

# HOUSE . . . . . No. 3546

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act protecting residents of the commonwealth from door-to-door solicitors..

*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 159 of the Massachusetts General Laws shall be amended by  
2   adding after Chapter 159C the following section: Chapter 159D as follows:

3           Section 1. As used in this chapter, the following words shall, unless the context clearly  
4   requires otherwise, have the following meanings:--

5           "Consumer", an individual who has a permanent or temporary home in the  
6   commonwealth the commonwealth and is a prospective recipient of consumer goods or services.

7           "Consumer goods or services", any article or service that is purchased, leased, exchanged  
8   or received primarily for personal, family or household purposes including, but not limited to,  
9   consumer goods of every kind and nature, stocks, bonds, mutual funds, annuities and other  
10   financial products.

11          "Existing customer", a consumer with whom the person or entity making a sales visit has  
12   maintained an account or had a business relationship within the previous 24 months.

13 "Marketing or sales solicitation", the initiation of a visit to the property of a consumer to  
14 encourage the purchase or rental of consumer goods of any kind or nature, or investment in,  
15 property, goods or services but not including a; (i) a visit to a consumer with that consumer's  
16 prior express written or verbal invitation or permission; (ii) by a tax-exempt nonprofit  
17 organization; (iii) by an individual or organization for a noncommercial purpose, such as a poll  
18 or survey; or (iv) to a consumer in response to a visit made by such consumer to an establishment  
19 selling, leasing or exchanging consumer goods or services at a fixed location.

20 "Office", the office of consumer affairs and business regulation.

21 "Property of a Consumer", Any property where a consumer resides permanently or  
22 temporarily whether or not such property is actually owned by the consumer.

23 "Sales visit ", a visit made by a solicitor to a consumer for the purpose of: (i) engaging in  
24 a marketing or sales solicitation; (ii) soliciting an extension of credit for consumer goods or  
25 services; or (iii) obtaining information that will or may be used for marketing or sales solicitation  
26 or exchange of or extension of credit for consumer goods or services.

27 "Solicitor", an individual, association, corporation, partnership, limited partnership,  
28 limited liability company or other business entity, or a subsidiary or affiliate thereof, doing  
29 business in the commonwealth and any employee, agent, representative, person going door to  
30 door selling products for such person or entity who makes or causes to be made a sales visit to  
31 the home of a consumer. This definition shall include transient vendors licensed under chapter  
32 101.

33 "Unsolicited sales visit", a sales visit to any residential property for the purpose of selling  
34 any item, product or service other than a visit made: (i) in response to an express written or

35 verbal request of the consumer called; (ii) primarily in connection with an existing debt or  
36 contract, payment or performance of which has not been completed at the time of the visit; (iii)  
37 to an existing customer unless such customer has stated to the solicitor that such customer no  
38 longer wishes to receive the sales visits of such solicitor; or (iv) in which the sale of goods and  
39 services is not completed, and payment or authorization of payment is not required, until after a  
40 face-to-face sales presentation by the solicitor or a meeting between the solicitor and customer.  
41 Nothing in this definition shall prevent legislation that specifically exempts certain sales visits  
42 from the operation of this law. This definition shall include visits by transient vendors licensed  
43 under Chapter 101.

44       Section 2.     In any city where this Chapter is accepted by a majority vote by the city  
45 council or, in a town by a majority vote of the town meeting, the police department shall  
46 establish and maintain a no sales solicitation listing of residents who do not wish to receive  
47 unsolicited visits by sales people at their home. The police department may contract with a  
48 private vendor to establish and maintain such listing, provided that the contract requires the  
49 vendor to provide the no sales solicitation visits listing in a printed hard copy format and in any  
50 other format offered at a cost that does not exceed the production cost of the format offered. The  
51 police department shall provide notice to consumers of the establishment of a no sales  
52 solicitation visits listing. A consumer who wishes to be included on the listing shall notify the  
53 police department by calling a toll-free number provided by the police department, or in such  
54 other manner and at such times as the police department may prescribe which may include  
55 electronic notification. A consumer on such listing shall be deleted from such listing upon the  
56 consumer's written request or in such other manner and at such times as the division may  
57 prescribe which may include electronic notification. The police department shall update such

listing not less than quarterly and shall make such listing available to solicitors and other persons for a fee as the police department shall prescribe.

Nothing in this chapter shall prevent a consumer from including on such list more than one of the places where he or she resides either permanently or temporarily.

### Section 3. Company Registration.

(a) Any company or individual who uses transient vendors to conduct door to door sales in the commonwealth whether such transient vendor is an employee or independent sales person, shall, before allowing such vendor to conduct door to door sales on the company or individual's behalf, register with the Secretary of State in a manner prescribed by the Secretary of State. The Secretary of State shall promulgate regulations and adopt fees for such registration that promote the intention of this Chapter and minimize the costs to the commonwealth for maintaining a registration program.

Every transient vendor shall, before conducting door to door sales in any municipality in the commonwealth, provide the police department in each community in which said individual intends to conduct door to door sales, with sufficient information to allow the police department to conduct an inquiry known as a "missing and wanted" check and a Criminal Offender Record Information check on such individual. The police department may develop a form for the purposes of obtaining such information from transient vendors. Said information shall include the solicitor's name, age, home address and local address, social security number or other identifying number if the solicitor is not a citizen of the United States, a form of identification with photograph, the registration certificate of each vehicle to be used while soliciting. The police agency may require any additional information necessary to complete a missing and

wanted and CORI search. The police agency shall provide each such transient vendor with a simple form indicating that the vendor has complied with this section.

Every solicitor shall, when registering with any police agency, include the name and address of any person or entity the solicitor is representing or whose product the solicitor is selling.

Solicitors shall carry their local solicitation registration certificate and other positive identification with them while soliciting door to door and selling consumer goods and shall produce such certificate upon the request of any law enforcement officer or person who is then being solicited.

Any company or individual who uses transient vendors to conduct door to door sales in the commonwealth and fails to register as provided in this chapter shall, for a first offense receive a warning and be advised of the need to register with the Secretary of State if the company or individual intends to continue to use transient vendors to conduct door to door sales in the commonwealth. Any company or individual who continues to use transient vendors to conduct door to door sales in the commonwealth without registering after being advised of the need to register shall be assessed a civil penalty of \$500.00.

Whoever violates this section by failing to register with the local police department, failing to produce a town issued registration certificate or failing to produce positive identification when requested by a police officer shall be assessed, for a first offense, a civil penalty of \$50.00. Any second or subsequent offense shall be deemed a misdemeanor and shall be punishable by a fine of not less than \$50.00 nor more than \$100.00.

A police officer may take any solicitor into custody pending positive identification and other checks who has not registered as required or who could not produce either a valid registration certificate or positive identification when requested to do so. Any solicitor taken into custody under this chapter may be held for up to four hours pending such determinations as described above. Such solicitor may be held for more than four hours if the police have probable cause to believe the solicitor has committed a crime or is wanted in that or any other jurisdiction.

Section 4. Unsolicited sales visits; limitations. A solicitor shall not make or cause to be made an unsolicited sales visit to a consumer if the consumer's address or name appears on the then current quarterly no sales solicitation visits listing made available by the police department under section 2.

Whoever violates the provisions of this section may be assessed a civil penalty of not more than \$50.00 for a first offence and a criminal penalty of not more than \$50.00 for any second or subsequent offence. In the case of any second or subsequent offense, if the consumer solicited in violation of this chapter is a senior citizen over the age of 65, said fine shall not be less than \$150.00. Each property entered when the name of the occupant or the address is on the do not knock list shall be deemed to be a separate violation.

Section 5. Disclosures by solicitors; information provided to consumers prior to payment. (a) A solicitor shall disclose all of the following information within the first minute of a sales visit and before requesting, accepting or arranging for payment by a consumer: (i) that the purpose of the visit is to make a sale or solicit funds; (ii) the correct name of the marketing company that employs the individual solicitor who is making the call or who makes or distributes the product that is being sold; (iii) the correct name of the ultimate seller or distributor

whose goods or services are being offered by means of the marketing visit; and (iv) a complete and accurate description of the goods or services being offered including, but not limited to, the retail market value of the goods or services.

(b) The solicitor shall provide all of the following information before requesting, accepting or arranging for payment by a consumer: (i) the cost to the consumer of the goods or services that are the subject of the sales call including, but not limited to, any applicable tax, shipping and handling fees; (ii) any restrictions, limitations or conditions attached to purchasing the goods or services; (iii) the complete terms of any applicable refund, return, cancellation, exchange or repurchase policies; (iv) any material aspect of an investment opportunity being offered including, but not limited to, the price of the land or other investment, the location of the investment and the fact that an investor may lose some or all of their original investment.

Section 6. Consumer objections to receipt of unsolicited sales visits; methods of compilation; notification of solicitors. The police department shall promulgate regulations to carry out this chapter which shall: (i) specify the methods by which each such consumer shall give notice to the police department or its contractor of the consumer's objection to receiving such sales visits or revocation of such notice; provided, however, that there shall be no cost to the consumer for joining the listing; (ii) specify the length of time for which a notice of objection shall be effective and the effect of a change of address on such notice; (iv) specify the methods by which such objections and revocations shall be collected and added to the no sales solicitations visits listing; (v) specify the methods by which a person or entity desiring to make sales visits may obtain access to the no sales solicitation visits listing as required to avoid visiting the properties of consumer included in such listing; and (vi) specify such other matters relating to the listing that the police department deems desirable.

146           The police department may create a computer access form to be completed electronically  
147 by consumers or local police agencies to add consumers to the list.

148           The police department shall determine the best method for maintaining said data but shall  
149 ensure that solicitors can obtain the data on a town by town basis.

150           Section 7.     National consumer database; inclusion of commonwealth portion in no  
151 sales solicitation calls listing. If any federal agency establishes a single national database of  
152 consumers who do not wish to receive unsolicited sales visits the police department shall include  
153 that part of such single national database that relates to the commonwealth in the listing  
154 established pursuant to this chapter.

155           Section 8.     Violations; enforcement; consumer action; penalties; attorney's fees and  
156 costs. (a) If, in the opinion of the Attorney General of the commonwealth, repeat violations of  
157 this chapter appear to be calculated or flagrant, the attorney general may initiate proceedings  
158 relating to a knowing violation or threatened knowing violation of this chapter. Such proceedings  
159 may include, without limitation, criminal actions for trespass, an injunction, a civil penalty of not  
160 more than \$5,000 for each knowing violation, but not less than \$1,500 for a knowing violation  
161 involving a consumer who is 65 years of age or older, and additional relief in a court of  
162 competent jurisdiction. The attorney general may also issue investigative demands and  
163 subpoenas, administer oaths and conduct hearings in the course of investigating a violation of  
164 this chapter. Criminal actions for trespass may be brought by any police agency having  
165 jurisdiction of the area in which the consumer complaining of a violation sits. Police officers  
166 may, based on probable cause, arrest any person believed to be in violation of this chapter  
167 without a warrant.



(b) A person who has received more than 1 unsolicited sales visit within a 12-month period by or on behalf of the same person or entity in violation of this chapter may: (i) bring an action to enjoin the violation; (ii) bring an action to recover for actual monetary loss from such knowing violation or to receive not more than \$5,000 in damages for such knowing violation, whichever is greater; or (iii) bring both such actions.

(c) In a civil proceeding resulting from a violation of this chapter, the consumer, after judgment in the consumer's favor and exhaustion of all appeals, if any, shall be awarded reasonable attorney's fees and costs from the defendant in the action.

Section 9. Time limitations for actions or proceedings. No criminal or civil action or proceeding shall be brought pursuant to this chapter: (i) more than 3 years after the person bringing the action knew or should have known of the occurrence of the alleged violation; or (ii) more than 3 years after the termination of a proceeding or action arising out of the same violation by the commonwealth, whichever is later.

Section 10. Use of information contained in no sales solicitation listing. Information contained in the no sales solicitation listing established pursuant to this chapter shall be used only for the purposes of compliance with this chapter or in a proceeding or action under section 8. Such information shall not be subject to public inspection or disclosure.

Section 11. Remedies not exclusive. The remedies, duties, prohibitions and penalties provided in this chapter shall not be exclusive and shall be in addition to all other causes of action, remedies and penalties provided by law, including any applicable remedies pursuant to chapter 93A.

189           Section 12.     Advisory group; availability of educational materials; written and  
190   electronic information. The police department shall disseminate to citizens in a manner of the  
191   department's choosing information about the availability of and instructions on how to have their  
192   names and residential addresses placed on the no solicitation list. The police department shall  
193   include on its internet website, if it has such a site, information that informs consumers of their  
194   rights to be placed on the no sales solicitation visits listing and the various methods, including  
195   notice to the department, of placing their names on the no sales solicitation visits listing.