

HOUSE No. 4229

Substituted by the House, on motion of Mr. Chan of Quincy, for a report of the committee on Consumer Protection and Professional Licensure, ought NOT to pass (under Joint Rule 10), on a petition (accompanied by bill, House, No. 134) of Jennifer E. Benson and others relative to removing fees for security freezes and disclosures of consumer credit reports. February 12, 2018.

The Commonwealth of Massachusetts

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

An Act removing fees for security freezes and disclosures of consumer credit reports.

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

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

5 “Consumer”, an individual.

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. Said chapter 93, as so appearing, is hereby amended by inserting after
10 section 51A the following new section:-

11 Section 51B. A user shall not obtain, use or seek the consumer report of a consumer in
12 connection with an application for credit unless the user obtains the consent of the consumer via
13 written, verbal, or electronic means as is appropriate in the manner in which an application for
14 credit is made. A user shall not obtain, use or seek the consumer report of a consumer in
15 connection with an application for credit without the consumer's written, verbal, or electronic
16 consent.

17 The user shall issue a consent form to the consumer within 15 minutes of receiving the
18 consumer's verbal or electronic consent to request the consumer report.

19 A waiver of this section shall be void and a user shall not require or request that a
20 consumer waive it. Failure to comply with this section shall constitute an unfair practice under
21 clause (a) of section 2 of chapter 93A.

22 SECTION 4. Section 56 of said chapter 93 of the General Laws, as so appearing, is
23 hereby amended by striking out section 56 and inserting in place thereof the following;-

24 Section 56. (a) Every consumer reporting agency shall, upon request and proper
25 identification of any consumer, clearly and accurately disclose to the consumer:

26 (1) the nature, contents and substance of all information, except medical information, in
27 its file on the consumer at the time of the request, and which is obtainable based upon the
28 identifying information supplied by the consumer when making such request, and if such
29 consumer has made a written request, delivered a written copy, photocopy or electronic copy, of
30 all such information except any code identifications which are used solely for purposes of
31 transferring such information to and from consumer reporting agencies; provided, however, that
32 the names of the users corresponding to the code identifications shall be disclosed to the

33 consumer; provided, further, that the agency shall provide a clear, simple and plain meaning
34 explanation of the information provided under this paragraph and such explanation shall be in a
35 readable format and type, which shall in no case be smaller than ten point type;

36 (2) the sources of all credit information obtained through routine credit reporting or
37 through any other credit reporting techniques in the file at the time of the request, except that the
38 sources of information acquired solely for use in preparing an investigative consumer report and
39 actually used for no other purpose need not be disclosed; provided, however, that in the event an
40 action is brought pursuant to section sixty-five, such sources shall be available to the plaintiff
41 under appropriate discovery procedures in the court in which the action is brought; and

42 (3) the recipients of any consumer report on the consumer which it has furnished for
43 employment purposes within the two-year period preceding the request, and for any other
44 purpose within the six-month period preceding the request.

45 (b) Every consumer reporting agency, upon contact by a consumer by phone, mail or
46 electronically, or in person regarding information which may be contained in the agency files
47 regarding that consumer, shall with each written disclosure, or in response to a request by the
48 consumer to be advised as to his rights, promptly advise the consumer of the consumer's rights
49 under this section. The written notice shall be in a clear and conspicuous format and be no
50 smaller than ten point type. The notice shall inform the consumer of the consumer's rights under
51 this chapter, provided in a clear and conspicuous manner, in substantially the following manner:

52 "You have a right to obtain a copy of your credit file from a consumer credit reporting
53 agency. You may be charged a reasonable fee not exceeding eight dollars. There is no fee,
54 however, if you have been turned down for credit, employment, insurance, or rental dwelling

55 because of information in your credit report within the preceding sixty days. The consumer credit
56 reporting agency must provide someone to help you interpret the information in your credit file.
57 Each calendar year you are entitled to receive, upon request, one free consumer credit report.

58 You have a right to dispute inaccurate information by contacting the consumer reporting
59 agency directly, either in writing, by electronic mail, through the credit reporting agency website,
60 or by telephone. The consumer reporting agency shall provide, upon request and without
61 unreasonable delay, a live representative of the consumer reporting agency to assist in dispute
62 resolution whenever possible and practicable, or to the extent consistent with federal law.
63 However, neither you nor any credit repair company or credit service organization has the right
64 to have accurate, current, and verifiable information removed from your credit report. In most
65 cases, under state and federal law, the consumer credit reporting agency must remove accurate,
66 negative information from your report only if it is over seven years old, and must remove
67 bankruptcy information only if it is over ten years old.

68 If you have notified a consumer credit reporting agency in writing that you dispute the
69 accuracy of information in your file, the consumer credit reporting agency must then, within
70 thirty business days, reinvestigate and modify or remove inaccurate information. The consumer
71 credit reporting agency may not charge a fee for this service. Any pertinent information and
72 copies of all documents you have concerning a dispute should be given to the consumer credit
73 reporting agency.

74 If reinvestigation does not resolve the dispute to your satisfaction, you may send a
75 statement to the consumer credit reporting agency to keep in your file, explaining why you think

76 the record is inaccurate. The consumer credit reporting agency must include your statement
77 about the disputed information in a report it issues about you.

78 You have a right to receive a record of all inquiries relating to a credit transaction
79 initiated in the six months preceding your request, or two years in the case of a credit report used
80 for employment purposes. This record shall include the recipients of any consumer credit report.

81 You have the right to opt out of any prescreening lists compiled by or with the assistance
82 of a consumer credit reporting agency by calling the agency's toll-free telephone number, or
83 contacting the agency electronically or in writing. You may be entitled to collect compensation,
84 in certain circumstances, if you are damaged by a person's negligent or intentional failure to
85 comply with the credit reporting act.

86 You have a right to request a "security freeze" on your consumer report. The security
87 freeze will prohibit a consumer reporting agency from releasing any information in your
88 consumer report without your express authorization. A security freeze shall be requested by
89 sending a request either by certified mail, overnight mail, regular stamped mail, or electronically
90 to a consumer reporting agency, or as authorized by regulation. The security freeze is designed to
91 prevent credit, loans or services from being approved in your name without your consent. You
92 should be aware that using a security freeze may delay, interfere with, or prevent the timely
93 approval of any subsequent request or application you make regarding new loans, credit,
94 mortgage, insurance, government services or payments, rental housing, employment, investment,
95 license, cellular phone, utilities, digital signature, internet credit card transactions, or other
96 services, including an extension of credit at point of sale.

97 When you place a security freeze on your consumer report, within 3 business days of
98 receiving your request for a security freeze, the consumer reporting agency shall send a written
99 or electronic confirmation of the security freeze and shall provide you with a personal
100 identification number or password to use if you choose to remove the freeze on your consumer
101 report or to authorize the release of your consumer report to a specific party or for a specified
102 period of time after the freeze is in place. To provide that authorization, you must contact the
103 consumer reporting agency and provide the following:-

104 (1) the personal identification number or password provided by the consumer reporting
105 agency;

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

107 (3) the third party or parties who are to receive the consumer report or the specified
108 period of time for which the report shall be available to authorized users of the consumer report.

109 A consumer reporting agency that receives a request from a consumer to lift a freeze on a
110 consumer report in writing by certified mail shall comply with the request not later than 3
111 business days after receiving the request; provided however, a consumer reporting agency that
112 receives such a request electronically or by telephone shall comply with the request as soon as
113 practicable and without unreasonable delay, but not later than 15 minutes after receiving the
114 request.

115 A security freeze shall not apply to a person or entity, or to its affiliates, or collection
116 agencies acting on behalf of the person or entity, with which you have an existing account, that
117 requests information relative to your consumer report for the purposes of reviewing or collecting

118 the account. "Reviewing the account" includes activities related to account maintenance,
119 monitoring, credit line increases, and account upgrades and enhancements."

120 SECTION 5. Section 57 of said chapter 93, as so appearing, is hereby amended, in line
121 13, by striking the words "only." and inserting in place thereof the following words:- only; or
122 (4) by electronic means if the consumer has made a written, verbal, or electronic request, with
123 proper identification.

124 SECTION 6. Section 62A of said chapter 93, as so appearing, is hereby amended by
125 inserting, in line 10, after the words "requests," the following words:- or by secure website or by
126 telephone,

127 SECTION 7. Said section 62A of said chapter 93, as so appearing, is hereby further
128 amended by striking out the third paragraph and inserting in place thereof the following
129 paragraph:-

130 A consumer reporting agency shall place a security freeze on a consumer report not later
131 than 3 business days after receiving a written request from the consumer by mail. A consumer
132 reporting agency that receives such a request electronically or by telephone shall comply with the
133 request no later than 1 business day after receiving the request. The consumer reporting agency
134 shall send a written or electronic confirmation of the security freeze to the consumer within 3
135 business days after receiving the request and shall provide the consumer with a unique personal
136 identification number or a unique password, or both, to be used by the consumer for the purpose
137 of providing authorization for the removal or lifting of the security freeze.

138 SECTION 8. Said section 62A of said chapter 93, as so appearing, is hereby further
139 amended, in line 35, by inserting after the word "request." the following sentence:- A consumer

140 reporting agency that receives such a request electronically or by telephone shall comply with the
141 request as soon as practicable and without unreasonable delay, not later than 15 minutes of
142 receiving the request.

143 SECTION 9. Said section 62A of said chapter 93, as so appearing, is hereby further
144 amended by inserting, in line 43, after the word “writing” the following words:- “or
145 electronically”

146 SECTION 10. Said section 62A of said chapter 93, as so appearing, is hereby further
147 amended by striking out the ninth paragraph and inserting in place thereof the following
148 paragraphs:-

149 A consumer reporting agency shall remove a security freeze within 3 business days of
150 receiving a written request for removal from a consumer who provides both proper identification
151 and the personal identification number or password provided by the consumer reporting agency
152 pursuant to this section. A consumer reporting agency shall remove a security freeze within 15
153 minutes of receiving an electronic or telephone request for removal from a consumer who
154 provides both proper identification and the personal identification number or password provided
155 by the consumer reporting agency pursuant to this section.

156 A consumer reporting agency need not remove a security freeze within the time provided
157 in this section if failure to do so resulted from (1) an act of God, war, natural disaster, strike, or
158 (2) unauthorized or illegal acts by a third party; (3) operational interruption; (4) governmental
159 action; (5) regularly scheduled maintenance, during other than normal business hours, of, or
160 updates to, the consumer reporting agency's systems; (6) commercially reasonable maintenance

161 of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled; or
162 (7) receipt of a removal request outside of normal business hours.

163 SECTION 11. Said section 62A of said chapter 93, as so appearing, is hereby further
164 amended by striking out the eleventh paragraph and inserting the following 2 paragraphs:-

165 A consumer reporting agency shall not charge a fee to any consumer who elects to freeze,
166 lift, or remove a security freeze from a consumer report.

167 A consumer reporting agency that compiles and maintains files on consumers on a
168 nationwide basis and receives a request by a consumer for a security freeze shall identify, to the
169 best of its knowledge, any other consumer reporting agency that compiles and maintains files on
170 consumers on a nationwide basis and inform consumers of appropriate websites, toll-free
171 telephone numbers and mailing addresses that would permit the consumer to place, lift or
172 remove a security freeze from such other consumer reporting agency. The consumer reporting
173 agencies subject to this section may establish a centralized source, including, but not limited to, a
174 website, that directs a consumer to such websites, toll-free telephone numbers and mailing
175 addresses.

176 SECTION 12. Said Chapter 93 of the General Laws, as so appearing, is hereby amended
177 by inserting after section 62A the following section:-

178 Section 62B. (a) As used in this section, the following words shall have the following
179 meanings:

180 “Protected consumer”, an individual who is under the age of seventeen years at the time a
181 request for the placement of a security freeze is made or an incapacitated person or a protected
182 person, as defined in section 5-101 of article V of chapter 190B.

183 “Record”, a compilation of information that identifies a protected consumer created by a
184 consumer reporting agency solely for the purpose of complying with this section. This record
185 may not be created or used to consider the protected consumer’s credit worthiness, credit
186 standing, credit capacity, character, general reputation, personal characteristics, or mode of
187 living.

188 “Representative”, a person who provides to a consumer reporting agency sufficient proof
189 of authority to act on behalf of a protected consumer.

190 “Security freeze”, (1) if a consumer reporting agency does not have a file that pertains to
191 a protected consumer, a restriction that (i) is placed on the protected consumer’s record in
192 accordance with this section; and (ii) except as otherwise provided in this section, prohibits the
193 consumer reporting agency from releasing the protected consumer’s record; or (2) if a consumer
194 reporting agency has a file that pertains to the protected consumer, a restriction that prevents the
195 consumer reporting agency from releasing the protected consumer’s consumer report or any
196 information derived from the protected consumer’s consumer report.

197 “Sufficient proof of authority”, documentation that shows a representative has authority
198 to act on behalf of a protected consumer and includes an order issued by a court of law, a
199 lawfully executed and valid power of attorney or a written, notarized statement signed by a
200 representative that expressly describes the authority of the representative to act on behalf of a
201 protected consumer.

202 “Sufficient proof of identification”, information or documentation that identifies a
203 protected consumer or a representative of a protected consumer and includes a social security
204 number or a copy of a social security card issued by the social security administration, a certified
205 or official copy of a birth certificate issued by the entity authorized to issue the birth certificate,
206 or a copy of a driver’s license, an identification card issued by the motor vehicle administration,
207 or any other government issued identification.

208 (b) This section shall not apply to the use of a protected consumer’s consumer report or
209 record by any of the following-

210 (1) a person or agent thereof, or an assignee of a financial obligation owing by the
211 consumer to such person or agent thereof, or a prospective assignee of a financial obligation
212 owing by the consumer to that person or agent thereof in conjunction with the proposed purchase
213 of the financial obligation, with which the consumer has or had, prior to assignment, an account
214 or contract, including a demand deposit account, or to whom the consumer issued a negotiable
215 instrument, for the purposes of reviewing the account or collecting the financial obligation owing
216 for the account, contract or negotiable instrument. For purposes of this paragraph, "reviewing the
217 account" shall include activities related to account maintenance, monitoring, credit line increases
218 and account upgrades and enhancements; or access to said account by a subsidiary, affiliate,
219 agent, assignee or prospective assignee of a person, or agent thereof, to whom access has been
220 granted for purposes of facilitating the extension of credit or other permissible use;

221 (2) any federal, state or local agency, law enforcement agency, or trial court acting
222 pursuant to a court order, warrant or subpoena;

223 (3) the Massachusetts child support agency under Title IV-D of the Social Security Act,
224 42 U.S.C. et seq;

225 (4) the executive office of health and human services or its agents or assigns acting to
226 investigate Medicaid fraud;

227 (5) the department of revenue or its agents or assigns acting to investigate or collect
228 delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;

229 (6) a person using credit information for the purposes of prescreening as provided for by
230 the federal Fair Credit Reporting Act;

231 (7) any person administering a credit file monitoring subscription service to which the
232 protected consumer has subscribed or the protected consumer's representative has subscribed on
233 the protected consumer's behalf;

234 (8) a person who, upon request from the protected consumer or the protected consumer's
235 representative, provides the protected consumer or the protected consumer's representative with
236 a copy of the protected consumer's consumer report;

237 (9) to the extent otherwise allowed by statute, any property and casualty insurer licensed
238 by the commonwealth for use in rating or underwriting insurance policies;

239 (10) a check services or fraud prevention services company that issues reports on
240 incidents of fraud or authorizations for the purpose of approving or processing negotiable
241 instruments, electronic funds transfers, or similar payment methods;

242 (11) a deposit account information service company that issues reports regarding account
243 closures due to fraud, substantial overdrafts, automated teller machine abuse, or similar

244 information regarding a consumer to inquiring banks or other financial institutions for use only
245 in reviewing an individual's request for a deposit account at the inquiring bank or financial
246 institution;

247 (12) an insurance company for the purpose of conducting the insurance company's
248 ordinary business;

249 (13) a consumer reporting agency that only resells credit information by assembling and
250 merging information contained in a database of another consumer reporting agency or multiple
251 consumer reporting agencies and that does not maintain a permanent database of credit
252 information from which new consumer reports are produced, except that such financial
253 institution or consumer reporting agency shall be subject to any security freeze placed on a
254 consumer report by another consumer reporting agency from which it obtains information; or

255 (14) a consumer reporting agency's database or file that consists of information that (a)
256 concerns and is used for criminal record information, fraud prevention or detection, personal loss
257 history information, or employment, tenant, or individual background screening and (b) is not
258 used for credit granting purposes.

259 (c) A consumer reporting agency shall place a security freeze on a consumer report for a
260 protected consumer if (1) the consumer reporting agency receives a request from the protected
261 consumer's representative for the placement of the security freeze and (2) the protected
262 consumer's representative (submits to the consumer reporting agency (i) sufficient proof of
263 identification of the protected consumer; (ii) sufficient proof of identification of the protected
264 consumer's representative; and (iii) sufficient proof of authority to act on behalf of the protected
265 consumer.

266 If a consumer reporting agency does not have a file that pertains to a protected consumer
267 when the consumer reporting agency receives a request described in this section, the consumer
268 reporting agency shall create a record for the protected consumer.

269 Upon receiving a request for a security freeze on a consumer report by a protected
270 consumer or the protected consumer's representative, a consumer reporting agency shall place a
271 security freeze for a protected consumer within 30 days.

272 (d) To remove a security freeze that is placed under this section, the protected consumer's
273 representative or the protected consumer shall submit a request for the removal of the security
274 freeze to the consumer reporting agency in writing, electronically, or by telephone. In the case of
275 a request by the representative of a protected consumer, sufficient proof of identification of the
276 protected consumer and the representative, and sufficient proof of authority to act on behalf of
277 the protected consumer must be presented before the security freeze is lifted. In the case of a
278 request by a protected consumer who is subject to a security freeze, sufficient proof of
279 identification of the consumer and proof that the consumer is no longer a protected consumer
280 must be presented before the security freeze is lifted.

281 A consumer reporting agency shall remove the security freeze on a consumer report not
282 later than 30 business days after receiving a request from the protected consumer or the protected
283 consumer's representative.

284 A consumer reporting agency may remove a security freeze for a protected consumer or
285 delete a record of a protected consumer if the security freeze was placed or the record was
286 created based on a material misrepresentation of fact by the protected consumer or the protected
287 consumer's representative. If a consumer reporting agency intends to remove a freeze on a

288 protected consumer report or delete a record of a protected consumer due to a material
289 misrepresentation of fact, the consumer reporting agency shall notify the protected consumer's
290 representative in writing or electronically 5 business days prior to removing the freeze on the
291 consumer report.

292 SECTION 13. Subsection (b) of section 3 of chapter 93H of the General Laws, as
293 appearing in the 2016 Official Edition, is hereby amended by striking out lines 45 through 52,
294 inclusive and inserting in place thereof the following paragraph:-

295 The notice to be provided to the resident shall include, but not be limited to, the
296 consumer's right to obtain a police report, how a consumer requests a security freeze and the
297 necessary information to be provided when requesting the security freeze, mitigation services to
298 be provided pursuant to this chapter, and any fees required to be paid to any of the consumer
299 reporting agencies, provided however, that said notification shall not include the nature of the
300 breach or unauthorized acquisition or use or the number of residents of the commonwealth
301 affected by said breach or unauthorized access or use. The person or agency breached shall
302 provide a sample copy of the notification it intends to distribute to consumers to the attorney
303 general and the office of consumer affairs and business regulations. The office of consumer
304 affairs and business regulations shall make available electronic copies of the breach notices on its
305 website and post the breach notification within 24 hours of receipt. As practicable and as such
306 not to impede active investigation by the attorney general, the office of consumer affairs and
307 business regulations shall update the breach notification on its website over time as new
308 information is discovered through the investigation process. The attorney general shall provide
309 information to consumers through its website on how consumers can access the data breach
310 notifications posted by the office of consumer affairs and business regulations.”

311 SECTION 14. Section 3 of chapter 93H of the General Laws, as so appearing, is hereby
312 amended by inserting after subsection (c) the following paragraph:-

313 The notice to be provided under this section shall not be delayed on grounds that the total
314 number of residents affected is not yet ascertained. In such case, and where otherwise necessary
315 to update or correct the information required, a person or agency shall provide additional notice
316 as soon as practicable and without unreasonable delay upon learning such additional information.

317 SECTION 15. Said section 3 of said chapter 93H, as so appearing, is amended by
318 inserting at the end thereof the following subsection:-

319 (d) If the person or agency that is breached is owned by another person or corporation,
320 the notice to the consumer shall include the name of parent, or affiliated corporation, trustee, or
321 agent thereof.

322 SECTION 16. Said section 3 of said chapter 93H, as so appearing, is hereby amended by
323 inserting at the end thereof the following:-

324 If the breach of security includes a social security number or federal tax identification
325 number, the person shall offer to each resident, whose personal information, including social
326 security number or federal tax identification number was breached or is reasonably believed to
327 have been breached, credit monitoring services at no cost to such resident for a period of 1 year.
328 Such person shall provide all information necessary for such resident to enroll in such services
329 and shall include information on how such resident can place a credit freeze on such resident's
330 credit file.