

HOUSE No. 4181

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 11, 2016.

The committee on Consumer Protection and Professional Licensure to whom were referred the petition (accompanied by bill, House, No. 193) of Colleen M. Garry and Brian M. Ashe for legislation to ban robocalls, so-called and the petition (accompanied by bill, House, No. 273) of William M. Straus and Louis L. Kafka relative to prohibiting robocalls, so-called, to mobile telephone devices, reports recommending that the accompanying bill (House, No. 4181) ought to pass.

For the committee,

JENNIFER E. BENSON

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

An Act prohibiting robocalls to all mobile telephone devices.

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

28 This chapter shall not apply to: (1) messages from school districts to students, parents or
29 employees; (2) messages advising employees of work schedules; (3) messages on behalf of
30 correctional facilities advising victims; (4) messages on behalf of municipalities and
31 government; (5) messages from public utilities pertaining to the service of the customer of
32 record; or (6) messages concerning the care, services or supplies related to the health of an
33 individual.

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

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

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

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

51 SECTION 17. Time Limitations for Actions or Proceedings

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

56 (b) Sections 15 through 17, inclusive, of this chapter shall not apply to any outbound
57 telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered
58 entity or its business associate, as those terms are defined in the HIPPA Privacy Rule, 45 CFR
59 160.103.