
4 “Firm offer of credit” the following 3 definitions:-

5 “Identity theft report”, report that alleges a violation of section 37E of chapter  
6 266, 18 United States Code, section 1028, or a similar statute in any other  
7 jurisdiction, or a copy of an official report filed by a consumer with an appropriate  
8 federal, state or local law enforcement agency, and the filing of which subjects the  
9 person filing the report to criminal penalties pursuant to section 67B of chapter 266  
10 or section 13A of chapter 269.

11 “Lift”, to suspend a security freeze for the purpose of releasing a consumer’s  
12 credit information to a specific party or for a specified period of time, as authorized by  
13 such consumer.

14 SECTION 2 Said section 50 of said chapter 93 of the General Laws, as so  
15 appearing, is hereby further amended by inserting after the definition of  
16 “Prescreening” the following 2 definitions:-

17           “Password” or “Personal identification number”, a unique and random  
18 number or a unique and random combination of numbers, letters or symbols, but  
19 shall not contain a consumer’s social security number or any sequence of 3 or more  
20 numbers of a consumer’s social security number, or other personal identifying  
21 information.

22           “Proper identification”, information generally sufficient to identify a person.  
23 Such information shall not include information concerning the consumer’s  
24 employment and personal or family history unless the consumer is unable to  
25 reasonably identify himself or herself with the information described in the preceding  
26 sentence.

27           "Security freeze", a notice placed on a consumer's credit report at a consumer  
28 reporting agency, at the request of the consumer and subject to certain exceptions, which  
29 prohibits the consumer reporting agency from releasing the consumer's report or any  
30 information derived there from without the express authorization of the consumer.

31           SECTION 3. Subsection (b) of section 56 of chapter 93 of the General Laws, as  
32 appearing in the 2004 Official Edition, is hereby amended by striking out the first  
33 sentence of the third paragraph, in lines 46 and 47, and inserting in place thereof the  
34 following 2 sentences:- You have a right to dispute inaccurate information by contacting  
35 the consumer reporting agency directly, either in writing or by telephone. The consumer  
36 reporting agency shall provide, upon request and without unreasonable delay, a live  
37 representative of the consumer reporting agency to assist in dispute resolution.

38 SECTION 4. Section 58 of said chapter 93, as so appearing, is hereby amended,  
39 in clause (a), in line 17, by deleting the word “writing” and inserting in place thereof the  
40 following words:- “writing, but shall provide consumers with the option of speaking with  
41 a live representative at any time during the dispute resolution process”

42 SECTION 5. Said section 58 of said chapter 93, as so appearing, is hereby further  
43 amended by inserting after clause (i) the following clause:-

44 (j) At any time during the dispute process outlined in this act, the consumer shall have the  
45 right to request to speak to a live representative from the consumer reporting agency in an  
46 attempt to resolve the dispute. The consumer reporting agency shall maintain a toll-free  
47 telephone number available to consumers for such a purpose and shall notify consumers  
48 of its availability.

49 SECTION 6. Section 55 of said chapter 93, as so appearing, is hereby amended  
50 by striking out, in line 1, the word “fifty-one” and inserting in place thereof the following  
51 words:- 51 and 62A.

52 SECTION 7. Subsection (b) of section 56 of chapter 93 of the General Laws, as  
53 so appearing, is hereby amended by striking out, in line 75, the word “act.” “and inserting  
54 in place thereof the following words:- act.

55 You have a right to request a “security freeze” on your credit report. The security  
56 freeze will prohibit a consumer reporting agency from releasing any information in your  
57 consumer report, also known as your credit report, without your express authorization. A  
58 security freeze must be requested by sending a written request via certified mail,

59 overnight mail, or regular stamped mail to a consumer reporting agency. The security  
60 freeze is designed to prevent credit, loans or services from being approved in your name  
61 without your consent. You should be aware that using a security freeze may delay,  
62 interfere with, or prevent the timely approval of any subsequent request or application  
63 you make regarding new loans, credit, mortgage, insurance, government services or  
64 payments, rental housing, employment, investment, license, cellular phone, utilities,  
65 digital signature, internet credit card transactions, or other services, including an  
66 extension of credit at point of sale.

67 When you place a security freeze on your credit report, within 5 business days of  
68 your request for a security freeze, the consumer reporting agency shall provide you with a  
69 personal identification number or password for use if you choose to remove the freeze on  
70 your credit report or authorize the release of your credit report for a specific party, parties  
71 or period of time after the freeze is in place. To provide that authorization, you must  
72 contact the consumer reporting agency and provide all of the following:

73 (1) the personal identification number or password provided by the credit  
74 reporting agency;

75 (2) proper identification to verify your identity; and

76 (3) the proper information regarding the third party or parties who are to receive  
77 the credit report or the period of time for which the report shall be available to users of  
78 the credit report.

79           “A consumer reporting agency that receives a request from a consumer to  
80 temporarily lift a freeze on a credit report shall comply with the request no later than 3  
81 business days after receiving the request.

82           “A security freeze shall not apply to a person or entity, or to its affiliates, or  
83 collection agencies acting on behalf of the person or entity, with which you have an  
84 existing account that requests information in your credit report for the purposes of  
85 reviewing or collecting the account, if you have previously given your consent to use of  
86 your credit reports. “Reviewing the account” includes activities related to account  
87 maintenance, monitoring, credit line increases, and account upgrades and enhancements.”

88           SECTION 8. Chapter 93 of the General Laws, as so appearing, is hereby  
89 amended by inserting after section 62 the following section:-

90           Section 62A. If a consumer requests a security freeze, the consumer reporting agency  
91 shall disclose to the consumer the process of placing, removing and lifting a security  
92 freeze. A consumer reporting agency shall require proper identification of the person  
93 making a request to place, lift or remove a security freeze.

94           A consumer may request that a security freeze be placed on his or her consumer  
95 report by sending a request in writing via certified mail, overnight mail, or regular  
96 stamped mail to a consumer reporting agency at an address designated by the consumer  
97 reporting agency to receive such requests. If a security freeze is in place, the information  
98 from a consumer's report may not be released to a third party without prior express  
99 authorization from the consumer. This section shall not prohibit a consumer reporting

100 agency from advising a third party that a security freeze is in effect with respect to the  
101 consumer's report.

102 A consumer reporting agency shall place a security freeze on a consumer's report  
103 not later than 3 business days after receiving a written request from the consumer. The  
104 consumer reporting agency shall send a written confirmation of the security freeze to the  
105 consumer within 5 business days after receiving the written request and shall provide the  
106 consumer with a unique personal identification number or a unique password or both to  
107 be used by the consumer for the purpose of providing authorization for the removal or  
108 lifting of the security freeze.

109 If the consumer wishes to lift a security freeze that is in place, he or she shall  
110 contact the consumer reporting agency, request that the freeze be lifted, and provide  
111 proper identification, the personal identification number or password, or both, provided  
112 by the consumer reporting agency, and proper information regarding the third party who  
113 is to receive the consumer report or the time period for which the report shall be available  
114 to users of the consumer report.

115 A consumer reporting agency that receives a request from a consumer to lift a  
116 security freeze on a consumer report pursuant to this chapter shall comply with the  
117 request as quickly as commercially possible, but under no circumstances not later than 3  
118 business days after receiving the request.

119 A consumer reporting agency may develop procedures involving the use of  
120 telephone, fax, the Internet, or other electronic media to receive and process a request  
121 from a consumer to lift a security freeze or remove a security freeze on a consumer report  
122 in an expedited manner, provided, however, that the director of consumer affairs and

123 business regulation may adopt regulations requiring alternate notice procedures for  
124 requesting or removing a security freeze..

125         A security freeze shall remain in place until the consumer requests that the  
126 security freeze be lifted or removed in the manner provided in this section; provided,  
127 however, that a consumer reporting agency may remove a security freeze if the  
128 consumer's report was frozen due to a material misrepresentation. If a consumer reporting  
129 agency intends to remove a freeze upon a consumer's report due to a material  
130 misrepresentation of fact by the consumer, the consumer reporting agency shall notify the  
131 consumer in writing 5 business days prior to removing the freeze on the consumer's  
132 report.

133         While a security freeze is in place, a consumer reporting agency shall not change  
134 any of the following official information in a consumer report without sending a written  
135 confirmation of the change to the consumer within 30 days of the change being posted to  
136 the consumer's file: name, date of birth, social security number, and address. Written  
137 confirmation shall not be required for technical modifications of a consumer's official  
138 information, including name and street abbreviations, complete spellings, or transposition  
139 of numbers or letters. In the case of an address change, the written confirmation shall be  
140 sent to both the new address and to the former address.

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

145 A consumer reporting agency shall remove a security freeze within 3 business  
146 days of receiving a request for removal from a consumer who provides both proper  
147 identification and the personal identification number or password provided by the  
148 consumer reporting agency pursuant to this chapter.

149 The provisions of this chapter shall not apply to the use of a consumer report by  
150 any of the following:

- 151 1) a person or entity, or a subsidiary, affiliate, or agent of that person or entity, or  
152 an assignee of a financial obligation owing by the consumer to such person or  
153 entity, or a prospective assignee of a financial obligation owing by the consumer  
154 to that person or entity in conjunction with the proposed purchase of the financial  
155 obligation, with which the consumer has or had prior to assignment an account or  
156 contract, including a demand deposit account, or to whom the consumer issued a  
157 negotiable instrument, for the purposes of reviewing the account or collecting the  
158 financial obligation owing for the account, contract or negotiable instrument. For  
159 purposes of this paragraph, "reviewing the account" shall include activities related  
160 to account maintenance, monitoring, credit line increases and account upgrades  
161 and enhancements; or a subsidiary, affiliate, agent, assignee, or prospective  
162 assignee of a person to whom access has been granted under for purposes of  
163 facilitating the extension of credit or other permissible use;
- 164 2) any federal, state or local agency, law enforcement agency, trial court, or acting  
165 pursuant to a court order, warrant, or subpoena;
- 166 3) the Massachusetts child support agency under Title IV-D of the Social Security  
167 Act (42 U.S.C. et seq.);

- 168 4) the executive office of health and human services or its agents or assigns acting  
169 to investigate Medicaid fraud;
- 170 5) the department of revenue or its agents or assigns acting to investigate or  
171 collect delinquent taxes or unpaid court orders or to fulfill any of its other  
172 statutory responsibilities;
- 173 6) a person or entity using credit information for the purposes of prescreening as  
174 provided for by the federal Fair Credit Reporting Act;
- 175 7) any person or entity administering a credit file monitoring subscription service  
176 to which the consumer has subscribed;
- 177 8) any person or entity acting solely for the purpose of providing a consumer with  
178 a copy of his or her credit report upon the consumer's request; or
- 179 9) to the extent otherwise allowed by statute, any property and casualty insurer  
180 licensed by the commonwealth for use in rating or underwriting insurance  
181 policies.

182 This section shall not prohibit a consumer reporting agency from charging a  
183 reasonable fee, not to exceed \$5, to a consumer who requests to place a security freeze,  
184 except that a consumer reporting agency shall not charge a fee to a victim of identity theft  
185 that provides a report of identify theft to a consumer reporting agency, if such report is  
186 accompanied by a police report filed in response to the identity theft in the appropriate  
187 municipality. Each consumer reporting agency shall allow consumers 1 security freeze  
188 and 1 lift of the security freeze per year, free of charge.

189           This section shall not prohibit a consumer reporting agency from charging a  
190 reasonable fee, not to exceed \$5, to a consumer who elects to lift the security freeze. No  
191 fee shall be charged for a permanent removal of a security freeze.

192           The following entities or persons shall not be required to place a security freeze  
193 on a consumer report:

194           1) a check services or fraud prevention services company, which issues reports on  
195 incidents of fraud or authorizations for the purpose of approving or processing negotiable  
196 instruments, electronic funds transfers or similar methods of payments;

197           2) a deposit account information service company, which issues reports regarding  
198 account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative  
199 information regarding a consumer, to inquiring banks or other financial institutions for  
200 use only in reviewing a consumer request for a demand deposit account at the inquiring  
201 bank; or

202           3) a consumer reporting agency that acts only as a reseller of credit information  
203 by assembling and merging information contained in the database of another consumer  
204 reporting agency or multiple consumer credit reporting agencies, and does not maintain a  
205 permanent database of credit information from which new consumer credit reports are  
206 produced; provided, however, that such financial institution or consumer reporting  
207 agency shall be subject to any security freeze placed on a consumer report by another  
208 consumer reporting agency from which it obtains information.

209           Notwithstanding any general or special law to the contrary, the director of the  
210 office of consumer affairs and business regulation, in consultation with the secretary of  
211 housing and economic development, shall promulgate rules and regulations pursuant to

212 this chapter including, but not limited to, the fees to be charged, and the method for  
213 requesting security freezes and the lifting or removing thereof.

214 SECTION 9. Section 63 of said chapter 93, as so appearing, is hereby amended  
215 by striking out the words “sixty-two” and inserting in place thereof the following word:-  
216 sixty-two-A

217 SECTION 10. Section 64 of said chapter 93, as so appearing, is hereby amended  
218 by striking out, in line 4, the words “fifty to sixty-two”, and inserting in place thereof the  
219 following words:- 50 to 62A.

220 SECTION 11. The General Laws, as so appearing, is hereby amended by  
221 inserting after Chapter 93G the following new chapter:-

222 CHAPTER 93H  
223 Electronic Security Breaches

224 Section 1. The following words as used in this chapter shall, unless the  
225 context clearly requires otherwise, have the following meanings:

226 “Agency”, any agency, executive office, department, board, commission,  
227 bureau, division or authority of the commonwealth, or any of its branches, or of any  
228 political subdivision thereof.

229 "Breach of the security of the system", the unauthorized acquisition of  
230 unencrypted electronic data that may compromise the security, confidentiality, or

231 integrity of personal information maintained by a commercial entity or agency that  
232 creates a material risk of identity theft or fraud against a resident of this state.

233 "Commercial entity", an individual, corporation, business trust, estate, trust,  
234 partnership, limited partnership, limited liability partnership, company, limited  
235 liability company, association, organization, joint venture or any other legal, whether  
236 for profit or not-for-profit, conducting business or operating in Massachusetts, but  
237 does not mean an agency as defined in this chapter.

238 "Electronic", relating to technology having electrical, digital, magnetic,  
239 wireless, optical, electromagnetic or similar capabilities.

240 "Encrypted" means transformation of data through the use of an algorithmic  
241 process into a form in which there is a low probability of assigning meaning without  
242 use of a confidential process or key, or securing the information by another method  
243 that renders the data elements unreadable or unusable.

244

245 "Notice" shall include:

246 (i) written notice;

247 (ii) electronic notice, if the agency's or commercial entity's primary means of  
248 communication with the Massachusetts resident is by electronic means or if  
249 notice provided is consistent with the provisions regarding electronic records  
250 and signatures set forth in § 7001 (c) of Title 15 of the United States Code;  
251 and section 110G of the General Laws; or

252 (iii) substitute notice, if the commercial entity or agency required to provide  
253 notice demonstrates that the cost of providing written notice will exceed  
254 \$150,000, or that the affected class of Massachusetts residents to be notified  
255 exceeds 250,000 residents, or that the commercial entity or agency does not  
256 have sufficient contact information to provide notice.

257 "Personal information" a resident's first name and last name or first initial  
258 and last name in combination with any 1 or more of the following data elements that  
259 relate to such resident:

- 260 a. Social Security number;
- 261 b. Driver's license number or state-issued identification card number;
- 262 c. or financial account number, credit or debit card number, if unauthorized  
263 use of such account does not require a security code, access code, or  
264 password to be accessed or used. The term "personal information" shall not  
265 include information that is lawfully obtained from publicly available  
266 information, or from Federal, State or local government records lawfully  
267 made available to the general public.

268 "Substitute notice", shall consist of all of the following:

- 269 (i) electronic mail notice if the commercial entity or agency has electronic  
270 mail addresses for the members of the affected class of Massachusetts  
271 residents; and

272 (ii) clear and conspicuous posting of the notice on the home page of the Web  
273 site of the commercial entity or agency if the commercial entity or agency  
274 maintains a web site; and

275 (iii) notice to major statewide media.

276 Section 2. The executive office of consumer affairs and business  
277 regulations shall adopt regulations for commercial entities that own or license, from  
278 another, personal information about a resident of the commonwealth. Such  
279 regulations shall be designed to safeguard the personal information of residents of the  
280 commonwealth and shall be consistent with the safeguards for protection of personal  
281 information set forth in the federal regulations by which the commercial entity is  
282 regulated. The objectives of the regulations shall be to insure the security and  
283 confidentiality of customer information in a manner fully consistent with nationwide  
284 standards; protect against anticipated threats or hazards to the security or integrity of  
285 such information; and protect against unauthorized access to or use of such  
286 information that could result in substantial harm or inconvenience to any customer.  
287 The regulations shall take into account the commercial entities' size, scope and type  
288 of businesses, the amount of resources available to such entities, the amount of stored  
289 data, and the need for security and confidentiality of both customer and employee  
290 information.

291 The division of public records shall establish rules and regulations for  
292 agencies that own or license, from another, personal information about a resident of  
293 the commonwealth and shall take into account the size, scope and type of services  
294 such agencies provide, the amount of resources available to such agencies, the

295 amount of electronically stored data, and the need for security and confidentiality of  
296 both customer and employee information.

297           Section 3. A commercial entity that owns or licenses from another, data that  
298 includes personal information about a resident of the commonwealth shall give notice  
299 to such resident of any breach of the security of the system in which data relevant to  
300 such resident is held, as soon as practicable and without unreasonable delay when  
301 such entity knows or has reason to know of a breach in the security of such system  
302 or when the entity knows or has reason to know that the personal information of such  
303 resident was acquired or used by an unauthorized person or used for an unauthorized  
304 purpose. Concurrently, such entity shall institute all measures necessary to notify  
305 such resident of the breach and to notify such resident of such acquisition or use of  
306 his personal information, to determine the scope of the breach and to undertake to  
307 restore the integrity, security and confidentiality of the resident's personal  
308 information.

309           A commercial entity or agency that maintains or stores but does not own or  
310 license from another, electronic data medium that includes personal information shall  
311 give notice to and cooperate with the owner or licensor of the information of any  
312 breach of the security of the system as soon as possible when such entity or agency  
313 knows or has reason to know that such personal information has been acquired or  
314 used by an unauthorized person or used for an unauthorized purpose. Such  
315 cooperation shall include sharing with the owner or licensor information relevant to  
316 the breach, except that such cooperation shall not be deemed to require the disclosure  
317 of confidential business information or trade secrets. Such commercial entity or

318 agency that maintains or stores, but does not own, electronic data shall not be  
319 responsible for providing notice to such resident if it does not materially know what  
320 the information is that is stored on the electronic data medium.

321           Nonwithstanding any general or special law to the contrary, the director of the  
322 office of consumer affairs and business regulation, in consultation with the secretary  
323 of housing and economic development, shall promulgate rules and regulations  
324 pursuant to this chapter including, but not limited to, the method of notice and  
325 substitute notice.

326           Section 4.     An agency that maintains electronic data that includes personal  
327 information of a resident of the commonwealth shall give notice to such resident of  
328 any breach of the security of its electronic data system when it knows or has reason  
329 to know of a breach in the security of system or when it knows or has reason to know  
330 that the personal information of such resident was acquired by an unauthorized  
331 person or used in an unauthorized manner.

332           Section 5.     Notice required under this chapter may be delayed if a law  
333 enforcement agency determines and informs the commercial entity or agency that  
334 provision of such notice may impede a criminal investigation. If notice is delayed  
335 pursuant to this section, such delay shall be made in good faith, without unreasonable  
336 delay and as soon as possible after the law enforcement agency determines and informs  
337 the commercial entity or agency that notification no longer poses a risk of impeding an  
338 investigation. The commercial entity or agency shall cooperate with law enforcement on  
339 investigating a breach, which includes the sharing of information about an owner or

340 licensee information relevant to the breach; provided however, that such disclosure shall  
341 not require the disclosure of confidential business information or trade secrets.

342           Section 6.     A commercial entity or agency that is required to give notice  
343 of a breach in the security of a system pursuant to this chapter shall also provide  
344 written notification of the nature and circumstances of the breach to the attorney  
345 general and the state regulatory agency that regulates the commercial entity, if any,  
346 as soon as possible following the discovery of a breach in the security of system. In  
347 addition, if such agency is within the executive department, it shall provide written  
348 notification of the nature and circumstances of the breach to the information  
349 technology division and the division of public records as soon as possible following  
350 the discovery of a breach in the security of system, and shall comply with all policies  
351 and procedures adopted by that division pertaining to the reporting and investigation  
352 of breaches of the system.

353           Section 7.     This chapter does not relieve a commercial entity or agency  
354 from the duty to comply with requirements of any applicable general or special law  
355 or federal law regarding the protection and privacy of personal information; provided  
356 however, a commercial entity that is regulated by federal law and that maintains  
357 procedures for a breach of the security of the system pursuant to the laws, rules,  
358 regulations, guidance, or guidelines established by its primary or functional federal  
359 regulator is deemed to be in compliance with this chapter if the commercial entity  
360 notifies affected Massachusetts residents in accordance with the maintained or  
361 required procedures when a breach occurs; provided further that the commercial  
362 entity also notifies the attorney general of the breach as soon as practicable and

363 without unreasonable delay following the discovery of its occurrence. Notification to  
364 the attorney general shall consist of, but not be limited to, the steps the commercial  
365 entity has taken or plans to take relating to the breach pursuant to the applicable  
366 federal regulation or statute; provided further that if said entity does not comply with  
367 federal laws, rules and regulations pursuant to its regulator then it shall be subject to  
368 the provisions of this chapter.

369           SECTION 12. The attorney general may bring an action pursuant to section 4 of  
370 chapter 93A against a commercial entity or otherwise to remedy violations of this  
371 chapter, and for other relief that may be appropriate.