

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Tolman, Steven (SEN)**

*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 to restore consumer control over the private information collected by retail discount cards

PETITION OF:

NAME:

Tolman, Steven (SEN)

DISTRICT/ADDRESS:

Second Suffolk and Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S00242 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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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 control  
6 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 privacy,  
9 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 in  
12 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 chapter  
14 414 of the acts of 1991, is hereby amended by striking the first sentence and inserting the  
15 following sentence:-

16 For the purposes of this section and sections 105 through 105C inclusive, the following words  
17 have the following meanings:

18 SECTION 3. Section 104 of chapter 93 of the General Laws, as so appearing, is hereby further  
19 amended by inserting the following paragraphs after the first sentence:-

20 “Anonymous purchasing behavior data”, cardholder purchasing behavior data that contains none  
21 of the cardholder’s private information.

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

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

27 SECTION 4. Section 104 of chapter 93 of the General Laws, as so appearing, is hereby further  
28 amended by adding the following paragraphs:-

29 “Personally identified purchasing behavior data”, cardholder purchasing behavior data which  
30 may contain one or more of the following: the cardholder’s name, telephone number(s), street  
31 address, city, state, ZIP code, E-mail address and birthdate.

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

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

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

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

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

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

48 (b) A card-issuer may collect a cardholder's anonymous purchasing behavior data. A card-issuer  
49 may disclose this anonymous purchasing behavior data to its agents and subsidiary companies.  
50 When a cardholder has granted a card-issuer the permission to do so, the card-issuer may collect  
51 the cardholder's personally-identified purchasing behavior data and distribute the cardholder's  
52 personal information and personally-identified purchasing behavior data to its agents or  
53 subsidiary companies. When a cardholder has granted a card-issuer the permission to do so, the  
54 card-issuer may sell, rent, lease or disclose the cardholder's personal information and personally-  
55 identified purchasing behavior data to a third-party.

56 (c) Retail discount card applications:

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

67 (ii) On a retail discount card application, a card-issuer shall clearly and conspicuously 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 consumer  
71 affairs provides according to section 105B(a)(ii); and

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

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

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

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

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

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

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

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

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

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

101 (B) the opportunity to choose from among the three privacy options as set out in (c)(iii) and in  
102 language the office of consumer affairs and business regulations provides according to section  
103 105B(ii);

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

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

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

108 (ii) At a card-issuer's customer service desk, return desk or the equivalent, and in at least one  
109 place in the retail location, a card-issuer shall post a sign detailing the pertinent provisions of this  
110 act in language the office of consumer affairs and business regulations provides according to  
111 section 105B(a)(iii) and in typeface no smaller than 54 point (three-quarters of an inch high). The  
112 card-issuer shall place the sign in plain view no further than five feet from where a cardholder  
113 may stand, and at a height no lower than four feet and no higher than eight feet from the ground.

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

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

124 (f) A card-issuer shall not seek to admit a cardholder's purchasing behavior data as evidence in  
125 its defense in any civil action to which the card-issuer and the cardholder are parties. A card-  
126 issuer shall not use a cardholder's purchasing behavior data as a basis for litigation. A card-issuer



127 shall not provide a third-party with a cardholder's purchasing behavior data for the purpose of  
128 litigation.

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

130 Section 105B. Implementation of regulations; education of consumers

131 (a) Thirty days before section 105A takes effect, the office of consumer affairs and business  
132 regulations shall promulgate and provide to a card-issuer the plain language statements required  
133 under sections 105A and 105C.

134 (b) No less than 30 days before section 105A takes effect, the attorney general shall maintain the  
135 Consumer Hotline to address and respond to cardholder complaints and reports regarding  
136 violations of section 105A. The attorney general shall amend the office of the attorney general's  
137 "Consumer Complaint Form" to include provisions for reporting violations of section 105A.

138 (c) On the day this section and section 105C take effect, the office of consumer affairs and  
139 business regulations shall commence a public awareness campaign to educate cardholders of  
140 their rights under sections 105A and 105C. The office's director shall ensure the campaign's  
141 sufficient pervasiveness prior to section 105A's date of effectiveness and for the first year after  
142 the act takes effect.

143 (d) On the day this section and section 105C take effect, the attorney general shall expand and  
144 maintain the attorney general's website to include current information and educational materials  
145 regarding the provisions of this act.

146 Section 105C. Conformity-inducing measures

147 (a) The office of consumer affairs and business regulations may promulgate regulations in  
148 conformity with the provisions and purposes of this section and sections 105A and 105B.

149 (b) A violation of section 105A is an unfair business practice as defined in section 2 of chapter  
150 93A.

151 (c) In addition to sanctions available under section (4) of chapter 93A, a court may require a  
152 violator of section 105A to post no more than three notices, admitting the violation of the section  
153 in language provided under section 105B(a)(v), with each notice no larger than five feet by five  
154 feet. A court may mandate the violator to post no more than three notices at each of the violator's  
155 retail locations' entrances, front windows or parking lots.

156 (d) For the purposes of civil remedies under sections (9) and (11) of chapter 93A, a court shall  
157 construe a card-issuer's violation of section 105A as a loss of personal property to the  
158 cardholder. The court shall value this loss of personal property between \$25 and \$1,000,  
159 depending upon factors including the severity, length and rate of recurrence of the card-issuer's  
160 violation.

161 (e) For the purposes of civil remedies under subsections (3) and (3A) of section 9 of chapter  
162 93A, a plaintiff may recover punitive damages against a card issuer who willfully or knowingly  
163 violates section 105A. A court shall make these punitive damages available in addition to all  
164 other relief available under those subsections.