

HOUSE No. 223

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce J. Ayers

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 bill:

An Act protecting consumers from telemarketing fraud.

PETITION OF:

NAME:

Bruce J. Ayers

DISTRICT/ADDRESS:

1st Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 79 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT PROTECTING CONSUMERS FROM TELEMARKETING FRAUD.

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 2004 Official Edition, is
2 hereby amended by inserting after Section 107 the following new section:—

3 Section 108(a). For the purposes of this section the following words shall have the following
4 meanings:

5 “Active solicitation:” a telephone call or telephone solicitation relating to covered products or
6 services made (i) by the seller on an unsolicited basis, (ii) by the seller in response to a consumer
7 submitted entry form or inquiry arising out of a non-excluded advertisement, or (iii) by the
8 consumer as a result of receiving a qualified mailing or a previous related telephone solicitation
9 from the seller. Solicitations or contracts made as results of the buyer responding to a particular
10 advertising except for advertisements in the classified section of a magazine or newspaper, shall
11 not constitute active solicitations even if a transaction is subsequently entered into by telephone.
12 These exceptions shall not apply where use of such advertisements are designed to circumvent
13 the cancellation rights provided by this section.

14 “Business day:” Monday through Friday, excluding national, state or local holidays.

15 “Buyer:” a consumer, whether a prospective or actual purchaser.

16 “Covered products or service:” any product or service, tangible or intangible, including the
17 provision of information. To be covered, the following must apply: (1) there is an active

18 solicitation; (2) the transaction is with a seller with whom the buyer does not have a pre-existing
19 relationship; (3) the transaction is made primarily by telephone; and (4) the telephone call results
20 in the buyer incurring a financial obligation to the seller directly or indirectly, as when the buyer
21 accepts the seller's offer, places an order, or pays or agrees to pay the seller. Without limiting the
22 scope of covered products and services, solicitations which include the offering of a gift, prize,
23 award, premium or other incentive, whether such bonus is being offered alone or in conjunction
24 with purchase of other products or services, are explicitly covered if the aforementioned
25 conditions are met. Covered products and services shall not include the following: food orders to
26 be delivered in the same day, airline reservation payments made directly to the air carrier for
27 non-refundable fares, fund-raising solicitations if chance plays no part in any accompanying
28 promotional offer, telephone sales from mail order catalogs where the call was initiated by the
29 buyer, purchases made by computer through a modem from the buyer's home, newspaper
30 subscriptions for home delivery, a pay-per-call service whose primary service is a chat line, sex
31 line, product technical support line, stock quotations, horoscopes, weather, medical advice,
32 polling or voting line, or other category of products or services specified in regulations of the
33 Attorney General.

34 "Pay-per-call service:" shall be defined as such term is used in 47 Code of Federal Regulations
35 64,709 as it may from time to time be amended.

36 "Pre-established relationship:" a relationship where prior non-canceled transactions have been
37 made by the buyer with the same seller, but not including transactions made with a related seller.

38 "Qualified mailing:" any solicitation delivered by mail, except solicitations to join book or
39 record clubs, to order identified magazines where the price is disclosed, for computer software
40 and hardware, and any other category specified by the Attorney General.

41 "Seller:" shall not include private party sellers offering covered goods or services only on an
42 occasional basis.

43 "Transaction date:" the date the buyer makes a transaction for covered products or services.

44 (b) Any transaction made primarily by telephone for covered products or services for personal,
45 family or household use, may be canceled by the buyer without obligation or cost within three
46 business days after receipt of the confirmation and cancellation rights notice required herein.
47 Notice of cancellation by the buyer may be made by telephone or by regular or certified mail.

48 The seller shall clearly and conspicuously disclose to the buyer the three-business-day right to
49 cancel before the consummation of the transaction either in (i) each oral solicitation or telephone
50 call where business is solicited, or in (ii) the initial written solicitation of the buyer. In addition,
51 the right to cancel shall be disclosed in writing as part of the confirmation and cancellation rights
52 notice mailed which the seller shall mail to the buyer within one week after the transaction date.
53 The cancellation disclosure shall be made in the following words, with the blanks to be filled in
54 with the appropriate information, and provided further that any cancellation telephone number
55 not be a pay-per-call service:

56 “Massachusetts law allows you to cancel this transaction no later than three business days not
57 including Saturday and Sunday after you receive a confirmation and cancellation rights notice
58 from us. To cancel, call [telephone number] or send a letter by regular or certified mail to
59 [address].”

60 Oral disclosures shall be stated with equal speed and clarity compared to the rest of the call. Oral
61 disclosures may not be made during the portion of any pay-per-call messages to which charges
62 apply, nor at a place in the oral solicitation which has a substantial likelihood not to be heard by
63 the buyer, or at a time when that disclosure will not be meaningful or relevant to the buyer.

64 Disclosures made in writing before the transaction shall be made clearly and conspicuously in
65 bold capitalized type no smaller than one-third the type of the largest type in the solicitation, but
66 not less than 12-point bold type, on the principal page of the solicitation.

67 The confirmation and cancellation rights notice provided after the transaction date shall be made
68 on a separate sheet of paper with no other information other than that necessary to identify the
69 seller, a detailed description of the product or service which is the subject of the transaction, the
70 date of the transaction, the price, the buyer’s name and address, and the required cancellation
71 statement in at least 12-point bold capitalized type.

72 Compliance with the cancellation deadline will be determined based on the date the consumer
73 notified the seller by telephone or the date of mailing of the cancellation. Upon cancellation, the
74 seller shall issue a full refund to the buyer within 14 days of receipt of said cancellation, and
75 cancel any obligations associated with the transactions. Services or products if provided during
76 the cancellation period are done so at the risk of the seller. Buyers may be required to return any
77 tangible products as a prerequisite to receipt of a refund.

78 Failure to provide the cancellation notice as required above shall entitle the consumer to cancel
79 the transaction without penalty until the appropriate cancellation notice is provided. Failure to
80 comply with the cancellation notification provisions of this section or to provide the refund as
81 required therein shall be sufficient cause for the buyer's credit-card issuer to charge back the
82 payment amount to the seller, if the transaction was consummated by means of a credit card or
83 by electronic means. The three-business-day right to cancel shall be extended to three business
84 days after the day of receipt of any covered product or service in cases where the price charged
85 the customer is higher than that which was represented, or the transaction was entered into by the
86 buyer based on a material misrepresentation of facts by the seller.

87 (c) The cancellation rights provided by this section may not be waived by agreement or
88 otherwise. The Attorney General may issue guidelines or promulgate rules and regulations for
89 the implementation and interpretation of this section. Any violation of this section shall
90 constitute an unfair or deceptive act or practice under the provisions of Chapter 93A.

91 (d) This section shall not apply to telephone calls made by a person registered pursuant to
92 Chapter 110A, or who is registered as a broker-dealer, registered representative, or salesperson
93 of a broker-dealer under federal securities laws, when performing acts within the scope of that
94 registration.