

HOUSE No. 160

The Commonwealth of Massachusetts

PRESENTED BY:

Gailanne M. Cariddi

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 requiring transparency in telephone solicitations.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>	<i>1/15/2015</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	<i>1/26/2015</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>2/3/2015</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	<i>2/3/2015</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/4/2015</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>	<i>2/2/2015</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	<i>2/3/2015</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	<i>2/3/2015</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>	<i>2/2/2015</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>	<i>1/30/2015</i>
<i>Geoff Diehl</i>	<i>7th Plymouth</i>	<i>1/18/2015</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>	<i>1/21/2015</i>
<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>2/3/2015</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>1/30/2015</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>1/22/2015</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>2/3/2015</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>2/3/2015</i>

<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/3/2015</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>	<i>2/1/2015</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>1/30/2015</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>	<i>1/23/2015</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>	<i>2/3/2015</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>2/3/2015</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	<i>2/3/2015</i>
<i>Randy Hunt</i>	<i>5th Barnstable</i>	<i>1/30/2015</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>2/4/2015</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>	<i>1/16/2015</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>	<i>2/4/2015</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/4/2015</i>
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>	<i>2/4/2015</i>
<i>Jerald A. Parisella</i>	<i>6th Essex</i>	<i>2/4/2015</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>2/3/2015</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>	<i>2/4/2015</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/29/2015</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>2/3/2015</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/3/2015</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>	<i>2/3/2015</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>2/4/2015</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	<i>1/26/2015</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>	<i>2/4/2015</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>	<i>2/3/2015</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>1/15/2015</i>

HOUSE No. 160

By Ms. Cariddi of North Adams, a petition (accompanied by bill, House, No. 160) of Gailanne M. Cariddi and others for legislation to require transparency in solicitations via telephone and similar devices. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act requiring transparency in telephone solicitations.

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. Section one of chapter 159C of the General Laws is hereby amended by
2 inserting the following definitions in their appropriate alphabetically-ordered locations, and by
3 striking out any existing definitions of the same terms:--

4 “Charitable contribution” shall have the same meaning as “contributions” in section 18 of
5 chapter 68 of the General Laws.

6 “Charitable organization” shall have the same meaning as in section 18 of chapter 68 of
7 the General Laws, provided that such organization has satisfied the registration requirements of
8 section 19 of said chapter 68.

9 “Consumer,” an individual who is a resident of the commonwealth and a prospective
10 recipient of consumer goods or services or a prospective contributor to a charitable organization.

11 “Marketing or sales solicitation,” the initiation of a telephone call or message to
12 encourage the purchase or rental of, or investment in, property, goods or services, or to solicit a
13 charitable contribution, that is transmitted to a consumer, but not including a telephone call or
14 message: (a) to a consumer with that consumer’s prior express written or verbal invitation or
15 permission; (b) by a tax-exempt nonprofit organization, or any charitable organization, provided
16 that the solicitation is conducted by a bona fide member or employee of or volunteer for such
17 organization and without the involvement of any professional solicitor or commercial co-
18 venturer as those terms are defined in section 18 of said chapter 68; (c) by an individual or
19 organization for a noncommercial purpose, such as a poll or survey; or (d) to a consumer in
20 response to a visit made by such consumer to an establishment selling, leasing or exchanging
21 consumer goods or services at a fixed location.

22 SECTION 2. Section 4 of chapter 159C of the General Laws is hereby amended to
23 include the following after the second word “devise”;

24 The telephone number listed in the identification service or device shall be a valid
25 telephone number in which the consumer can directly communicate with the solicitor.

26 SECTION 3. Section 5A of chapter 159C of the General Laws is hereby amended in
27 paragraph (a) by striking out clauses (ii) through (iv) and inserting in place thereof the following:

28 -- (ii) the correct name of the telemarketing company that employs the individual telemarketer
29 who is making the call, provided that if the individual telemarketer is employed by a
30 subcontractor hired by the telemarketing company holding the contract with the person or
31 organization desiring the sale or contribution, then the individual telemarketer shall state as his
32 or her employer the correct name of the subcontractor; (iii) the correct name of the ultimate seller

33 whose goods or services are being offered, or charitable organization for which contributions are
34 being solicited, by means of the telemarketing call; and (iv) a complete and accurate description
35 of any goods or services being offered including, but not limited to, the retail market value of the
36 goods or services. Charitable solicitations conducted by a professional solicitor or commercial
37 co-venturer, as those terms are defined in section 18 of said chapter 68, shall also satisfy the
38 disclosure requirements of section 23 of said chapter 68, subject, however, to section 5(b)(v)
39 herein.

40 SECTION 4. Section 5A of chapter 159C of the General Laws is hereby further amended
41 by inserting in paragraph (b), after the phrase “original investment,” the following: -- ; and (v) in
42 the case of a professional solicitor or commercial co-venturer making a telephonic sales call
43 soliciting a charitable contribution, if a consumer asks in substance for information about what
44 amount or proportion of a contribution would be retained or received by the professional solicitor
45 or commercial co-venturer, or by the charitable organization for charitable purposes, the
46 telemarketer shall provide either (A) the guaranteed minimum percentage of the gross receipts
47 from fundraising that will be utilized exclusively for the charitable purposes described in the
48 solicitation, as stated in the contract or written agreement between the professional solicitor or
49 commercial co-venturer and the charitable organization, or (B) any comparable disclosure that
50 may be required by regulations promulgated under section 29 of said chapter 68.

51

52 SECTION 5. Section 5A of chapter 159C is further amended by adding the following:

53 (c) A solicitor who represents themselves, either verbally or in writing, to be a police
54 officer, fireman, teacher, doctor, nurse, emergency medical technician, clergy member, or any

55 member of a charitable organization for which they may have contracted with shall be subject to
56 civil penalties pursuant to 93(A) of the General Laws, or any other remedy pursuant to Section 8
57 of this chapter.

58

59 SECTION 6. Section 5A of chapter 159C is further amended by adding the following:

60 (d) A for profit solicitor as defined by Section 18 of Chapter 68 of the General Laws
61 shall keep recordings of calls made or letters sent for the purpose of soliciting funds pursuant to
62 Section 18. The recordings of the phone calls shall be kept on file with the company for a period
63 of not less than 180 days. At any point during this period these recordings shall be subject to
64 audit and inspection by the Attorney General's Office.

65 A for profit solicitor working pursuant to Chapter 68 of the General Laws shall be subject
66 to civil liabilities pursuant to Chapter 93(A) of the General Laws for any violation of the section
67 or any other remedy pursuant to Section 8 of this chapter.

68

69 SECTION 7: paragraph (c) under Section 8 of this chapter shall be deleted.