

HOUSE No. 4806

The Commonwealth of Massachusetts

The committee of conference on the disagreeing votes of the two branches with reference to the Senate amendments (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2492; by inserting before the enacting clause an Emergency Preamble; and by striking out the title and inserting in place thereof the following title: “An Act relative to consumer protection from security breaches”) of the House Bill removing fees for security freezes and disclosures of consumer credit reports (House, No. 4241), reports recommending passage of the accompanying bill (House, No. 4806) July 24, 2018.

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

An Act relative to consumer protection from security breaches.

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 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. Except for the purposes described in subparagraphs (A) and (E) of
12 paragraph (3) of subsection (a) of 15 U.S.C. section 1681b and subclause (i) of clause (3) of

13 subsection (a) of section 51, a user shall not obtain, use or seek the consumer report of a
14 consumer unless the user: (i) obtains the prior written, verbal or electronic consent of the
15 consumer, as is appropriate for the manner in which the transaction or extension of credit was
16 negotiated or entered into; and (ii) discloses, prior to obtaining the consumer's consent, the
17 user's reason for accessing the consumer report to the consumer.

18 Nothing in this section shall prohibit a user who has already secured the consent of the
19 consumer, or an investor or potential investor of an existing credit obligation, from obtaining a
20 consumer report in connection with: (i) the same transaction; (ii) reviewing an existing account;
21 (iii) increasing the credit line on an existing account; (iv) taking collection action on an existing
22 account; (v) providing products and services or offering of products and services to an existing
23 customer's account; or (vi) any other permissible purpose pursuant to subparagraph (A) or (E) of
24 paragraph (3) of subsection (a) of 15 U.S.C. section 1681b or subclause (i) of clause (3) of
25 subsection (a) of section 51.

26 A user shall not require or request that a consumer waive this section and any such
27 waiver shall be void. Failure to comply with this section shall constitute an unfair practice under
28 clause (a) of section 2 of chapter 93A.

29 SECTION 4. Said chapter 93 is hereby further amended by striking out section 56, as
30 appearing in the 2016 Official Edition, and inserting in place thereof the following section:-

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

33 (1) the nature, contents and substance of all information, except medical information, in
34 its file on the consumer at the time of the request, and which is obtainable based upon the

35 identifying information supplied by the consumer when making such request, and if such
36 consumer has made a written request, deliver a written copy, photocopy or electronic copy, of all
37 such information except any code identifications which are used solely for purposes of
38 transferring such information to and from consumer reporting agencies; provided, however, that
39 the names of the users corresponding to the code identifications shall be disclosed to the
40 consumer; and provided further, that the agency shall provide a clear, simple and plain meaning
41 explanation of the information provided under this paragraph and such explanation shall be in a
42 readable format and type, which shall not be smaller than 10 point type;

43 (2) the sources of all credit information obtained through routine credit reporting or
44 through any other credit reporting techniques in the file at the time of the request, except that the
45 sources of information acquired solely for use in preparing an investigative consumer report and
46 actually used for no other purpose need not be disclosed; provided, however, that, in the event an
47 action is brought pursuant to section 65, such sources shall be available to the plaintiff under
48 appropriate discovery procedures in the court in which the action is brought; and

49 (3) the recipients of any consumer report on the consumer which it has furnished for
50 employment purposes within the 2-year period preceding the request, and for any other purpose
51 within the 6-month period preceding the request.

52 (b) In accordance with 15 U.S.C. section 1681c-1, every consumer reporting agency,
53 upon contact by a consumer by phone, mail or electronic communication, or in person regarding
54 information which may be contained in the agency files regarding that consumer, shall with each
55 written disclosure, or in response to a request by the consumer to be advised as to the consumer's
56 rights, promptly advise the consumer of the consumer's rights under this section. The written

57 notice shall be in a clear and conspicuous format and be no smaller than 10 point type. The
58 notice shall inform the consumer of the consumer's rights under this chapter, provided in a clear
59 and conspicuous manner, in substantially the following manner:

60 "You have a right to obtain a copy of your credit file from a consumer credit reporting
61 agency. You may be charged a reasonable fee not exceeding \$8. There is no fee, however, if you
62 have been turned down for credit, employment, insurance or rental dwelling because of
63 information in your credit report within the preceding 60 days. The consumer credit reporting
64 agency must provide someone to help you interpret the information in your credit file. Each
65 calendar year you are entitled to receive, upon request, one free consumer credit report.

66 You have a right to dispute inaccurate information by contacting the consumer reporting
67 agency directly, either in writing, by mail or electronic communication through the credit
68 reporting agency website, or by telephone. The consumer reporting agency shall provide, upon
69 request and without unreasonable delay, a live representative of the consumer reporting agency
70 to assist in dispute resolution whenever possible and practicable, or to the extent consistent with
71 federal law. However, neither you nor any credit repair company or credit service organization
72 has the right to have accurate, current and verifiable information removed from your credit
73 report. In most cases, under state and federal law, the consumer credit reporting agency must
74 remove accurate, negative information from your report only if it is more than 7 years old, and
75 must remove bankruptcy information only if it is more than 10 years old.

76 If you have notified a consumer credit reporting agency in writing that you dispute the
77 accuracy of information in your file, the consumer credit reporting agency must then, within 30
78 business days, reinvestigate and modify or remove inaccurate information. The consumer credit

79 reporting agency may not charge a fee for this service. Any pertinent information and copies of
80 all documents you have concerning a dispute should be given to the consumer credit reporting
81 agency.

82 If reinvestigation does not resolve the dispute to your satisfaction, you may send a
83 statement to the consumer credit reporting agency to keep in your file, explaining why you think
84 the record is inaccurate. The consumer credit reporting agency must include your statement
85 about the disputed information in a report it issues about you.

86 You have a right to receive a record of all inquiries relating to a credit transaction
87 initiated in the 6 months preceding your request, or 2 years in the case of a credit report used for
88 employment purposes. This record shall include the recipients of any consumer credit report.

89 You have the right to opt out of any prescreening lists compiled by or with the assistance
90 of a consumer credit reporting agency by calling the agency's toll-free telephone number, or by
91 contacting the agency through electronic communication or in writing. You may be entitled to
92 collect compensation, in certain circumstances, if you are damaged by a person's negligent or
93 intentional failure to comply with the credit reporting act.

94 You have a right to request a "security freeze" on your consumer report. The security
95 freeze will prohibit a consumer reporting agency from releasing any information in your
96 consumer report without your express authorization. A security freeze shall be requested by
97 sending a request either by toll-free telephone, secure electronic means or mail consistent with
98 15 U.S.C. section 1681c-1 to a consumer reporting agency. The security freeze is designed to
99 prevent credit, loans or services from being approved in your name without your consent. You
100 should be aware that using a security freeze may delay, interfere with, or prevent the timely

101 approval of any subsequent request or application you make regarding new loans, credit,
102 mortgage, insurance, government services or payments, rental housing, employment, investment,
103 license, cellular phone, utilities, digital signature, internet credit card transactions or other
104 services, including an extension of credit at point of sale.

105 When you place a security freeze on your consumer report, within 5 business days of
106 receiving your request for a security freeze, the consumer reporting agency shall send
107 confirmation of the security freeze consistent with 15 U.S.C. section 1681c-1.”.

108 SECTION 5. Section 57 of said chapter 93, as so appearing, is hereby amended by
109 inserting after the word “only”, in line 13, the following words:-; or

110 (4) by electronic communication if the consumer has made a written, verbal or electronic
111 request, with proper identification.

112 SECTION 6. Section 62A of said chapter 93, as so appearing, is hereby amended by
113 striking out the eleventh paragraph and inserting in place thereof the following paragraph:-

114 In accordance with 15 U.S.C section 1681c-1 and to the extent permitted by federal law,
115 a consumer reporting agency shall not charge a fee to any consumer who elects to place, lift or
116 remove a security freeze from a consumer report.

117 SECTION 7. Said chapter 93 is hereby further amended by inserting after section 62A
118 the following section:-

119 Section 62B. A consumer reporting agency shall not knowingly offer a paid product to
120 prevent unauthorized access or restrict access to a consumer’s credit unless at the time of
121 transaction the consumer reporting agency: (i) notifies the consumer of the availability of

122 obtaining a security freeze without charge and (ii) provides information to the consumer on how
123 to obtain a security freeze.

124 A consumer reporting agency that compiles and maintains files on consumers on a
125 nationwide basis and receives a request by a consumer for a security freeze shall identify, to the
126 best of its knowledge, any other consumer reporting agency that compiles and maintains files on
127 consumers on a nationwide basis and inform consumers of appropriate websites, toll-free
128 telephone numbers and mailing addresses that would permit the consumer to place, lift or
129 remove a security freeze from such other consumer reporting agency. The consumer reporting
130 agencies subject to this section may establish a centralized source, including, but not limited to, a
131 website, that directs a consumer to such websites, toll-free telephone numbers and mailing
132 addresses.

133 SECTION 8. The first paragraph of subsection (b) of section 3 of chapter 93H of the
134 General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out the
135 last sentence of and inserting in place thereof the following sentence:-

136 The notice to be provided to the attorney general and said director, and consumer
137 reporting agencies or state agencies if any, shall include, but not be limited to: (i) the nature of
138 the breach of security or unauthorized acquisition or use; (ii) the number of residents of the
139 commonwealth affected by such incident at the time of notification; (iii) the name and address of
140 the person or agency that experienced the breach of security; (iv) name and title of the person or
141 agency reporting the breach of security, and their relationship to the person or agency that
142 experienced the breach of security ; (v) the type of person or agency reporting the breach of
143 security; (vi) the person responsible for the breach of security, if known; (vii) the type of

144 personal information compromised, including, but not limited to, social security number, driver's
145 license number, financial account number, credit or debit card number or other data; (viii)
146 whether the person or agency maintains a written information security program; and (ix) any
147 steps the person or agency has taken or plans to take relating to the incident, including updating
148 the written information security program. A person who experienced a breach of security shall
149 file a report with the attorney general and the director of consumer affairs and business
150 regulation certifying their credit monitoring services comply with section 3A.

151 SECTION 9. Said subsection (b) of said section 3 of said chapter 93H, as so appearing, is
152 hereby further amended by striking out the last paragraph and inserting in place thereof the
153 following paragraph:-

154 The notice to be provided to the resident shall include, but shall not be limited to: (i) the
155 resident's right to obtain a police report; (ii) how a resident may request a security freeze and the
156 necessary information to be provided when requesting the security freeze; (iii) that there shall be
157 no charge for a security freeze; and (iv) mitigation services to be provided pursuant to this
158 chapter; provided, however, that said notice shall not include the nature of the breach of security
159 or unauthorized acquisition or use, or the number of residents of the commonwealth affected by
160 said breach of security or unauthorized access or use. The person or agency that experienced the
161 breach of security shall provide a sample copy of the notice it sent to consumers to the attorney
162 general and the office of consumer affairs and business regulation. A notice provided pursuant to
163 this section shall not be delayed on grounds that the total number of residents affected is not yet
164 ascertained. In such case, and where otherwise necessary to update or correct the information
165 required, a person or agency shall provide additional notice as soon as practicable and without
166 unreasonable delay upon learning such additional information.

167 SECTION 10. Said section 3 of said chapter 93H, as so appearing, is hereby further
168 amended by striking out subsection (c) and inserting in place thereof the following 3
169 subsections:-

170 (c) As practicable and as not to impede active investigation by the attorney general or
171 other law enforcement agency, the office of consumer affairs and business regulation shall: (i)
172 make available electronic copies of the sample notice sent to consumers on its website and post
173 such notice within 1 business day upon receipt from the person that experienced a breach of
174 security; (ii) update the breach of security notification report on its website as soon as practically
175 possible after the information has been verified by said office but not more than 10 business days
176 after receipt unless the information provided is not verifiable; provided, however, that the office
177 shall post said notice as soon as verified; (iii) amend, on a recurring basis, the breach of security
178 notification report to include new information discovered through the investigation process or
179 new subsequent findings from a previously reported breach of security; and (iv) instruct
180 consumers on how they may file a public records request to obtain a copy of the notice provided
181 to the attorney general and said director from the person who experienced a breach of security.

182 (d) If the person or agency that experienced a breach of security is owned by another
183 person or corporation, the notice to the consumer shall include the name of the parent or
184 affiliated corporation.

185 (e) If an agency is within the executive department, it shall provide written notification of
186 the nature and circumstances of the breach of security or unauthorized acquisition or use to the
187 executive office of technology services and security and the division of public records in the
188 office of the state secretary as soon as practicable and without unreasonable delay following the

189 discovery of a breach of security or unauthorized acquisition or use, and shall comply with all
190 policies and procedures adopted by the executive office of technology services and security
191 pertaining to the reporting and investigation of such an incident.

192 SECTION 11. Said chapter 93H is hereby further amended by inserting after section 3
193 the following section:-

194 Section 3A. (a) If a person knows or has reason to know that said person experienced an
195 incident that requires notice pursuant to section 3 and such breach of security includes a social
196 security number, the person shall contract with a third party to offer to each resident whose
197 social security number was disclosed in the breach of security or is reasonably believed to have
198 been disclosed in the breach of security, credit monitoring services at no cost to said resident for
199 a period of not less than 18 months; provided, however, that if the person that has experienced a
200 breach of security is a consumer reporting agency, then said consumer reporting agency shall
201 contract with a third party to offer each resident whose social security number was disclosed in
202 the breach of security or is reasonably believed to have been disclosed in the breach of security,
203 credit monitoring services at no cost to such resident for a period of not less than 42 months.
204 Said contracts shall not include reciprocal agreements for services in lieu of payment or fees. The
205 person or agency shall provide all information necessary for the resident to enroll in credit
206 monitoring services and shall include information on how the resident may place a security
207 freeze on the resident's consumer credit report.

208 (b) A person that experienced a breach of security shall not require a resident to waive the
209 resident's right to a private right of action as a condition of the offer of credit monitoring
210 services.