

SENATE No. 153

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

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.

The Commonwealth of Massachusetts

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

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

15 "Regular price", the tag or posted price charged for the property or service if a single
16 price is tagged or posted.

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

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

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

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

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

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

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

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

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

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

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

76 (d) Delivery charges;

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

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

80 (a) Installation charges;

81 "Sales price" shall not include:

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

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

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

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

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

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

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

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

98 D. One of the following criteria is met:

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

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

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

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

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

117 The sale or purchase price offered to a purchaser through a seller’s website or electronic
118 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.