

**HOUSE . . . . . No. 297**

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**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:	DATE ADDED:
<i>William M. Straus</i>	<i>10th Bristol</i>	
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	

**HOUSE . . . . . No. 297**

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By Mr. Straus of Mattapoisett, a petition (accompanied by bill, House, No. 297) of William M. Straus and Mark C. Montigny relative to the privacy rights of certain customers of supermarkets. Consumer Protection and Professional Licensure.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 127 OF 2011-2012.]

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Thirteen**  
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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 clearly  
5 indicates otherwise, shall have the following meanings:

6 “Affiliates,” any company whose involvement with the consumer is necessary to effect,  
7 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 transaction, 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.