

SENATE No. 131

The Commonwealth of Massachusetts

PRESENTED BY:

Anthony W. Petrucci

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 adoption of the accompanying bill:

An Act relative to robocall telephone solicitation.

PETITION OF:

NAME:

Anthony W. Petrucci

DISTRICT/ADDRESS:

First Suffolk and Middlesex

SENATE No. 131

By Mr. Petruccelli, a petition (accompanied by bill, Senate, No. 131) of Anthony W. Petruccelli for legislation relative to robocall telephone solicitation. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to robocall 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 Chapter 159C of the General Laws is hereby amended by adding the following 2
2 sections:-

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

5 “Consumer” as defined in section 1.

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

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

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

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

13 “Robocall telephone solicitation”, a voice or text communication, whether prerecorded or
14 a facsimile, over a telephone line or wireless telephone network or via a commercial mobile
15 radio service that is a robocall telephone solicitation to a telephone subscriber for the purpose of
16 soliciting or encouraging the purchase or rental of, or investment in, property, goods, or services;
17 obtaining or providing information that will or may be used for that purpose; soliciting or
18 encouraging a telephone subscriber’s participation in any contest, sweepstakes, raffle, or lottery,

19 whether legal or illegal; or obtaining a charitable donation. “Robocall telephone solicitation”
20 shall include a political message if the message is communicated by use of an automatic dialing
21 and recorded message player.

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

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

29 “pre-existing business relationship” means a prior or existing relationship formed by a
30 voluntary two-way communication between a person or entity and a residential subscriber with
31 or without an exchange of consideration, on the basis of an inquiry, application, purchase or
32 transaction by the residential subscriber regarding products or services offered by such person or
33 entity, which relationship has not been previously terminated by either party.

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

36 This chapter shall not apply to: (1) messages from school districts to students, parents or
37 employees; (2) messages advising employees of work schedules; (3) messages on behalf of
38 correctional facilities advising victims; (4) messages on behalf of municipalities and
39 government; (5) Informational calls.

40 SECTION 16. Violations; Enforcement by Attorney General; Consumer Action;
41 Penalties; Attorney’s Fees and Costs

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

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

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

57 SECTION 17. Time Limitations for Actions or Proceedings

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

62 (b) Sections 15 through 17, inclusive, of this chapter shall not apply to any outbound
63 telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered
64 entity or its business associate, as those terms are defined in the HIPPA Privacy Rule, 45 CFR
65 160.103.