

SENATE No. 187

The Commonwealth of Massachusetts

In the Year Two Thousand 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
6 control 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 consumer
9 privacy, create a more informed consumer with regard to retail discount card practices, and curb
10 deceptive retail practices with regard to the collection and sale of private information.

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

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

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

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

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

26 SECTION 4. Section 104 of chapter 93 of the General Laws, as so appearing, is hereby
27 further amended by adding the following paragraphs:- “Personally identified purchasing
28 behavior data”, cardholder purchasing behavior data which may contain one or more of the
29 following: the cardholder’s name, telephone number(s), street address, city, state, ZIP code, E-
30 mail address and birthdate.

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

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

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

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

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

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

47 (b) A card-issuer may collect a cardholder’s anonymous purchasing behavior data. A
48 card-issuer may disclose this anonymous purchasing behavior data to its agents and subsidiary
49 companies. When a cardholder has granted a card-issuer the permission to do so, the card-issuer
50 may collect the cardholder’s personally-identified purchasing behavior data and distribute the
51 cardholder’s personal information and personally-identified purchasing behavior data to its

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

55 (c) Retail discount card applications:

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

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

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

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

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

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

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

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

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

84 (iv) A card-issuer shall print the privacy options set out in (c)(iii) in language the office
85 of consumer affairs and business regulations provides according to section 105B(a)(i). A card-
86 issuer shall print these options on the first page of the application in a typeface no smaller than
87 12 points (one sixth of an inch high) and no smaller than the smallest type on the application.

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

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

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

101 (A) a summary of the pertinent provisions of this section and section 105C in language
102 the office of consumer affairs and business regulations provides according to section
103 105B(a)(iii);

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

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

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

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

112 (ii) At a card-issuer's customer service desk, return desk or the equivalent, and in at least
113 one place in the retail location, a card-issuer shall post a sign detailing the pertinent provisions of

114 this act in language the office of consumer affairs and business regulations provides according to
115 section 105B(a)(iii) and in typeface no smaller than 54 point (three-quarters of an inch high). The
116 card-issuer shall place the sign in plain view no further than five feet from where a cardholder
117 may stand, and at a height no lower than four feet and no higher than eight feet from the ground.

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

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

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

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