HOUSE DOCKET, NO. 2516 FILED ON: 1/20/2011

HOUSE . . . . . No. 1879

The Commonwealth of Massachusetts

PRESENTED BY:

Anne M. Gobi

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 passage of the accompanying:

An Act regulating material representations in advertising.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Anne M. Gobi	*5th Worcester*
Todd M. Smola	*1st Hampden*

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By Ms. Gobi of Spencer, a petition (accompanied by bill, House, No. 1879) of Anne M. Gobi and Todd M. Smola relative to unfair and deceptive trade practices involving material representations in advertising. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *254* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act regulating material representations in advertising.

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

SECTION 1. The Commonwealth of Massachusetts finds the following:

1) Consumers are entitled to proper advertising disclosures.

2) The disclosure of qualifying information is necessary to prevent an ad from being deceptive and disclosures should be effectively communicated to consumers.

Section 2 Definitions

(A) The term "advertisement" means any oral, written, graphic, or pictorial representation made by a seller in the course of the solicitation of retail business or which encourages a person to purchase a retail product. Advertisement includes any representation made in a newspaper, magazine, or other publication or on radio or television or contained in a notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, catalog or letter or printed on or contained in any tag or label which is attached to or accompanies any product offered for sale. Advertisement includes any representation disseminated within Massachusetts if the advertisement is directed to consumers in Massachusetts.

(B) The term "disseminate" means to publish, broadcast, deliver, circulate, mail, display and post or otherwise distribute to a consumer.

(C) The term “clear and conspicuous” means that the material representation being disclosed is of such size, color, contrast or audibility and is so presented as to be readily noticed and understood by a reasonable person to whom it is disclosed.

(D) The term “material representation” means any oral, written, graphic or pictorial claim or statement, the disclosure of which has the tendency or capacity to influence the decision of reasonable buyers or reasonable prospective buyers whether to purchase the product.

(E) The term “representation” means any oral, written, graphic or pictorial claim or statement.

(F) The term “seller” means any person who offers any product for sale, rental or lease. “Seller” excludes any authorized representative of a seller; however “seller” shall exclude an individual not engaged in trade or commerce under M.G.Lc.93A, who places a classified advertisement in a newspaper, magazine or other publication.

Section 3 Television Advertisements

A) Material representation must be displayed in type not less than 14 scan lines in height

B) Material representations must contain letters of a color or shade that contrasts with the background, and the background may not consist of colors and/or images which obscure or detract attention from the material representation.

C) Material representations must appear on the screen for duration equal to at least one second per three words of the material representation but not less than five seconds.

Section 4 Radio and Audio Advertisements

A) Material representations must be at an audible decibel level

B) Material representations must be delivered at a speed equal to or less than any other representation contained in the advertisement.

C) No ancillary words or sounds shall be used to obscure or distract attention from the material representation or detract from its meaning or importance.

Section 5 Printed, Written, Typed or Graphic Advertisements

A) Material representation must appear in a minimum of eight point type.

B) Material representations must be in close proximity to the information which it modifies and is not obscured by any ancillary information.

46 C) Material representations must be printed in letters which noticeably contrast with
47 the background.

48 Section 6 Enforcement

49 Any violations of this Act shall be deemed to be an unfair and deceptive trade practice
50 and subject to any and all provisions of Chapter 93A