

HOUSE No.

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 passage of the accompanying bill:

An Act relative to the privacy rights of certain customers.

PETITION OF:

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

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 327 OF 2007-2008.]

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
—————

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 appearing in the 2000
2 Official Edition, the following chapter:—

3 **CHAPTER** **93H.**
4 **SUPERMARKET PRIVACY.**

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

7 “Affiliates,” any company whose involvement with the consumer is necessary to effect, administer or
8 enforce such transaction.

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

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

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

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

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

26 “Unrelated Use,” when used with respect to information collected by a financial institution in connection

27 with any transaction with a consumer in any financial product or financial service, means any use other than (1) a
28 use necessary to effect, administer or enforce such transaction, or (2) a use to provide directly or indirectly other
29 banking products as defined in 15 USC Sec. 78c, insurance products as defined by 15 USC Sec. 6712, or securities
30 products as defined by 15 USC Sec. 766 to said consumer.

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

34 1) disclosing nonpublic personal information to nonaffiliated third parties, including the categories of
35 information that may be disclosed;

36 2) disclosing nonpublic personal information of persons who have ceased to be members of such groups of
37 the supermarket; and

38 3) protecting the nonpublic personal information of consumers
39 The required disclosure must include

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

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

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

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

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

50 (3) Resolution of consumer dispute inquiries;

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

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