HOUSE DOCKET, NO. 59 FILED ON: 1/6/2011

HOUSE . . . . . No. 127

The Commonwealth of Massachusetts

PRESENTED BY:

William M. Straus

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 adoption of the accompanying bill:

An Act relative to the privacy rights of certain customers..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William M. Straus	*10th Bristol*

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HOUSE . . . . . No. 127

By Mr. Straus of Mattapoisett, a petition (accompanied by bill, House, No. 127) of William M. Straus relative to the privacy rights of certain customers of supermarkets. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *315* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

SECTION 1. The General Laws are hereby amended by inserting after chapter 93G, as appearing in the 2000 Official Edition, the following chapter:—

CHAPTER 93H. SUPERMARKET PRIVACY.

Section 1. Whenever used in this chapter, the following terms, unless the context clearly indicates otherwise, shall have the following meanings:

"Affiliates," any company whose involvement with the consumer is necessary to effect, administer or enforce such transaction.

8 “Company”, with respect to a market grocer, any person, or legal representative thereof,
9 to whom a market grocer provides a product or service, where product or service is to be used
10 primarily for personal, family or household purposes.

11 “Consumer”, an individual who requests or obtains from a market grocer products or
12 services, including but not limited to groceries which are used primarily for personal, family, or
13 household purposes, and also means the legal representative of that individual.

14 “Supermarket”, any retail company that participates in the sale of perishable food items
15 and has at least 300 employees and 4 retail locations in the Commonwealth of Massachusetts.

16 “Nonaffiliated third Party”, means any entity that is not an affiliate of, or related by
17 common ownership or affiliated by corporate control with or bound in an aforementioned
18 contract with, the market grocer, but does not include a joint employee of the institution.

19 “Nonpublic personal information”, means personally identifiable information either
20 provided by a consumer to a market grocer in connection with any transaction with the consumer
21 or service performed for the consumer or otherwise obtained by the market grocer. “Nonpublic
22 personal information” does not include personally identifiable information in any list,
23 description, or other grouping of consumers that is publicly available if the list, description, or
24 other grouping of consumers was derived without using personally identifiable information that
25 is not publicly available.

26 “Unrelated Use,” when used with respect to information collected by a financial
27 institution in connection with any transaction with a consumer in any financial product or
28 financial service, means any use other than (1) a use necessary to effect, administer or enforce
29 such transact ion, or (2) a use to provide directly or indirectly other banking products as defined

30 in 15 USC Sec. 78c, insurance products as defined by 15 USC Sec. 6712, or securities products
31 as defined by 15 USC Sec. 766 to said consumer.

32 Section 2. A supermarket shall, at the time of establishing enrollment of a consumer in
33 any membership group or entity constituted for the purpose of providing retail price discounts for
34 consumer, provide a clear and conspicuous disclosure to the consumer in writing of such
35 supermarket's policies and practices with respect to:

36 1) Disclosing nonpublic personal information to nonaffiliated third parties, including the
37 categories of information that may be disclosed;

38 2) Disclosing nonpublic personal information of persons who have ceased to be members
39 of such groups of the supermarket; and

40 3) Protecting the nonpublic personal information of consumers

41 The required disclosure must include

42 A) An option for the consumer to allow the supermarket to share nonpublic personal
43 information with nonaffiliated third parties. If the consumer does not provide written consent for
44 the sharing of nonpublic personal information, the supermarket must assume the consumer does
45 not want their information shared with third parties.

46 Section 3. A consumer who terminates membership in such supermarket discount groups
47 shall be deemed to have withdrawn any consent to disclosure given pursuant to this chapter.

48 Section 4. The provisions of this chapter shall not apply to the disclosure by a
49 supermarket with respect to nonpublic personal information whenever such disclosure is
50 necessary to:

51 1) Protect the confidentiality or security of the supermarket's records pertaining to the
52 consumer, the service or product requested or authorized, or the transaction therein;

53 2) Protect the consumer against actual or potential fraud, unauthorized transactions,
54 claims or other liability;

55 3) Resolution of consumer dispute inquiries;

56 4) Comply with a properly authorized civil, criminal or regulatory investigation,
57 subpoena or summons by federal, state or local authorities, or to respond to judicial process or
58 government regulatory authorities having jurisdiction over the supermarkets.

59 Section 5. Any violation of the provisions of this chapter shall be deemed to be an unfair
60 and deceptive trade practice, as defined in section 2 of chapter 93A. The Executive Office of
61 Consumer Affairs is authorized to promulgate rules or regulations necessary to enforce the
62 provisions of this chapter. The office of the Massachusetts Attorney General may seek
63 enforcement against violations of this chapter in the courts of the Commonwealth seeking
64 appropriate declaratory and/or injunctive relief.