

SENATE NO. 242

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.

2 General information.

3 (a) Short title:

4 This law's short title is "The Consumer Privacy Restoration Act."

5 (b) General objectives:

6 This law has the purpose of creating a more informed consumer and restoring consumer control over
7 private information in the context of retail discount cards.

8 (c) Applications or general principles section:

9 (i) A court shall resolve ambiguities in this law in a way that will protect consumer privacy, create a
10 more informed consumer with regard to retail discount card practices, and curb deceptive retail
11 practices with regard to the collection and sale of private information.

12 (ii) A court shall construe a violation of this law as an unfair business practice as defined in section 2
13 of chapter 93A of the General Laws.

14 SECTION 2. Section 104 of chapter 93 of the General Laws, as appearing in section 1 of chapter 414
15 of the acts of 1991, is hereby amended by striking the first sentence and inserting the following
16 sentence:-

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

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

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

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

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

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

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

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

35 “Private information”, a cardholder’s personally identifiable information, including first name, last
36 name, initials, telephone number(s), street address, city, state, ZIP code, month and day of birth, social
37 security number, driver’s license number, E-mail address, employer, credit card or bank account
38 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 and
40 which a cardholder presents to a retailer at the time of a transaction to obtain discounts on retail
41 products or services the card-issuer offers.

42 SECTION 5. Chapter 93 of the General Laws is hereby amended by inserting after section 105 the
43 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 any
47 performance in conformity with this section.

48 (b) A card-issuer may collect a cardholder's anonymous purchasing behavior data. A card-issuer may
49 disclose this anonymous purchasing behavior data to its agents and subsidiary companies. When a
50 cardholder has granted a card-issuer the permission to do so, the card-issuer may collect the
51 cardholder's personally-identified purchasing behavior data and distribute the cardholder's personal
52 information and personally-identified purchasing behavior data to its agents or subsidiary companies.
53 When a cardholder has granted a card-issuer the permission to do so, the card-issuer may sell, rent,
54 lease or disclose the cardholder's personal information and personally-identified purchasing behavior
55 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 the
58 following information: telephone number(s), E-mail address, birth date, social security number,
59 employer or income. Unless a cardholder seeks to use the retail discount card for check-cashing or
60 other financial services, a card-issuer shall not require a cardholder to provide a driver's license or
61 other identification. If a cardholder provides personally-identified information to obtain check-cashing
62 privileges or other financial services in connection with the retail discount card, or if a cardholder
63 completes a transaction with a credit card, the card-issuer shall not connect this information in
64 conjunction with the cardholder's purchasing behavior data unless the cardholder grants the card-
65 issuer permission to do so. If a cardholder requests to obtain a retail-discount card anonymously, a
66 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 cardholder's
69 purchasing behavior data;

70 (B) the pertinent aspects of this section and section 105C in language the office of consumer affairs
71 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 opportunity
74 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 card-
76 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, and
78 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, and
80 the card-issuer may disclose this data to its agents and subsidiary companies. The card-issuer may sell,
81 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 consumer
83 affairs and business regulations provides according to section 105B(a)(i). A card-issuer shall print
84 these options on the first page of the application in a typeface no smaller than 12 points (one sixth of
85 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 only
87 collect the cardholder's anonymous purchasing behavior data and disclose this data to its agents and
88 subsidiary companies. Once a cardholder selects a privacy option, a retailer shall honor that selection
89 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 mail to
92 existing cardholders a letter informing the cardholder of the cardholder's right to choose from among
93 the three privacy options. The card-issuer shall alter its collection of the cardholder's purchasing
94 behavior data accordingly within 30 days of the cardholder's response to the letter. Once a cardholder
95 selects a privacy option, a retailer shall honor that selection until such time when the cardholder selects
96 a different privacy option. The card-issuer shall construe a cardholder's lack of response to the letter as
97 permission to continue collecting and sharing the cardholder's data without alteration. In the letter, the
98 card-issuer shall include the following:

99 (A) a summary of the pertinent provisions of this section and section 105C in language the office of
100 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 place in
109 the retail location, a card-issuer shall post a sign detailing the pertinent provisions of this act in
110 language the office of consumer affairs and business regulations provides according to section
111 105B(a)(iii) and in typeface no smaller than 54 point (three-quarters of an inch high). The card-issuer
112 shall place the sign in plain view no further than five feet from where a cardholder may stand, and at a
113 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 the
116 caption, "Is this retailer selling your private information without your permission? Call the Attorney
117 General's Consumer Hotline to report violations of the Consumer Privacy Restoration Act." The
118 retailer shall print this information in typeface no smaller than nine points (one eighth of an inch high)
119 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, printing,
122 postage, shipping or handling fees or other costs. After a cardholder's first request of a calendar year, a
123 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 its
125 defense in any civil action to which the card-issuer and the cardholder are parties. A card-issuer shall

126 not use a cardholder's purchasing behavior data as a basis for litigation. A card-issuer shall not provide
127 a third-party with a cardholder's purchasing behavior data for the purpose of litigation.

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

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

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

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

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

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

144 Section 105C. Conformity-inducing measures

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

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

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

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

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