

SENATE No. 2246

The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court
(2015-2016)
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SENATE, Thursday, April 28, 2016

The committee on Consumer Protection and Professional Licensure to whom was referred the petitions (accompanied by bill, Senate, No. 179) of Anthony W. Petruccelli for legislation relative to robocall telephone solicitation and (accompanied by bill, Senate, No. 186) of Richard J. Ross, Jeffrey N. Roy and Carolyn C. Dykema for legislation relative to professional solicitors,- reports the accompanying bill (Senate, No. 2246).

For the committee,
Barbara A. L'Italien

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to robocalls and telephone solicitation.

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 68 of the General Laws, as appearing in the 2014 Official Edition,
2 is hereby amended by striking out section 22 and inserting in place thereof the following
3 section:-

4 Section 22. (a) Every contract or agreement between a professional fund-raising counsel
5 or a commercial co-venturer or a professional solicitor and a charitable organization required to
6 have a certificate of registration pursuant to section nineteen shall be in writing, signed by two
7 officers of the charitable organization, and filed with the director of the division within ten days
8 after such contract or agreement is entered into. No solicitation shall be conducted prior to the
9 filing of such contract or agreement.

10 (b) Every contract or agreement between a professional solicitor or a commercial co-
11 venturer and a charitable organization shall include: (1) a statement of the charitable purposes to
12 be described in the solicitation; (2) a statement of the guaranteed minimum percentage of the
13 gross receipts from fundraising which will be utilized exclusively for the charitable purposes

14 described in the solicitation; and (3) a website and telephone number where persons may obtain
15 the statements required pursuant to clauses (1) and (2) of this subsection.

16 SECTION 2. Section 1 of chapter 159C of the General Laws, as so appearing, is hereby
17 amended by inserting the following definitions in their appropriate alphabetically-ordered
18 locations, and by striking out any existing definitions of the same terms:--

19 “Charitable contribution” shall have the same meaning as “contributions” in section 18 of
20 chapter 68 of the General Laws.

21 “Charitable organization” shall have the same meaning as in section 18 of chapter 68 of
22 the General Laws, provided that such organization has satisfied the registration requirements of
23 section 19 of said chapter 68.

24 “Consumer,” an individual who is a resident of the commonwealth and a prospective
25 recipient of consumer goods or services or a prospective contributor to a charitable organization.

26 “Marketing or sales solicitation,” the initiation of a telephone call or message to
27 encourage the purchase or rental of, or investment in, property, goods or services, or to solicit a
28 charitable contribution, that is transmitted to a consumer, but not including a telephone call or
29 message: (a) to a consumer with that consumer’s prior express written or verbal invitation or
30 permission; (b) by a tax-exempt nonprofit organization, or any charitable organization, provided
31 that the solicitation is conducted by a bona fide member or employee of or volunteer for such
32 organization and without the involvement of any professional solicitor or commercial co-
33 venturer as those terms are defined in section 18 of said chapter 68; (c) by an individual or
34 organization for a noncommercial purpose, such as a poll or survey; or (d) to a consumer in

35 response to a visit made by such consumer to an establishment selling, leasing or exchanging
36 consumer goods or services at a fixed location.

37 SECTION 3. Section 4 of chapter 159C of the General Laws, as so appearing, is hereby
38 amended by inserting in line 3, after the word “device”, the following sentences:-

39 The telephone solicitor must conduct all marketing or sales solicitation calls using a valid
40 telephone number at which the consumer can directly communicate with the solicitor. If a
41 solicitor lists a number in the identification service or device, that listed number shall be a valid
42 telephone number at which the consumer can directly communicate with the solicitor.

43 SECTION 4. Section 5A of chapter 159C of the General Laws, as so appearing, is hereby
44 amended by striking out paragraph(a) and inserting in place thereof the following: - (a) A
45 telephone solicitor shall disclose all of the following information within the first minute of a
46 telephonic sales call and before requesting, accepting, or arranging for payment by a consumer
47 (i) that the purpose of the telephone call is to make a sale or solicit funds; (ii) the true name of
48 the individual making the solicitation and the correct name of the telemarketing company that
49 employs the individual telemarketer who is making the call, provided that if the individual
50 telemarketer is employed by a subcontractor hired by the telemarketing company holding the
51 contract with the person or organization desiring the sale or contribution, then the individual
52 telemarketer shall state as his or her employer the correct name of the subcontractor; (iii) the
53 correct name of the ultimate seller whose goods or services are being offered, or charitable
54 organization for which contributions are being solicited, by means of the telemarketing call; and
55 (iv) a complete and accurate description of any goods or services being offered including, but not
56 limited to, the retail market value of the goods or services. Charitable and non-charitable

57 solicitations conducted by a professional solicitor or commercial co-venturer, as those terms are
58 defined in section 18 of said chapter 68, shall also satisfy the disclosure requirements of section
59 23 of said chapter 68, subject, however, to section 5(b)(v) herein.

60 SECTION 5. Said section 5A of chapter 159C of the General Laws, as so appearing, is
61 hereby further amended by inserting in paragraph (b), after the phrase “original investment,” the
62 following: -- ; and (v) in the case of a professional solicitor or commercial co-venturer making a
63 telephonic sales call soliciting a charitable contribution, if a consumer asks in substance for
64 information about what amount or proportion of a contribution would be retained or received by
65 the professional solicitor or commercial co-venturer, or by the charitable organization for
66 charitable purposes, the telemarketer shall provide either (A) the guaranteed minimum
67 percentage of the gross receipts from fundraising that will be utilized exclusively for the
68 charitable purposes described in the solicitation, as stated in the contract or written agreement
69 between the professional solicitor or commercial co-venturer and the charitable organization, or
70 (B) any comparable disclosure that may be required by regulations promulgated under section 29
71 of said chapter 68.

72 SECTION 6. Said section 5A of chapter 159C of the General Laws, as so appearing, is
73 hereby further amended by adding the following clauses:-

74 (c) A solicitor who misrepresents him or herself, either verbally or in writing, to be a
75 police officer, fireman, teacher, doctor, nurse, emergency medical technician, clergy member, or
76 any member of a charitable organization for which he or she may have contracted with shall be
77 subject to civil penalties pursuant to chapter 93(A) of the General Laws, or any other remedy
78 pursuant to section 8 of this chapter.

79 (d) A for profit solicitor as defined by Section 18 of Chapter 68 of the General Laws
80 shall keep recordings of calls made or letters sent for the purpose of soliciting funds pursuant to
81 Section 18. The recordings of the phone calls shall be kept on file with the company for a period
82 of not less than 180 days. At any point during this period these recordings shall be subject to
83 audit and inspection by the Attorney General's Office.

84 A for profit solicitor working pursuant to Chapter 68 of the General Laws shall be subject
85 to civil liabilities pursuant to Chapter 93(A) of the General Laws for any violation of the section
86 or any other remedy pursuant to Section 8 of this chapter.

87 SECTION 7: paragraph (c) under section 8 of Chapter 159C shall be deleted.

88 SECTION 8. Chapter 159C of the General Laws, as so appearing, is hereby amended by adding
89 the following 3 sections:-

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

92 "Consumer" as defined in section 1.

93 "Hands-free mobile telephone", shall have the same meaning as set forth in section 1 of
94 chapter 90.

95 "Mobile electronic device", shall have the same meaning as set forth in section 1 of
96 chapter 90.

97 ""Mobile telephone", shall have the same meaning as set forth in section 1 of chapter 90.

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

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

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

113 “Informational call” means a commercial call from, or on behalf of, an entity with whom
114 the called party has a pre-existing business relationship, but such term does not include a
115 robocall.

116 “pre-existing business relationship” means a prior or existing relationship formed by a
117 voluntary two-way communication between a person or entity and a residential subscriber with
118 or without an exchange of consideration, on the basis of an inquiry, application, purchase or

119 transaction by the residential subscriber regarding products or services offered by such person or
120 entity, which relationship has not been previously terminated by either party.

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

123 This chapter shall not apply to: (1) messages from school districts to students, parents or
124 employees; (2) messages advising employees of work schedules; (3) messages on behalf of
125 correctional facilities advising victims; (4) messages on behalf of municipalities and
126 government; (5) Informational calls; (6) messages from public utilities pertaining to the service
127 of the customer of record; or (7) messages from doctors, hospitals, or other healthcare providers
128 concerning the care, services or supplies related to the health of an individual.

129 Section 16. Violations; Enforcement by Attorney General; Consumer Action; Penalties;
130 Attorney's Fees and Costs

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

138 (b) A person who has received more than 1 unsolicited telephonic call within a 12-month
139 period by or on behalf of the same person or entity in violation of this section may: (i) bring an
140 action to enjoin the violation; (2) bring an action to recover for actual monetary loss from such

141 knowing violation or to receive not less than \$10,000 in damages for such willful and knowing
142 violation, whichever is greater; or (iii) bring both such actions

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

146 Section 17. Time Limitations for Actions or Proceedings

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

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

154 160.103