

[CHAPTER 487D]
RETAIL MERCHANT CLUB CARDS

Section

487D-1 Definitions

487D-2 Retail merchant club cards; requirements

Note

Personal information protection requirements. L Sp 2008, c 10, §§7 to 15.

Cross References

Information privacy and security council; personal information security, see §§487N-5 to 7.

Personal information policy and oversight responsibilities for government agencies, see §487J-5.

" **[§487D-1] Definitions.** For purposes of this chapter:

"Cardholder" means any consumer to whom a retail merchant club card is issued, and may include all persons holding the club card under the same account.

"Cardholder information" means the cardholder's name, mailing address, electronic mail address, and any unique membership identifiers assigned by the club card issuer to the cardholder for purposes of targeting marketing activities.

"Club card" means any card or device used for the purpose of obtaining access to purchase retail products through membership, for price discounts, or to receive other no-cost benefits provided by the retail merchant. A "club card" is not a credit card, charge card, or check cashing card.

"Club card issuer" means a retail merchant that provides club cards to consumers, and includes a contract information services provider of the retail merchant.

"Marketing purposes" means the categorization of cardholders based on the cardholder's shopping patterns, spending history, or behavioral characteristics derived from account activity that is provided to an unaffiliated third party for consideration.

"Personal information" means information associated with an actual person that is a name, an address, a telephone number, an electronic mail address, a driver's license number, a social security number, an employer, a place of employment, information related to employment, an employee identification number, a mother's maiden name, an identifying number of a depository account, a bank account number, a password used for accessing information, a taxpayer identification number, health insurance identification number, date of birth, a personal identification number (PIN), a government passport number, credit card number, or any other name, number, or code that is used to access personal financial information about the actual person.

"Retail merchant" means any retailer that sells food, products, or merchandise.

"Unaffiliated third party" means a business that is not under the corporate control or common ownership of the club card issuer or is not a contract information services provider of the retail merchant. [L 2004, c 92, pt of §2]

" **[\$487D-2] Retail merchant club cards; requirements.** (a) No club card issuer shall request in a club card application, or require as a condition of obtaining a club card, that the applicant provide any personal information except name, address, and telephone number. If the club card issuer requires a unique identifier to confirm the identity of the applicant, the club card issuer may ask for the last four digits of the applicant's social security number.

(b) No club card issuer may sell or share a cardholder's name, address, telephone number, or any personal information to any unaffiliated third party except as permitted in this subsection. A club card issuer may share cardholder information for marketing purposes if the club card issuer complies with all the following:

- (1) The club card issuer charges an annual fee for the club card and requires the cardholder to renew the club card annually;
- (2) The club card issuer allows only cardholders to make purchases and not members of the general public;
- (3) The club card issuer provides a written statement to the cardholder upon payment of the annual fee that notifies the cardholder that:
 - (A) The cardholder information may be shared with other businesses for purposes of marketing information;
 - (B) Payment of the annual fee means the cardholder has agreed to allow the club card issuer to share cardholder information; and
 - (C) The cardholder may choose to opt-out from the sharing of cardholder information; and
- (4) The club card issuer obtains a written confidentiality agreement from the unaffiliated third party that the shared information will not be transferred to any other entity.

(c) The restrictions of subsection (a) shall not apply when the club card application form is used for the dual purpose of club card membership and establishing privileges for check cashing, check verification, or as a credit application; provided that no club card issuer shall require as a condition of obtaining a club card that the cardholder obtain the club card as an identification card for purposes of check cashing or credit.

(d) Nothing in this section prohibits a club card issuer from including on its club card application form a credit application to a designated credit card company and transmitting the credit application to the credit card company, provided that:

- (1) The credit application form is separately identified as an option on the club card application form; and
- (2) The credit application clearly discloses that the cardholder is applying for credit with the designated credit card company. [L 2004, c 92, pt of §2]