

SENATE No. 2455

The Commonwealth of Massachusetts

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

SENATE, April 19, 2018

The committee on Ways and Means, to whom was referred the House Bill removing fees for security freezes and disclosures of consumer credit reports (House, No. 4241) (also based on Senate, No. 2305); reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2455; and by striking out the title and inserting in place thereof the following title:- “An Act relative to consumer protection from security breaches”; and by inserting before the enacting clause the following emergency preamble:- “*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to enhance forthwith the ability of consumers to protect their credit reports, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.”

For the committee,
Karen E. Spilka

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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 in
3 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 is hereby further amended by inserting after section 51A
10 the following section:–

11 Section 51B. A user shall not obtain, use or seek the consumer report of a consumer
12 unless the user: (i) obtains the written, verbal or electronic consent of the consumer, as is
13 appropriate for the manner in which the transaction or extension of credit was negotiated or
14 entered into; and (ii) discloses the user’s reason for accessing the consumer report to the
15 consumer.

16 Nothing in this section shall prohibit a user who has secured the consent of the consumer
17 from obtaining a credit report in connection with: (i) the same transaction; (ii) reviewing an
18 existing account for purpose of the extension of credit; (iii) increasing the credit line on an
19 existing account; (iv) taking collection action on an existing account; or (v) for any other
20 legitimate purpose associated with an existing account.

21 A user shall not require or request that a consumer waive this section and any such
22 waiver shall be void.

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

25 SECTION 4. Section 56 of said chapter 93, as appearing in the 2016 Official Edition, is
26 hereby amended by inserting after the word “copy”, in line 8, the following words:- , electronic
27 copy.

28 SECTION 5. Said section 56 of said chapter 93, as so appearing, is hereby further
29 amended by inserting after the word “mail,”, in line 32, the following word:- electronically.

30 SECTION 6. Said section 56 of said chapter 93, as so appearing, is hereby further
31 amended by inserting after the word “writing”, in line 51, the following words:- , by electronic
32 mail through the credit reporting agency website.

33 SECTION 7. Said section 56 of said chapter 93, as so appearing, is hereby further
34 amended by inserting after the word “agency”, in line 83, the following words:- electronically or.

35 SECTION 8. Said section 56 of said chapter 93, as so appearing, is hereby further
36 amended by striking out, in lines 91 and 92, the words “or regular stamped mail” and inserting in
37 place thereof the following words:- , regular stamped mail or electronically.

38 SECTION 9. Said section 56 of said chapter 93, as so appearing, is hereby further
39 amended by inserting after the word “agency”, in line 104, the following words:- shall send a
40 written or electronic confirmation of the security freeze and.

41 SECTION 10. Said section 56 of said chapter 93, as so appearing, is hereby further
42 amended by inserting after the word “consumer”, in lines 116 and 117, the following words:- in
43 writing by mail.

44 SECTION 11. Said section 56 of said chapter 93, as so appearing, is hereby further
45 amended by inserting after the word “days”, in line 118, the following words:- after receiving the
46 request; provided, however, that a consumer reporting agency that receives such request
47 electronically or by telephone shall comply with the request as soon as practicable and without
48 unreasonable delay, but not later than 15 minutes.

49 SECTION 12. Said section 56 of said chapter 93, as so appearing, is hereby further
50 amended by striking out, in lines 123 and 124, the words “, if you have previously given consent
51 to the use of your consumer report”.

52 SECTION 13. Section 57 of said chapter 93, as so appearing, is hereby amended by
53 inserting after the word “only”, in line 13, the following words:- ; or

54 (4) by electronic means if the consumer has made a request therefor, with proper
55 identification.

56 SECTION 14. Section 59 of said chapter 93, as so appearing, is hereby amended by
57 adding the following 2 subsections:-

58 (f) If a breach of security occurs at a consumer reporting agency and includes a social
59 security number, the consumer reporting agency shall offer to each consumer whose personal
60 information, including social security number, was breached or is reasonably believed to have
61 been breached, credit monitoring services at no cost to the consumer for not less than 5 years.
62 The consumer reporting agency shall provide all information necessary for the consumer to
63 enroll in such services and shall include information on how the consumer may place a security
64 freeze on the consumer report.

65 (g) A consumer reporting agency shall not require a consumer to waive the consumer's
66 right to a private right of action as a condition of exercising any of the provisions of this chapter.

67 SECTION 15. Section 62A of said chapter 93, as so appearing, is hereby amended by
68 inserting after the words "requests," in line 10, the following words:- electronically, by
69 telephone.

70 SECTION 16. Said section 62A of said chapter 93, as so appearing, is hereby further
71 amended by striking out the third paragraph and inserting in place thereof the following
72 paragraph:-

73 A consumer reporting agency shall place a security freeze on a consumer report not later
74 than 3 business days after receiving a written request from the consumer by mail. A consumer
75 reporting agency that receives a request electronically or by telephone shall comply with the
76 request not later than 1 business day after receiving the request. The consumer reporting agency
77 shall send a written or electronic confirmation of the security freeze to the consumer not later

78 than 3 business days after receiving the request and shall provide the consumer with a unique
79 personal identification number or a unique password, or both, to be used by the consumer for the
80 purpose of providing authorization for the removal or lifting of the security freeze.

81 SECTION 17. Said section 62A of said chapter 93, as so appearing, is hereby further
82 amended by inserting after the word “request”, in line 35, the following words:- ; provided,
83 however, that a consumer reporting agency that receives such a request electronically or by
84 telephone shall comply with the request as soon as practicable and without unreasonable delay
85 but not later than 15 minutes after receiving the request.

86 SECTION 18. Said section 62A of said chapter 93, as so appearing, is hereby further
87 amended by inserting after the word “writing”, in line 43, the following words:- or electronically
88 at least.

89 SECTION 19. Said section 62A of said chapter 93, as so appearing, is hereby further
90 amended by striking out the ninth paragraph and inserting in place thereof the following 2
91 paragraphs:-

92 A consumer reporting agency shall remove a security freeze not later than 3 business
93 days after receiving a written request for removal from a consumer who provides both proper
94 identification and the personal identification number or password provided by the consumer
95 reporting agency pursuant to this section. A consumer reporting agency shall remove a security
96 freeze not later than 15 minutes after receiving an electronic or telephone request for such
97 removal from a consumer who provides both proper identification and the personal identification
98 number or password provided by the consumer reporting agency pursuant to this section.

99 A consumer reporting agency shall not be required to remove a security freeze within the
100 time provided in this section if failure to do so resulted from: (i) an act of God, war, natural
101 disaster or strike; (ii) unauthorized or illegal acts by a third party; (iii) operational interruption;
102 (iv) governmental action; (v) regularly scheduled maintenance, except during normal business
103 hours, of, or updates to, the consumer reporting agency's systems; (vi) commercially reasonable
104 maintenance or repair of the consumer reporting agency's systems that is unexpected or
105 unscheduled; or (vii) receipt of a removal request outside of normal business hours; provided,
106 however, that a security freeze that was not removed pursuant to this paragraph shall be removed
107 promptly upon resuming regular business activities.

108 SECTION 20. Said section 62A of said chapter 93, as so appearing, is hereby further
109 amended by striking out the eleventh paragraph and inserting in place thereof the following 3
110 paragraphs:-

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

113 A consumer reporting agency that compiles and maintains files on consumers on a
114 nationwide basis and receives a request by a consumer for a security freeze shall identify, to the
115 best of its knowledge, any other consumer reporting agency that compiles and maintains files on
116 consumers on a nationwide basis and inform consumers of appropriate websites, toll-free
117 telephone numbers and mailing addresses that would permit the consumer to place, lift or
118 remove a security freeze from those other consumer reporting agencies. Upon sending
119 confirmation of a security freeze to a consumer under the third paragraph of this section, a
120 consumer reporting agency shall forward an official copy of the confirmation to other consumer

121 reporting agencies that compile and maintain files on consumers on a nationwide basis. A
122 consumer reporting agency that has received a forwarded official copy of a security freeze
123 confirmation and has not placed a security freeze on that consumer's account within 2 business
124 days shall, not later than the third business day after receiving the forwarded official copy, use its
125 best efforts to contact the consumer and inform the consumer how a security freeze may be
126 placed on the consumer's account held by that consumer reporting agency.

127 Consumer reporting agencies subject to this section may establish a centralized source
128 including, but not limited to, a website, that directs consumers to that website or to a toll-free
129 telephone number and mailing address.

130 SECTION 21. Said chapter 93 is hereby further amended by inserting after section 62A
131 the following section:-

132 Section 62B. (a) For the purposes of this section, the following words shall have the
133 following meanings unless the context requires otherwise:-

134 "Protected consumer", an individual who is under 16 years of age at the time a request
135 for the placement of a security freeze is made or an individual who is an incapacitated person or
136 a protected person as defined in section 5-101 of article V of chapter 190B.

137 "Record", a compilation of information that identifies a protected consumer that was
138 created by a consumer reporting agency solely for the purpose of complying with this section;
139 provided, however, that the record shall not be created or used to consider the protected
140 consumer's credit worthiness, credit standing, credit capacity, character, general reputation,
141 personal characteristics or mode of living.

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

144 “Security freeze”, if a consumer reporting agency does not have a file that pertains to a
145 protected consumer, (i) a restriction that: (A) is placed on the protected consumer’s record in
146 accordance with this section; and (B) except as otherwise provided in this section, prohibits the
147 consumer reporting agency from releasing the protected consumer’s record; or (ii) if a consumer
148 reporting agency has a file that pertains to the protected consumer, a restriction that prevents the
149 consumer reporting agency from releasing the protected consumer’s consumer report or any
150 information derived from the protected consumer’s consumer report.

151 “Sufficient proof of authority”, documentation that shows a representative has authority
152 to act on behalf of a protected consumer including, but not limited to, a court order, a lawfully
153 executed and valid power of attorney or a written, notarized statement signed by a representative
154 that expressly describes the authority of the representative to act on behalf of a protected
155 consumer.

156 “Sufficient proof of identification”, information or documentation that identifies a
157 protected consumer or a representative of a protected consumer including, but not limited to, a
158 social security number or a copy of a social security card issued by the social security
159 administration, a certified or official copy of a birth certificate issued by the entity authorized to
160 issue the birth certificate or a copy of a driver’s license or identification card issued by the
161 registry of motor vehicles or any other government-issued identification.

162 (b) This section shall not apply to the use of a protected consumer’s consumer report or
163 record by:

164 (i) a person, that person's agent or an assignee or prospective assignee of a financial
165 obligation owing by the consumer to that person or that person's agent in conjunction with the
166 proposed purchase of the financial obligation, with whom the consumer has or had, prior to
167 assignment, an account or contract, including a demand deposit account, or to whom the
168 consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting
169 the financial obligation owing for the account, contract or negotiable instrument; provided,
170 however, that for purposes of this clause, "reviewing the account" shall include activities related
171 to account maintenance, monitoring, credit line increases and account upgrades and
172 enhancements or access to the account by a subsidiary, affiliate, agent, assignee or prospective
173 assignee of a person or that person's agent, to whom access has been granted for purposes of
174 facilitating the extension of credit or for any other permissible use;

175 (ii) a federal, state or local agency, law enforcement agency or the trial court, including
176 the grand jury, acting pursuant to a court order, warrant or subpoena;

177 (iii) the Massachusetts child support agency under Title IV-D of the Social Security Act,
178 42 U.S.C. et seq.;

179 (iv) the executive office of health and human services or its agents or assigns acting to
180 investigate Medicaid fraud;

181 (v) the department of revenue or its agents or assignees acting to investigate or collect
182 delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;

183 (vi) a person using credit information for prescreening under the federal Fair Credit
184 Reporting Act;

185 (vii) a person administering a credit file monitoring subscription service to which the
186 protected consumer has subscribed or the protected consumer's representative has subscribed on
187 the protected consumer's behalf;

188 (viii) a person who, upon request from the protected consumer or the protected
189 consumer's representative, provides the protected consumer or the protected consumer's
190 representative with a copy of the protected consumer's consumer report;

191 (ix) to the extent otherwise allowed by law, a property and casualty insurer licensed by
192 the commonwealth for use in rating or underwriting insurance policies;

193 (x) a check services or fraud prevention services company that issues reports on incidents
194 of fraud or authorizations for the purpose of approving or processing negotiable instruments,
195 electronic funds transfers or similar payment methods;

196 (xi) a deposit account information service company that issues reports regarding account
197 closures due to fraud, substantial overdrafts, automated teller machine abuse or similar
198 information regarding a consumer to inquiring banks or other financial institutions for use only
199 in reviewing an individual's request for a deposit account at the inquiring bank or financial
200 institution;

201 (xii) an insurance company, for the purpose of conducting the insurance company's
202 ordinary business;

203 (xiii) a consumer reporting agency that only resells credit information by assembling and
204 merging information contained in a database of another consumer reporting agency and that does
205 not maintain a permanent database of credit information from which new consumer reports are

206 produced, except that such financial institution or consumer reporting agency shall be subject to
207 any security freeze placed on a consumer report by another consumer reporting agency from
208 which it obtains information; or

209 (xiv) a consumer reporting agency's database or file that consists of information that: (A)
210 concerns and is used for criminal record information, fraud prevention or detection, personal loss
211 history information or employment or tenant or individual background screening; and (B) is not
212 used for credit-granting purposes.

213 (c) A consumer reporting agency shall place a security freeze on a consumer report for a
214 protected consumer if the consumer reporting agency receives a request from the protected
215 consumer or, if required by law, the protected consumer's representative, for the placement of
216 the security freeze. If the request is from a protected consumer's representative, the protected
217 consumer's representative shall submit to the consumer reporting agency: (i) sufficient proof of
218 identification of the protected consumer; (ii) sufficient proof of identification of the protected
219 consumer's representative; and (iii) sufficient proof of authority to act on behalf of the protected
220 consumer.

221 If a consumer reporting agency does not have a file that pertains to a protected consumer
222 when the consumer reporting agency receives a request described in this section, the consumer
223 reporting agency shall create a record for the protected consumer and comply with the request if
224 all other requirements of this section are met.

225 A consumer reporting agency shall place a security freeze on a consumer report not later
226 than 30 business days after receiving a request from the protected consumer or the protected
227 consumer's representative to place that security freeze.

228 (d) To remove a security freeze placed pursuant to this section, the protected consumer or
229 the protected consumer's representative shall submit a request for the removal of the security
230 freeze to the consumer reporting agency. In the case of a request submitted by a protected
231 consumer's representative, sufficient proof of identification of the protected consumer and the
232 representative and sufficient proof of authority to act on behalf of the protected consumer shall
233 be presented before the security freeze is lifted. In the case of a request submitted by a protected
234 consumer who is subject to a security freeze, sufficient proof of identification of the protected
235 consumer and proof that the protected consumer is no longer a protected consumer because the
236 person is no longer under the age of 16 or an incapacitated person or a protected person as
237 defined in section 5-101 of article V of chapter 190B shall be presented before the security freeze
238 is lifted. For an incapacitated person or a protected person as defined in said section 5-101 of
239 said article V of said chapter 190B, sufficient proof of identification shall include, but not be
240 limited to, an order issued by a court.

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

244 A consumer reporting agency may remove a security freeze for a protected consumer or
245 delete a record of a protected consumer if the security freeze was placed or the record was
246 created based on a material misrepresentation of fact by the protected consumer or the protected
247 consumer's representative. A consumer reporting agency shall notify the protected consumer or
248 the protected consumer's representative in writing or electronically at least 30 business days
249 before removing a security freeze on the protected consumer's consumer report or before
250 deleting a record of the protected consumer.

251 SECTION 22. Subsection (a) of section 2 of chapter 93H of the General Laws, as
252 appearing in the 2016 Official Edition, is hereby amended by adding the following sentence:-
253 The regulations shall require, taking into account said factors, appropriate persons to certify to
254 the office of consumer affairs and business regulation, under penalty of perjury, that they
255 maintain an information security program that complies with this section.

256 SECTION 23. Section 3 of said chapter 93H, as so appearing, is hereby amended by
257 striking out the paragraph in lines 45 to 52, inclusive, and inserting in place thereof the following
258 2 paragraphs:-

259 The notice to be provided to the resident shall include, but not be limited to: (i) the
260 consumer's right to obtain a police report; (ii) instructions to the consumer on how to request a
261 security freeze and the necessary information to be provided when requesting the security freeze;
262 and (iii) mitigation services to be provided pursuant to this chapter; provided, however, that the
263 notice shall not include the nature of the breach or unauthorized acquisition or use or the number
264 of residents of the commonwealth affected by the breach or unauthorized access or use. The
265 person or agency breached shall provide a sample copy of the notice it intends to distribute to
266 consumers to the attorney general and to the office of consumer affairs and business regulation.

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

271 SECTION 24. Said section 3 of said chapter 93H is hereby further amended by adding
272 the following subsection:-

273 (d) If a breach of security includes a social security number, the person who maintains,
274 stores, owns or licenses the data that was breached shall offer to each resident whose personal
275 information was breached or is reasonably believed to have been breached credit monitoring
276 services for a period of at least 2 years at no cost to the resident. The person shall provide all
277 information necessary for the resident to enroll in such services and shall include information on
278 how the resident can place a security freeze on the resident's consumer report.

279 SECTION 25. The department of consumer affairs and business regulation shall
280 promulgate regulations implementing section 22 of this act not later than 9 months after the
281 effective date of this act.

282 SECTION 26. The twelfth paragraph of section 62A of chapter 93 of the General Laws,
283 as appearing in section 20, shall take effect upon its passage.

284 SECTION 27. Unless otherwise provided, this act shall take effect 90 days after its
285 passage.

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