HOUSE DOCKET, NO. FILED ON: 1/6/2009

**HOUSE . . . . . . . . . . . . . . . No.**

|  |
| --- |
|  |

The Commonwealth of Massachusetts

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PRESENTED BY:

**David P. Linsky**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General
 Court assembled:*

 The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the crime of identity fraud.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PETITION OF:

|  |  |
| --- | --- |
| Name: | District/Address: |
| David P. Linsky | 5th Middlesex |

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1571 OF 2007-2008.]

The Commonwealth of Massachusetts

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**In the Year Two Thousand and Nine**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

An Act relative to the crime of identity fraud.

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

 SECTION 1. Section 37E of Chapter 266 of the General Laws is hereby amended in subsection (a) within the definition of “Personal identifying information” by: (i) striking the word “individual” and inserting in place thereof, the word “person” and (ii) inserting after the words “password identification”, as appearing at the end of the subparagraph, the following words: “or tax identification number, or other bank or financial institution issued financial account number or distinctive password identification code”.

            SECTION 2. Section 37E of Chapter 266 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended in subsection (a), by inserting after the definition of

            “Personal identifying information” the following definition: “Person’ includes an individual whether living or deceased, association, organization, corporation or other business entity.”.

            SECTION 3. Section 37E of Chapter 266 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended as follows by inserting after subsection (c), the following subsections:—

                        (d)  Whoever attempts to solicit, obtain or obtains from another person the personal identifying information of such person, by false pretense or by willfully making a materially false, fictitious or deceptive statement or communication, whether by oral, written, electronic mail, internet site or any other means, with the intent to:

 (i)                  pose as such person in order to defraud any person, by fraudulently obtaining money, credit, goods, services or anything of value, or

 (ii)                use the personal identifying information of such person to obtain, forge, or cause to be made, any unlawful, fraudulent or false: bank or financial institution issued credit card, charge card, bank card or financial instrument or any government or quasi-government issued identification card, license, passport, birth certificate or permit document.

                        shall be guilty of the crime of identity fraud and shall be punished as follows:

                        (1) for a violation involving subsection (d)(i): if the offense is a first offense and the value of the item obtained or attempted to be obtained is no more than two hundred and fifty dollars, by a fine of not more than $1,000, or by imprisonment in the house of correction for not more than 2 ½  years, or by both such fine and imprisonment; or if the offense is a second or subsequent offense or the value of the item obtained or attempted to be obtained is more than two hundred and fifty dollars, by a fine of not more than $5,000, or by imprisonment in the state prison for not more than 5 years, or in the house of correction for not more than 2 ½  years, or by both such fine and imprisonment; and

                        (2)  for a violation involving subsection (d)(ii) by a fine of not more than $5,000, or by imprisonment in the state prison for not more than 5 years, or in the house of correction for not more than 2 ½  years, or by both such fine and imprisonment.

                        A person who knowingly aids or abets another person to commit or attempt to commit the offense of identity fraud prohibited by this subsection shall be guilty of, and shall be subject to the punishment for, identity fraud provided under this subsection.

                        (e) A prosecution under this section may be commence and disposed of, in either the Superior Court or District Court. A prosecution in the Superior Court may be commenced in the county in which the conduct in violation of this section occurred in the commonwealth, or in the county where the victim or defendant resides, or has a principal place of business within the commonwealth. A prosecution commenced in the District Court may be commenced in the judicial district in which the conduct in violation of this section occurred within the commonwealth, or in the judicial district where the victim or defendant resides or has a principal place of business within the commonwealth.

            SECTION 4. Section 37E of Chapter 266 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking the current subsection heading “(d)” and inserting a new subsection heading “(f)”.

            SECTION 5. Section 37E of Chapter 266 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking the current subsection heading “(e)” and inserting a new subsection heading “(g)”.

            SECTION 6. Section 37E of Chapter 266 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after current subsection (e), which heading is to be amended to subsection “(g)” by Section 5, the following subsection:—

                        (h) A law enforcement officer when acting within the scope of the officer’s lawful authority shall not be subject to the prohibitions of subsections (b), (c) or (d).