

# HOUSE . . . . . No. 315

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act relative to the privacy rights of certain customers..

*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. The General Laws are hereby amended by inserting after chapter 93G, as  
2 appearing in the 2000 Official Edition, the following chapter:—

3                   CHAPTER 93H.SUPERMARKET PRIVACY.

4           Section 1. Whenever used in this chapter, the following terms, unless the context  
5 clearly indicates otherwise, shall have the following meanings:           “Affiliates,” any company  
6 whose involvement with the consumer is necessary to effect, administer or enforce such  
7 transaction.           “Company”, with respect to a market grocer, any person, or legal  
8 representative thereof, to whom a market grocer provides a product or service, where product or  
9 service is to be used primarily for personal, family or household purposes.           “Consumer”,  
10 an individual who requests or obtains from a market grocer products or services, including but  
11 not limited to groceries which are used primarily for personal, family, or household purposes,  
12 and also means the legal representative of that individual.           “Supermarket”, any retail  
13 company that participates in the sale of perishable food items and has at least 300 employees and  
14 4 retail locations in the Commonwealth of Massachusetts.           “Nonaffiliated third Party”,

15 means any entity that is not an affiliate of, or related by common ownership or affiliated by  
16 corporate control with or bound in an aforementioned contract with, the market grocer, but does  
17 not include a joint employee of the institution. “Nonpublic personal information”, means  
18 personally identifiable information either provided by a consumer to a market grocer in  
19 connection with any transaction with the consumer or service performed for the consumer or  
20 otherwise obtained by the market grocer. “Nonpublic personal information” does not include  
21 personally identifiable information in any list, description, or other grouping of consumers that is  
22 publicly available if the list, description, or other grouping of consumers was derived without  
23 using personally identifiable information that is not publicly available. “Unrelated Use,”  
24 when used with respect to information collected by a financial institution in connection with any  
25 transaction with a consumer in any financial product or financial service, means any use other  
26 than (1) a use necessary to effect, administer or enforce such transaction, or (2) a use to provide  
27 directly or indirectly other banking products as defined in 15 USC Sec. 78c, insurance products  
28 as defined by 15 USC Sec. 6712, or securities products as defined by 15 USC Sec. 766 to said  
29 consumer. Section 2. A supermarket shall, at the time of establishing enrollment of a  
30 consumer in any membership group or entity constituted for the purpose of providing retail price  
31 discounts for consumer, provide a clear and conspicuous disclosure to the consumer in writing of  
32 such supermarket’s policies and practices with respect to: 1) disclosing nonpublic  
33 personal information to nonaffiliated third parties, including the categories of information that  
34 may be disclosed; 2) disclosing nonpublic personal information of persons who have  
35 ceased to be members of such groups of the supermarket; and 3) protecting the nonpublic  
36 personal information of consumers The required disclosure must include A) An  
37 option for the consumer to allow the supermarket to share nonpublic personal information with

nonaffiliated third parties. If the consumer does not provide written consent for the sharing of nonpublic personal information, the supermarket must assume the consumer does not want their information shared with third parties. Section 3. A consumer who terminates membership in such supermarket discount groups shall be deemed to have withdrawn any consent to disclosure given pursuant to this chapter. Section 4. The provisions of this chapter shall not apply to the disclosure by a supermarket with respect to nonpublic personal information whenever such disclosure is necessary to: (1) Protect the confidentiality or security of the supermarket's records pertaining to the consumer, the service or product requested or authorized, or the transaction therein; (2) Protect the consumer against actual or potential fraud, unauthorized transactions, claims or other liability; (3) Resolution of consumer dispute inquiries; (4) Comply with a properly authorized civil, criminal or regulatory investigation, subpoena or summons by federal, state or local authorities, or to respond to judicial process or government regulatory authorities having jurisdiction over the supermarkets. Section 5. Any violation of the provisions of this chapter shall be deemed to be an unfair and deceptive trade practice, as defined in section 2 of chapter 93A. The Executive Office of Consumer Affairs is authorized to promulgate rules or regulations necessary to enforce the provisions of this chapter. The office of the Massachusetts Attorney General may seek enforcement against violations of this chapter in the courts of the Commonwealth seeking appropriate declaratory and/or injunctive relief.