

SENATE No. 187

The Commonwealth of Massachusetts

PRESENTED BY:

Steven A. Tolman

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 to restore consumer control over the private information collected by retail discount cards

PETITION OF:

NAME:

Steven A. Tolman

DISTRICT/ADDRESS:

Second Suffolk and Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00242 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO RESTORE CONSUMER CONTROL OVER THE PRIVATE INFORMATION
COLLECTED BY RETAIL DISCOUNT CARDS.

*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.** General information.

2 (a) Short title:

3 This law's short title is "The Consumer Privacy Restoration Act."

4 (b) General objectives:

5 This law has the purpose of creating a more informed consumer and restoring consumer control
6 over private information in the context of retail discount cards.

7 (c) Applications or general principles section:

8 (i) A court shall resolve ambiguities in this law in a way that will protect
9 consumer privacy, create a more informed consumer with regard to retail discount

10 card practices, and curb deceptive retail practices with regard to the collection and
11 sale of private information.

12 (ii) A court shall construe a violation of this law as an unfair business practice as
13 defined in section 2 of chapter 93A of the General Laws.

14 **SECTION 2.** Section 104 of chapter 93 of the General Laws, as appearing in section 1 of
15 chapter 414 of the acts of 1991, is hereby amended by striking the first sentence and inserting the
16 following sentence:- For the purposes of this section and sections 105 through 105C inclusive,
17 the following words have the following meanings:

18 **SECTION 3.** Section 104 of chapter 93 of the General Laws, as so appearing, is hereby
19 further amended by inserting the following paragraphs after the first sentence:- “Anonymous
20 purchasing behavior data”, cardholder purchasing behavior data that contains none of the
21 cardholder’s private information.

22 “Card-issuer”, a person who engages in the business of making sales at retail or for use, storage
23 or consumption and who operates a retail discount card program; this definition subsumes all the
24 person’s subsidiaries and agents.

25 “Cardholder”, a consumer to whom a retailer has issued a retail discount card, or a consumer
26 who is applying for a retail discount card.

27 **SECTION 4.** Section 104 of chapter 93 of the General Laws, as so appearing, is hereby
28 further amended by adding the following paragraphs:- “Personally identified purchasing
29 behavior data”, cardholder purchasing behavior data which may contain one or more of the

30 following: the cardholder's name, telephone number(s), street address, city, state, ZIP code, E-
31 mail address and birthdate.

32 "Purchasing behavior data", information a card-issuer collects about a cardholder's buying
33 habits, including product preference, transaction size and time, location and frequency of
34 shopping trips.

35 "Private information", a cardholder's personally identifiable information, including first name,
36 last name, initials, telephone number(s), street address, city, state, ZIP code, month and day of
37 birth, social security number, driver's license number, E-mail address, employer, credit card or
38 bank account balances or numbers and retail discount card account numbers.

39 "Retail discount card", a card, tag, coupon booklet or device that a retailer issues to consumers
40 and which a cardholder presents to a retailer at the time of a transaction to obtain discounts on
41 retail products or services the card-issuer offers.

42 **SECTION 5.** Chapter 93 of the General Laws is hereby amended by inserting after
43 section 105 the following sections:-

44 Section 105A. Card-issuers, restrictions on.

45 (a) A card-issuer shall not withhold incentives from or offer additional incentives to a
46 cardholder based upon any provisions of this section. A card-issuer shall not charge a cardholder
47 a fee for any performance in conformity with this section.

48 (b) A card-issuer may collect a cardholder's anonymous purchasing behavior data. A
49 card-issuer may disclose this anonymous purchasing behavior data to its agents and subsidiary

50 companies. When a cardholder has granted a card-issuer the permission to do so, the card-issuer
51 may collect the cardholder's personally-identified purchasing behavior data and distribute the
52 cardholder's personal information and personally-identified purchasing behavior data to its
53 agents or subsidiary companies. When a cardholder has granted a card-issuer the permission to
54 do so, the card-issuer may sell, rent, lease or disclose the cardholder's personal information and
55 personally-identified purchasing behavior data to a third-party.

56 (c) Retail discount card applications:

57 (i) On a retail discount card application, a card-issuer shall not require a
58 cardholder to provide the following information: telephone number(s), E-mail
59 address, birth date, social security number, employer or income. Unless a
60 cardholder seeks to use the retail discount card for check-cashing or other
61 financial services, a card-issuer shall not require a cardholder to provide a driver's
62 license or other identification. If a cardholder provides personally-identified
63 information to obtain check-cashing privileges or other financial services in
64 connection with the retail discount card, or if a cardholder completes a transaction
65 with a credit card, the card-issuer shall not connect this information in
66 conjunction with the cardholder's purchasing behavior data unless the cardholder
67 grants the card-issuer permission to do so. If a cardholder requests to obtain a
68 retail-discount card anonymously, a card-issuer shall permit the cardholder to do
69 so.

70 (ii) On a retail discount card application, a card-issuer shall clearly and
71 conspicuously print:

72 (A) a list of all agents and subsidiary companies to which the card-issuer
73 will disclose the cardholder's purchasing behavior data;

74 (B) the pertinent aspects of this section and section 105C in language the
75 office of consumer affairs provides according to section 105B(a)(ii); and

76 (C) other information as the office of consumer affairs and business
77 regulations may mandate.

78 (iii) On a retail discount card application, a card-issuer shall present a cardholder
79 with the opportunity to choose from among the three following privacy options:

80 (A) the card-issuer may collect the cardholder's anonymous purchasing
81 behavior data and the card-issuer may disclose this data to its agents and
82 subsidiary companies;

83 (B) the card-issuer may collect the cardholder's personally-identified
84 purchasing behavior data, and the card-issuer may disclose this data to its
85 agents and subsidiary companies; or

86 (C) the card-issuer may collect the cardholder's personally-identified
87 purchasing behavior data, and the card-issuer may disclose this data to its
88 agents and subsidiary companies. The card-issuer may sell, rent, lease or
89 disclose this data to a third-party.

90 (iv) A card-issuer shall print the privacy options set out in (c)(iii) in language the
91 office of consumer affairs and business regulations provides according to section

92 105B(a)(i). A card-issuer shall print these options on the first page of the
93 application in a typeface no smaller than 12 points (one sixth of an inch high) and
94 no smaller than the smallest type on the application.

95 (iv) If a cardholder does not choose one of the three options set out in (c)(iii), a
96 card-issuer may only collect the cardholder's anonymous purchasing behavior
97 data and disclose this data to its agents and subsidiary companies. Once a
98 cardholder selects a privacy option, a retailer shall honor that selection until such
99 time when the cardholder selects a different privacy option.

100 (d) A card-issuer shall provide a cardholder with the following notice and choices:

101 (i) On the day this section takes effect and once per calendar year thereafter, a
102 card-issuer shall mail to existing cardholders a letter informing the cardholder of
103 the cardholder's right to choose from among the three privacy options. The card-
104 issuer shall alter its collection of the cardholder's purchasing behavior data
105 accordingly within 30 days of the cardholder's response to the letter. Once a
106 cardholder selects a privacy option, a retailer shall honor that selection until such
107 time when the cardholder selects a different privacy option. The card-issuer shall
108 construe a cardholder's lack of response to the letter as permission to continue
109 collecting and sharing the cardholder's data without alteration. In the letter, the
110 card-issuer shall include the following:

111 (A) a summary of the pertinent provisions of this section and section 105C
112 in language the office of consumer affairs and business regulations
113 provides according to section 105B(a)(iii);

114 (B) the opportunity to choose from among the three privacy options as set
115 out in (c)(iii) and in language the office of consumer affairs and business
116 regulations provides according to section 105B(ii);

117 (C) a toll-free telephone number, E-mail address, website address or self-
118 addressed postage-paid envelope for the cardholder's response;

119 (D) a statement that cardholders may respond to the letter at any time; and

120 (E) other information as the office of consumer affairs and business
121 regulations may mandate.

122 (ii) At a card-issuer's customer service desk, return desk or the equivalent, and in
123 at least one place in the retail location, a card-issuer shall post a sign detailing the
124 pertinent provisions of this act in language the office of consumer affairs and
125 business regulations provides according to section 105B(a)(iii) and in typeface no
126 smaller than 54 point (three-quarters of an inch high). The card-issuer shall place
127 the sign in plain view no further than five feet from where a cardholder may
128 stand, and at a height no lower than four feet and no higher than eight feet from
129 the ground.

130 (iii) On a cardholder's receipt of transaction and on a retail discount card larger
131 than three square inches, a card-issuer shall print the Attorney General's
132 Consumer Hotline telephone number with the caption, "Is this retailer selling your
133 private information without your permission? Call the Attorney General's
134 Consumer Hotline to report violations of the Consumer Privacy Restoration Act."
135 The retailer shall print this information in typeface no smaller than nine points
136 (one eighth of an inch high) and no smaller than the smallest typeface on the retail
137 discount card or receipt.

138 (e) Once per calendar year and upon a cardholder's verbal or written request, a card-
139 issuer shall provide the cardholder with the cardholder's purchase behavior data free of any
140 processing, printing, postage, shipping or handling fees or other costs. After a cardholder's first
141 request of a calendar year, a card-issuer may charge the cardholder a nominal fee for this data.

142 (f) A card-issuer shall not seek to admit a cardholder's purchasing behavior data as
143 evidence in its defense in any civil action to which the card-issuer and the cardholder are parties.
144 A card-issuer shall not use a cardholder's purchasing behavior data as a basis for litigation. A
145 card-issuer shall not provide a third-party with a cardholder's purchasing behavior data for the
146 purpose of litigation.

147 (g) This section shall take effect 60 days after the day sections 105B and 105C take
148 effect.

149 Section 105B. Implementation of regulations; education of consumers

150 (a) Thirty days before section 105A takes effect, the office of consumer affairs and
151 business regulations shall promulgate and provide to a card-issuer the plain language statements
152 required under sections 105A and 105C.

153 (b) No less than 30 days before section 105A takes effect, the attorney general shall
154 maintain the Consumer Hotline to address and respond to cardholder complaints and reports
155 regarding violations of section 105A. The attorney general shall amend the office of the attorney
156 general's "Consumer Complaint Form" to include provisions for reporting violations of section
157 105A.

158 (c) On the day this section and section 105C take effect, the office of consumer affairs
159 and business regulations shall commence a public awareness campaign to educate cardholders of
160 their rights under sections 105A and 105C. The office's director shall ensure the campaign's
161 sufficient pervasiveness prior to section 105A's date of effectiveness and for the first year after
162 the act takes effect.

163 (d) On the day this section and section 105C take effect, the attorney general shall expand
164 and maintain the attorney general's website to include current information and educational
165 materials regarding the provisions of this act.

166 Section 105C. Conformity-inducing measures

167 (a) The office of consumer affairs and business regulations may promulgate regulations
168 in conformity with the provisions and purposes of this section and sections 105A and 105B.

169 (b) A violation of section 105A is an unfair business practice as defined in section 2 of
170 chapter 93A.

171 (c) In addition to sanctions available under section (4) of chapter 93A, a court may
172 require a violator of section 105A to post no more than three notices, admitting the violation of
173 the section in language provided under section 105B(a)(v), with each notice no larger than five
174 feet by five feet. A court may mandate the violator to post no more than three notices at each of
175 the violator's retail locations' entrances, front windows or parking lots.

176 (d) For the purposes of civil remedies under sections (9) and (11) of chapter 93A, a court
177 shall construe a card-issuer's violation of section 105A as a loss of personal property to the
178 cardholder. The court shall value this loss of personal property between \$25 and \$1,000,
179 depending upon factors including the severity, length and rate of recurrence of the card-issuer's
180 violation.

181 (e) For the purposes of civil remedies under subsections (3) and (3A) of section 9 of
182 chapter 93A, a plaintiff may recover punitive damages against a card issuer who willfully or
183 knowingly violates section 105A. A court shall make these punitive damages available in
184 addition to all other relief available under those subsections.