

By Mr. Toomey of Cambridge, petition of Timothy J. Toomey, Jr., and others relative to the protection of consumers from identity theft. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

PETITION OF:

Timothy J. Toomey, Jr.
John J. Binienda
Christine E. Canavan
Elizabeth A. Malia

Denise Provost
Thomas P. Kennedy

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO IDENTITY THEFT IN THE COMMONWEALTH.

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. Chapter 266 of the General Laws is hereby amended
2 by adding the following section:—

3 Section 37F. Identity Theft Investigation.

4 A person who has learned or reasonably suspects that his or hers
5 personal identifying information has been unlawfully used by
6 another, as described in Section 37E of Chapter 266, may initiate a
7 law enforcement investigation by contacting the local law enforce-
8 ment that has jurisdiction over his or her actual residence, which
9 shall take an identity theft police report of the matter, provide the
10 complainant with a copy of that report, and begin an investigation of
11 the facts. If the suspected crime was committed in a different juris-
12 diction, the local law enforcement agency must refer the matter to
13 the jurisdiction's local law enforcement agency where the suspected
14 crime was committed for further investigation of the facts.

15 b) Any city, town, or district police department which requires an
16 investigating police officer to make a report concerning an incident,
17 offense or alleged offense investigated, or any arrest made, on a
18 form provided by the department shall include on said form a space

19 to indicate whether said incident, offense, alleged offense or arrest
20 involved identity fraud as defined in Section 37E of Chapter
21 266. Said officer shall also provide any victim, as defined in Section
22 37E of Chapter 266, a copy of said report and may be redacted by
23 the investigating police officer.

1 SECTION 2. Chapter 24A of the General Laws is hereby
2 amended by inserting the following new section:—

3 Section 6. (a) There shall be in the office a division of Privacy
4 Protection whose primary purpose shall be protecting the privacy of
5 individuals' personal information by identifying consumer problems
6 in the privacy area and facilitating development of fair information
7 practices.

8 (b) The office shall inform the public of potential options for pro-
9 tecting the privacy of, and avoiding the misuse of, personal informa-
10 tion.

11 (c) The office shall make recommendations to organizations for
12 privacy policies and practices that promote and protect the interests
13 of consumers.

14 (d) The office may promote voluntary and mutually agreed upon
15 non-binding arbitration and mediation of privacy related disputes
16 where appropriate.

17 (e) The Director of the Consumer Affairs and Business Regula-
18 tion shall do all of the following: (1) Receive complaints from indi-
19 viduals concerning any persons obtaining, compiling, maintaining,
20 using, disclosing or disposing of personal information in a manner
21 that may be potentially unlawful or violate a stated privacy policy
22 relating to that individual, and provide advice, information, and
23 referral where available. (2) Provide information to consumers on
24 effective ways of handling complaints that involve violations of pri-
25 vacy related laws, including identity theft and identity fraud. Where
26 appropriate local, state, or federal agencies are available to assist
27 consumers with those complaints, the director shall refer those com-
28 plaints to those agencies. (3) Develop information and educational
29 programs and materials to foster public understanding and recogni-
30 tion of the purposes of this article. (4) Investigate and assist in the
31 prosecution of identity theft and other privacy related crimes, and, as
32 necessary, coordinate with local, state, and federal law enforcement
33 agencies in the investigation of similar crimes. (5) Assist and coordi-

34 nate in the training of local, state, and federal law enforcement agen-
35 cies regarding identity theft and other privacy related crimes, as
36 appropriate. (6) The authority of the office or the director, to adopt
37 regulations under this article shall be limited exclusively to those
38 regulations necessary and appropriate to implement paragraphs (b),
39 (c), (d), and (e). (f) Commencing in 2004, the director shall report to
40 the Legislature on an annual basis, on or before January 31, detailing
41 the activities engaged in by the department under this article.

1 SECTION 3. Chapter 93 of The Massachusetts General Laws, as
2 appearing in the 2002 Official Edition, is hereby amended by
3 inserting after Section 55 the following section:—

4 Section 55A. (a) No person or entity, including a state or local
5 agency may not do any of the following:

6 (1) intentionally communicate or otherwise make available to the
7 general public an individual's Social Security number;

8 (2) print an individual's Social Security number on any card
9 required for the individual to access products or services provided by
10 the person or data collector;

11 (3) require an individual to transmit his or her Social Security
12 number over the Internet, unless the connection is secure or the
13 Social Security number is encrypted;

14 (4) require an individual to use his or her Social Security number
15 to access an Internet Web site, unless a password or unique personal
16 identification number or other authentication device is also required
17 to access the Internet Web site;

18 (5) print an individual's Social Security number on any materials
19 that are mailed to the individual, unless required by law;

20 (6) sell, lease, loan, trade, rent, or otherwise disclose an individu-
21 al's Social Security number to a third party for any purpose without
22 written consent to the disclosure from the individual.

23 Nothing in this section shall apply to medical information or doc-
24 uments that are recorded or required to be open to the public pur-
25 suant to Section 7 of Chapter 4.

26 (b) Violations of any provision of this section shall constitute and
27 unfair and deceptive trade practice pursuant to the provisions of
28 Chapter ninety-three A.

1 SECTION 4. Each state department and state agency shall enact
2 and maintain a permanent privacy policy that includes, but is not
3 limited to, the following principles:

4 (a) Personally identifiable information is only obtained through
5 lawful means.

6 (b) The purposes for which personally identifiable data are col-
7 lected are specified at or prior to the time of collection, and any sub-
8 sequent use is limited to the fulfillment of purposes not inconsistent
9 with those purposes previously specified.

10 (c) Personal data shall not be disclosed, made available, or other-
11 wise used for purposes other than those specified, except with the
12 consent of the subject of the data, or as authorized by law or regula-
13 tion.

14 (d) Personal data collected must be relevant to the purpose for
15 which it is collected.

16 (e) The general means by which personal data is protected against
17 loss, unauthorized access, use modification or disclosure shall be
18 posted, unless such disclosure of general means would compromise
19 legitimate state department or state agency objectives or law
20 enforcement purposes.

21 (f) Each state department or state agency shall designate a posi-
22 tion within the department or agency, the duties of which shall
23 include, but not be limited to, responsibility for the privacy policy
24 within that department or agency.