

SENATE No. 2492

Senate, April 26, 2018 – Text of the Senate amendment to the House Bill removing fees for security freezes and disclosures of consumer credit reports (House, No. 4241)

The Commonwealth of Massachusetts

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

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 amended by inserting after section 51A the
10 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 prior 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, prior to obtaining the consumer’s consent, the user’s reason for
15 accessing the consumer report to the consumer.

16 Nothing in this section shall prohibit a user who has secured the consent of the consumer
17 or an assignee of the user’s account from obtaining a consumer report in connection with: (i) the
18 same transaction; (ii) reviewing an existing account; (iii) increasing the credit line on an existing

19 account; (iv) taking collection action on an existing account; or (v) for any other legitimate
20 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:- , electronically
32 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 after receiving proper identification.

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 consumer reporting agency knows or has reason to know that it experienced an
59 incident that requires notice under section 3 of chapter 93H, the consumer reporting agency shall
60 offer to each consumer whose personal information, including social security number, was
61 breached or is reasonably believed to have been breached, credit monitoring services at no cost
62 to the consumer for not less than 5 years. The consumer reporting agency shall provide all
63 information necessary for the consumer to enroll in such services and shall include information
64 on how the consumer may place a security 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 and proper identification.

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. A consumer reporting agency shall not
113 offer a paid product which seeks to protect a consumer from a security breach or restrict access
114 to information about a consumer unless it has notified the consumer of the availability of a
115 security freeze at no charge and how to obtain a security freeze.

116 A consumer reporting agency that compiles and maintains files on consumers on a
117 nationwide basis and receives a request by a consumer for a security freeze shall identify, to the
118 best of its knowledge, any other consumer reporting agency that compiles and maintains files on
119 consumers on a nationwide basis and inform consumers of appropriate websites, toll-free
120 telephone numbers and mailing addresses that would permit the consumer to place, lift or
121 remove a security freeze from those other consumer reporting agencies. Upon sending
122 confirmation of a security freeze to a consumer under the third paragraph of this section, a
123 consumer reporting agency shall refer the freeze request, along with the contact information the
124 agency used to send its confirmation of the security freeze, but excluding a personal
125 identification number or other credentials that would allow the consumer to lift or remove the

126 security freeze, to other consumer reporting agencies that compile and maintain files on
127 consumers on a nationwide basis. A consumer reporting agency that has received a referral and
128 has not placed a security freeze on that consumer's account within 2 business days shall, not later
129 than the third business day after receiving the referral, use reasonable efforts to contact the
130 consumer and inform the consumer how a security freeze may be placed on the consumer's
131 account held by that consumer reporting agency. The requirement to contact the consumer shall
132 not apply if no contact information is provided in the referral and the consumer reporting agency
133 is unable to locate contact information for that consumer in its database.

134 Consumer reporting agencies subject to this section shall establish a centralized source
135 including, but not limited to, a website, that directs consumers to the website or to a toll-free
136 telephone number and mailing address where consumers may place, thaw or remove a security
137 freeze. When a consumer places, thaws or removes a freeze through this central location, it shall
138 be applicable to any other consumer reporting agency which compiles and maintains files on
139 consumers on a nationwide basis. Consumer reporting agencies shall not charge a fee to
140 complete a transaction in this centralized location

141 SECTION 21. Said chapter 93 is hereby amended by inserting after section 62A the
142 following section:-

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

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

148 “Record”, a compilation of information that identifies a protected consumer that was
149 created by a consumer reporting agency solely for the purpose of complying with this section;
150 provided, however, that the record shall not be created or used to consider the protected
151 consumer’s credit worthiness, credit standing, credit capacity, character, general reputation,
152 personal characteristics or mode of living.

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

155 “Security freeze”, if a consumer reporting agency does not have a file that pertains to a
156 protected consumer, (i) a restriction that: (A) is placed on the protected consumer’s record in
157 accordance with this section; and (B) except as otherwise provided in this section, prohibits the
158 consumer reporting agency from releasing the protected consumer’s record; or (ii) if a consumer
159 reporting agency has a file that pertains to the protected consumer, a restriction that prevents the
160 consumer reporting agency from releasing the protected consumer’s consumer report or any
161 information derived from the protected consumer’s consumer report.

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

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

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

175 (i) a person, that person’s agent or an assignee or prospective assignee of a financial
176 obligation owing by the consumer to that person or that person’s agent in conjunction with the
177 proposed purchase of the financial obligation, with whom the consumer has or had, prior to
178 assignment, an account or contract, including a demand deposit account, or to whom the
179 consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting
180 the financial obligation owing for the account, contract or negotiable instrument; provided,

181 however, that for purposes of this clause, “reviewing the account” shall include activities related
182 to account maintenance, monitoring, credit line increases and account upgrades and
183 enhancements or access to the account by a subsidiary, affiliate, agent, assignee or prospective
184 assignee of a person or that person’s agent, to whom access has been granted for purposes of
185 facilitating the extension of credit or for any other permissible use;

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

188 (iii) the Massachusetts child support agency under Title IV-D of the Social Security Act,
189 42 U.S.C. et seq.;

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

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

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

196 (vii) a person administering a credit file monitoring subscription service to which the
197 protected consumer has subscribed or the protected consumer’s representative has subscribed on
198 the protected consumer’s behalf;

199 (viii) a person who, upon request from the protected consumer or the protected
200 consumer’s representative, provides the protected consumer or the protected consumer’s
201 representative with a copy of the protected consumer’s consumer report;

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

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

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

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

214 (xiii) a consumer reporting agency that only resells credit information by assembling and
215 merging information contained in a database of another consumer reporting agency and that does
216 not maintain a permanent database of credit information from which new consumer reports are
217 produced, except that such financial institution or consumer reporting agency shall be subject to
218 any security freeze placed on a consumer report by another consumer reporting agency from
219 which it obtains information; or

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

224 (c) A consumer reporting agency shall place a security freeze on a consumer report for a
225 protected consumer if the consumer reporting agency receives a request from the protected
226 consumer or, if required by law, the protected consumer's representative, for the placement of
227 the security freeze. If the request is from a protected consumer's representative, the protected
228 consumer's representative shall submit to the consumer reporting agency: (i) sufficient proof of
229 identification of the protected consumer; (ii) sufficient proof of identification of the protected
230 consumer's representative; and (iii) sufficient proof of authority to act on behalf of the protected
231 consumer.

232 If a consumer reporting agency does not have a file that pertains to a protected consumer
233 when the consumer reporting agency receives a request described in this section, the consumer

234 reporting agency shall create a record for the protected consumer and comply with the request if
235 all other requirements of this section are met.

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

239 (d) To remove a security freeze placed pursuant to this section, the protected consumer or
240 the protected consumer's representative shall submit a request for the removal of the security
241 freeze to the consumer reporting agency. In the case of a request submitted by a protected
242 consumer's representative, sufficient proof of identification of the protected consumer and the
243 representative and sufficient proof of authority to act on behalf of the protected consumer shall
244 be presented before the security freeze is lifted. In the case of a request submitted by a protected
245 consumer who is subject to a security freeze, sufficient proof of identification of the protected
246 consumer and proof that the protected consumer is no longer a protected consumer because the
247 person is no longer under the age of 16 or an incapacitated person or a protected person as
248 defined in section 5-101 of article V of chapter 190B shall be presented before the security freeze
249 is lifted. For an incapacitated person or a protected person as defined in said section 5-101 of
250 said article V of said chapter 190B, sufficient proof of identification shall include, but not be
251 limited to, an order issued by a court.

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

255 A consumer reporting agency may remove a security freeze for a protected consumer or
256 delete a record of a protected consumer if the security freeze was placed or the record was
257 created based on a material misrepresentation of fact by the protected consumer or the protected
258 consumer's representative. A consumer reporting agency shall notify the protected consumer or
259 the protected consumer's representative in writing or electronically at least 30 business days
260 before removing a security freeze on the protected consumer's consumer report or before
261 deleting a record of the protected consumer.

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

267 SECTION 23. Section 3 of said chapter 93H, as so appearing, is hereby amended by
268 striking out the paragraph in lines 45 to 52, inclusive, and inserting in place thereof the following
269 2 paragraphs:-

270 The notice to be provided to the resident shall include, but not be limited to: (i) the
271 consumer's right to obtain a police report; (ii) instructions to the consumer on how to request a
272 security freeze and the necessary information to be provided when requesting the security freeze;
273 (iii) that there is no charge for a security freeze; and (iv) mitigation services to be provided
274 pursuant to this chapter; provided, however, that the notice shall not include the nature of the
275 breach or unauthorized acquisition or use or the number of residents of the commonwealth
276 affected by the breach or unauthorized access or use. The person or agency breached shall
277 provide a sample copy of the notice it intends to distribute to consumers to the attorney general
278 and to the office of consumer affairs and business regulation.

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

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

285 (d) If a person knows or has reason to know that the person experienced an incident that
286 requires notice under section 3 of chapter 93H, and if that incident involves a social security
287 number, the person shall offer to each resident credit monitoring services for a period of at least
288 2 years at no cost to the resident. The person shall provide all information necessary for the

289 resident to enroll in such services and shall include information on how the resident can place a
290 security freeze on the resident's consumer report.

291 SECTION 25. The department of consumer affairs and business regulation shall
292 promulgate regulations implementing section 22 not later than 12 months after the effective date
293 of this act.

294 SECTION 26. The twelfth paragraph of section 62A of chapter 93 of the General Laws,
295 as appearing in section 20, shall take effect upon passage of this act.

296 SECTION 27. The thirteenth paragraph of section 62A of chapter 93 of the General
297 Laws, as appearing in section 20, shall take effect 1 year after passage of this act.

298 SECTION 28. Unless otherwise provided, this act shall take effect 90 days after its
299 passage.