

By Mr. Marzilli of Arlington, petition of J. James Marzilli, Jr., and other members of the General Court for legislation to restrict non-consensual use of personal data. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Five.

AN ACT TO RESTRICT NON-CONSENSUAL USE OF PERSONAL DATA.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after
2 Chapter 66A the following chapter: —

3 **Chapter 66B**
4 **PERSONAL DATA PROTECTION**

5 Section 1. Definitions.

6 “Data subject” as defined in Chapter 66A, section one.

7 “Private business” means any corporation, partnership, chari-
8 table organization, franchise or substantially similar entity orga-
9 nized under the Massachusetts General Laws or any other state
10 and doing business in Massachusetts.

11 “Secondary use” means using personal data for a purpose other
12 than that for which it was collected.

13 “Written informed consent” means a consent form signed by a
14 data subject releasing specified personal data for secondary use.
15 The private business has the burden of writing the consent form in
16 language understandable by the reasonable data subject. The con-
17 sent form must include, but not be limited to, the following:

18 1) a list of reasonably foreseeable secondary use of the per-
19 sonal data; and

20 2) the option to prohibit the release of personal data for any or
21 all of the listed secondary uses.

22 Section 2. Restrictions on Personal Data.

23 Any private business collecting personal data shall obtain
24 written informed consent of the data subject prior to selling,
25 leasing or using personal data for any secondary use.

26 Section 3. Civil Damages.

27 Any violation of this chapter shall subject the private business
28 to civil actions by the data subject. The data subject shall have
29 authority to seek any or all of the following:

30 a. declaratory relief;

31 b. actual damages for any harm proximately caused by the
32 violation;

33 c. exemplary damages of not more than \$1000 per violation;

34 d. declaratory relief;

35 e. costs and reasonable attorney's fees from the private busi-
36 ness for any successful action brought.

37 Section 4. Injunctive Relief.

38 Any violation of this chapter shall subject the private business
39 to an action for injunctive or declaratory relief or mandamus
40 issued by any court of competent jurisdiction. The court may
41 make the order or judgment as necessary to prevent any private
42 business from violating this chapter. The data subject or the
43 attorney general, upon his or her own complaint, or upon the com-
44 plaining of any individual, may bring actions for injunction or
45 mandamus.

46 Section 5. Statute of Limitations.

47 Any court of competent jurisdiction shall have authority to hear
48 an action to enforce liability under section 3 or 4 of this chapter
49 within three years from the date on which the violation occurs. If
50 the defendant willfully violates this chapter, any court shall have
51 authority to hear an action to enforce liability under section 3 or 4
52 of this chapter within three years after discovery of the violation.