

HOUSE No. 3546

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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

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

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

62 Section 3. Company Registration.

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

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

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

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

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

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

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

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

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

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

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

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

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

134 Section 6. Consumer objections to receipt of unsolicited sales visits; methods of
135 compilation; notification of solicitors. The police department shall promulgate regulations to
136 carry out this chapter which shall: (i) specify the methods by which each such consumer shall
137 give notice to the police department or its contractor of the consumer's objection to receiving
138 such sales visits or revocation of such notice; provided, however, that there shall be no cost to
139 the consumer for joining the listing; (ii) specify the length of time for which a notice of objection
140 shall be effective and the effect of a change of address on such notice; (iv) specify the methods
141 by which such objections and revocations shall be collected and added to the no sales
142 solicitations visits listing; (v) specify the methods by which a person or entity desiring to make
143 sales visits may obtain access to the no sales solicitation visits listing as required to avoid visiting
144 the properties of consumer included in such listing; and (vi) specify such other matters relating to
145 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.

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

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

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

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

185 Section 11. Remedies not exclusive. The remedies, duties, prohibitions and penalties
186 provided in this chapter shall not be exclusive and shall be in addition to all other causes of
187 action, remedies and penalties provided by law, including any applicable remedies pursuant to
188 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.