

# SENATE . . . . . No. 153

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## The Commonwealth of Massachusetts

PRESENTED BY:

***Anne M. Gobi, (BY REQUEST)***

*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 internet advertising.

PETITION OF:

NAME:

*Jim White*

DISTRICT/ADDRESS:

*10 Petersham Road Phillipston, MA 01331*

# SENATE . . . . . No. 153

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By Ms. Gobi (by request), a petition (accompanied by bill, Senate, No. 153) of Jim White for legislation relative to internet advertising. Consumer Protection and Professional Licensure.

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## The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
\_\_\_\_\_

An Act relative to internet advertising.

*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. Chapter 93 of the General Laws, as appearing in the 2010 Official Edition,  
2   is hereby amended by inserting the following section:—

3           Section 114. As used in section 115, the following words shall, unless the context clearly  
4   requires otherwise, have the following meanings:—

5           “Advertisement”, a commercial message in any medium that promotes, directly or  
6   indirectly, a credit transaction.

7           “Discount”, a reduction made from the regular price. The term “discount” shall not mean  
8   a surcharge.

9           “Merchandise certificate” or “coupon”, a writing issued by a seller, not redeemable in  
10   cash and usable in its face amount in lieu of cash in exchange for goods or services supplied by  
11   the seller but does not include a writing issued by the seller as a gift certificate. The issuance of  
12   the merchandise certificate or coupon shall be deemed to be a transaction giving rise to

indebtedness of a buyer to the seller of goods, services or insurance for a part or all of the purchase price thereof upon issuance.

“Regular price”, the tag or posted price charged for the property or service if a single price is tagged or posted.

"Purchaser", a person to whom a sale of tangible personal property is made or to whom services are furnished and includes a buyer, vendee, lessee, licensee, or grantee.

"Purchase price" applies to the measure subject to use tax and has the same meaning as "sales price".

"Retailer" includes (i) every person engaged in the business of making sales at retail; (ii) every person engaged in the making of retail sales at auction of tangible personal property whether owned by such person or others; (iii) every person engaged in the business of making sales for storage, use or other consumption, or in the business of making sales at auction of tangible personal property whether owned by such person or others for storage, use or other consumption; (iv) every salesman, representative, peddler or canvasser who, in the opinion of the commissioner, it is necessary to regard for the efficient administration of this chapter as the agent of the dealer, distributor, supervisor or employer under whom he operates or from whom he obtains the tangible personal property sold by him, in which case the commissioner may treat and regard such agent as the retailer jointly responsible with his principal, employer or supervisor for the collection and payment of the tax imposed by this chapter; and (v) the commonwealth, or any political subdivision thereof, or their respective agencies when such entity is engaged in making sales at retail of a kind ordinarily made by private persons.

"Retail establishment", any premises in which the business of selling services or tangible personal property is conducted, or, in or from which any retail sales are made.

"Retail sale or Sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

"Sale" and "selling" include (i) any transfer of title or possession, or both, exchange, barter, lease, rental, conditional or otherwise, of tangible personal property or the performance of services for a consideration, in any manner or by any means whatsoever; (ii) the producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting; (iii) the furnishing and distributing of tangible personal property or services for a consideration by social clubs and fraternal organizations to their members or others; (iv) a transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; (v) a transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of any publication; (vi) the furnishing of information by printed, mimeographed or multigraphed matter, or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons, and excluding the services of advertising or other agents, or other persons acting in a representative capacity, and information services used by newspapers, radio broadcasters and television broadcasters in the collection and dissemination of news and excluding the furnishing of information by

photocopy or other similar means by not for profit libraries which are recognized as exempt from taxation under § 501(c)(3) of the Federal Internal Revenue Code; (vii) the performance of services for a consideration, excluding (a) services performed by an employee for his employer whether compensated by salary, commission, or otherwise, (b) services performed by a general partner for his partnership and compensated by the receipt of distributive shares of income or loss from the partnership; and (c) the performance of services for which the provider is compensated by means of an honorarium, or fee paid to any person or entity registered under 15 USC 80b-3 or 15 USC 78q-1 for services the performance of which require such registration, for services related thereto or for trust, custody, and related cash management and securities services of a trust company as defined in chapter one hundred and seventy-two.

"Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money; whether received in money or otherwise, without any deduction for the following:

(a) The seller's cost of the property sold;

(b) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(c) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(d) Delivery charges;

(e) Credit for any trade-in, except as provided in sections 26 and 27A of this chapter;

The following charges are excluded only if they are separately stated on the invoice, billing, or similar document given to the purchaser:

(a) Installation charges;

"Sales price" shall not include:

(a) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(b) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;

(c) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, billing, or similar document given to the purchaser; and

(d) Employee discounts that are reimbursed by a third party on sales of motor vehicles and manufacturer rebates on motor vehicles.

"Sales price" shall include consideration received by the seller from third parties if:

A. The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

B. The seller has an obligation to pass the price reduction or discount through to the purchaser;

C. The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

D. One of the following criteria is met:

1. The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

2. The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a “preferred customer” card that is available to any patron does not constitute membership in such a group), or 3. The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

“Seller” or “Vendor” a retailer or other person making sales, leases or rentals of tangible personal property or services.

SECTION 2. Chapter 93 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by inserting the following section:—

Section 115. Any grocery store, retailer or wholesale club, which offers a discount, promotion, premium, coupon, merchandise certificate, give-away, or rebate by advertisement on the internet, must also offer the same discount, promotion, premium, coupon, give-away, or rebate for retail purchases in its retail establishments.

The sale or purchase price offered to a purchaser through a seller’s website or electronic advertisement shall be made by the seller to a purchaser by sale at retail.

119           It shall be an unfair method of competition and a deceptive act or practice to refuse to  
120   offer the same sale or purchase price to a purchaser in the seller's retail establishment as is  
121   available to a purchaser through a seller's website or advertisement.