SENATE DOCKET, NO. 476 FILED ON: 1/16/2013

SENATE . . . . . No. 131

The Commonwealth of Massachusetts

PRESENTED BY:

Anthony W. Petruccelli

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:	DISTRICT/ADDRESS:
Anthony W. Petruccelli	*First Suffolk and Middlesex*

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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:

Chapter 159C of the General Laws is hereby amended by adding the following 2 sections:-

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

"Consumer" as defined in section 1.

"Hands-free mobile telephone", shall have the same meaning as set forth in section l of chapter 90.

"Mobile electronic device", shall have the same meaning as set forth in section l of chapter 90.

""Mobile telephone", shall have the same meaning as set forth in section l of chapter 90.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 17. Time Limitations for Actions or Proceedings

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

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