

# HOUSE . . . . . No. 04073

By Mr. Speliotis of Danvers, for the committee on Consumer Protection and Professional Licensure, on House, No. 3858, a Bill prohibiting robocalls to all mobile telephone devices (House, No. 4073). May 7, 2012.

## The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act Prohibiting Robocalls to all Mobile Telephone Devices.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Chapter 159C of the General Laws is hereby amended by adding the following 2 sections:-

2 Section 15. As used in this section, the following words shall, unless the context requires  
3 otherwise, have the following meanings:-

4 “Consumer” as defined in section 1.

5 “Hands-free mobile telephone”, shall have the same meaning as set forth in section 1 of  
6 chapter 90.

7 “Mobile electronic device”, shall have the same meaning as set forth in section 1 of  
8 chapter 90.

9 “”Mobile telephone”, shall have the same meaning as set forth in section 1 of chapter 90.

10 “Robocall”, is an automated phone call that uses both a computerized auto-dialer and a  
11 computer-delivered pre-recorded message.

12 “Robocall telephone solicitation”, a voice or text communication, whether prerecorded or  
13 a facsimile, over a telephone line or wireless telephone network or via a commercial mobile  
14 radio service that is a robocall telephone solicitation to a telephone subscriber for the purpose of  
15 soliciting or encouraging the purchase or rental of, or investment in, property, goods, or services;  
16 obtaining or providing information that will or may be used for that purpose; soliciting or  
17 encouraging a telephone subscriber’s participation in any contest, sweepstakes, raffle, or lottery,  
18 whether legal or illegal; or obtaining a charitable donation. “Robocall telephone solicitation”  
19 shall include a political message if the message is communicated by use of an automatic dialing  
20 and recorded message player.

21 “Robocall telephone solicitor”, an individual, association, corporation, partnership, limited  
22 partnership, Limited Liability Company or other business entity, or a subsidiary or affiliate  
23 thereof, doing business in the commonwealth who makes or causes to be made a telephonic sales  
24 call.

25 All robocalls shall be prohibited in the commonwealth to any hands-free mobile  
26 telephones, mobile electronic devices and mobile telephones as defined in this section.

27 This chapter shall not apply to: (1) messages from school districts to students, parents or  
28 employees; (2) messages advising employees of work schedules; (3) messages on behalf of  
29 correctional facilities advising victims; or (4) messages on behalf of municipalities and  
30 government.

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32 SECTION 16. Violations; Enforcement by Attorney General; Consumer Action;  
33 Penalties; Attorney's Fees and Costs

34 (a) The attorney general may initiate proceedings relating to a knowing violation or threatened  
35 knowing violation of this section. Such proceedings may include, without limitation, an  
36 injunction, a civil penalty of not less than \$10,000 for each knowing violation, but not less than  
37 \$1,500 for a knowing violation involving a consumer who is 65 years of age or older, and  
38 additional relief in a court of competent jurisdiction. The attorney general may also issue  
39 investigative demands and subpoenas, administer oaths and conduct hearings in the course of  
40 investigating a violation of this section.

41 (b) A person who has received more than 1 unsolicited telephonic call within a 12-month period  
42 by or on behalf of the same person or entity in violation of this section may: (i) bring an action to  
43 enjoin the violation; (2) bring an action to recover for actual monetary loss from such knowing  
44 violation or to receive not less than \$10,000 in damages for such knowing violation, whichever is  
45 greater; or (iii) bring both such actions

46 In a civil proceeding resulting from a transaction involving a violation of this section, the  
47 prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, shall be  
48 awarded reasonable attorney's fees and costs from the nonprevailing party.

49 SECTION 17. Time Limitations for Actions or Proceedings

50 (a) No action or proceeding shall be brought pursuant to the section: (i) more than 5 years  
51 after the person bringing the action knew or should have known of the occurrence of the alleged  
52 violation; or (ii) more than 5 years after the termination of a proceeding or action arising out of  
53 the same violation by the commonwealth, whichever is later.

54 (b) Sections 15 through 17, inclusive, of this chapter shall not apply to any outbound  
55 telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered  
56 entity or its business associate, as those terms are defined in the HIPPA Privacy Rule, 45 CFR  
57 160.103.