

HOUSE No. 138

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>1/13/2017</i> |
| <i>Geoff Diehl</i> | <i>7th Plymouth</i> | |
| <i>Angelo L. D'Emilia</i> | <i>8th Plymouth</i> | |
| <i>Diana DiZoglio</i> | <i>14th Essex</i> | |
| <i>Tricia Farley-Bouvier</i> | <i>3rd Berkshire</i> | |
| <i>Smitty Pignatelli</i> | <i>4th Berkshire</i> | <i>1/31/2017</i> |
| <i>Carole A. Fiola</i> | <i>6th Bristol</i> | <i>1/23/2017</i> |
| <i>Lori A. Ehrlich</i> | <i>8th Essex</i> | <i>1/23/2017</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> | |
| <i>John W. Scibak</i> | <i>2nd Hampshire</i> | |
| <i>Angelo J. Puppolo, Jr.</i> | <i>12th Hampden</i> | <i>2/1/2017</i> |
| <i>Jennifer E. Benson</i> | <i>37th Middlesex</i> | |
| <i>Tackey Chan</i> | <i>2nd Norfolk</i> | |
| <i>Randy Hunt</i> | <i>5th Barnstable</i> | |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> | |
| <i>Hannah Kane</i> | <i>11th Worcester</i> | |
| <i>Kenneth I. Gordon</i> | <i>21st Middlesex</i> | |
| <i>David Paul Linsky</i> | <i>5th Middlesex</i> | |

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| <i>Brian M. Ashe</i> | <i>2nd Hampden</i> |
| <i>Paul Brodeur</i> | <i>32nd Middlesex</i> |
| <i>Louis L. Kafka</i> | <i>8th Norfolk</i> |
| <i>David M. Rogers</i> | <i>24th Middlesex</i> |
| <i>Patricia A. Haddad</i> | <i>5th Bristol</i> |
| <i>Carolyn C. Dykema</i> | <i>8th Middlesex</i> |
| <i>Colleen M. Garry</i> | <i>36th Middlesex</i> |
| <i>Paul A. Schmid, III</i> | <i>8th Bristol</i> |
| <i>Russell E. Holmes</i> | <i>6th Suffolk</i> |
| <i>Solomon Goldstein-Rose</i> | <i>3rd Hampshire</i> |
| <i>Frank I. Smizik</i> | <i>15th Norfolk</i> |
| <i>Brendan P. Crighton</i> | <i>Third Essex</i> |
| <i>Natalie Higgins</i> | <i>4th Worcester</i> |
| <i>Kimberly N. Ferguson</i> | <i>1st Worcester</i> |
| <i>Ruth B. Balsler</i> | <i>12th Middlesex</i> |
| <i>Daniel J. Hunt</i> | <i>13th Suffolk</i> |
| <i>Michael D. Brady</i> | <i>Second Plymouth and Bristol</i> |
| <i>Claire D. Cronin</i> | <i>11th Plymouth</i> |
| <i>Gerard Cassidy</i> | <i>9th Plymouth</i> |
| <i>Chris Walsh</i> | <i>6th Middlesex</i> |
| <i>John J. Mahoney</i> | <i>13th Worcester</i> |
| <i>Sean Garballey</i> | <i>23rd Middlesex</i> |
| <i>James J. O'Day</i> | <i>14th Worcester</i> |
| <i>Aaron Vega</i> | <i>5th Hampden</i> |
| <i>Kate Hogan</i> | <i>3rd Middlesex</i> |
| <i>Susan Williams Gifford</i> | <i>2nd Plymouth</i> |
| <i>Joseph W. McGonagle, Jr.</i> | <i>28th Middlesex</i> |
| <i>Steven S. Howitt</i> | <i>4th Bristol</i> |
| <i>Anne M. Gobi</i> | <i>Worcester, Hampden, Hampshire and Middlesex</i> |
| <i>Keiko M. Orrall</i> | <i>12th Bristol</i> |
| <i>Paul W. Mark</i> | <i>2nd Berkshire</i> |
| <i>Harold P. Naughton, Jr.</i> | <i>12th Worcester</i> |
| <i>Michelle M. DuBois</i> | <i>10th Plymouth</i> |
| <i>William Driscoll</i> | <i>7th Norfolk</i> |

HOUSE No. 138

By Ms. Cariddi of North Adams, a petition (accompanied by bill, House, No. 138) 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 Ninetieth General Court
(2017-2018)**

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
2 by inserting the following definitions in their appropriate alphabetically-ordered locations, and
3 by striking out any existing definitions of the same terms:--

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

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

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

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

25 SECTION 2. Section 4 of chapter 159C of the General Laws is hereby amended to
26 include the following after the second word "device":-

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

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

32 "(ii) the correct name of the telemarketing company that employs the individual
33 telemarketer who is making the call, provided that if the individual telemarketer is employed by

34 a subcontractor hired by the telemarketing company holding the contract with the person or
35 organization desiring the sale or contribution, then the individual telemarketer shall state as his
36 or her employer the correct name of the subcontractor; (iii) the correct name of the ultimate seller
37 whose goods or services are being offered, or charitable organization for which contributions are
38 being solicited, by means of the telemarketing call; and (iv) a complete and accurate description
39 of any goods or services being offered including, but not limited to, the retail market value of the
40 goods or services. Charitable solicitations conducted by a professional solicitor or commercial
41 co-venturer, as those terms are defined in section 18 of said chapter 68, shall also satisfy the
42 disclosure requirements of section 23 of said chapter 68, subject, however, to section 5(b)(v)
43 herein.

44 SECTION 4. Section 5A of chapter 159C of the General Laws is hereby further
45 amended by inserting in paragraph (b), after the phrase “original investment,” the following:-

46 "and (v) in the case of a professional solicitor or commercial co-venturer making a
47 telephonic sales call soliciting a charitable contribution, if a consumer asks in substance for
48 information about what amount or proportion of a contribution would be retained or received by
49 the professional solicitor or commercial co-venturer, or by the charitable organization for
50 charitable purposes, the telemarketer shall provide either (A) the guaranteed minimum
51 percentage of the gross receipts from fundraising that will be utilized exclusively for the
52 charitable purposes described in the solicitation, as stated in the contract or written agreement
53 between the professional solicitor or commercial co-venturer and the charitable organization, or
54 (B) any comparable disclosure that may be required by regulations promulgated under section 29
55 of said chapter 68.

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

58 "(c) A solicitor who represents themselves, either verbally or in writing, to be a
59 police officer, fireman, teacher, doctor, nurse, emergency medical technician, clergy member, or
60 any member of a charitable organization for which they may have contracted with shall be
61 subject to civil penalties pursuant to 93(A) of the General Laws, or any other remedy pursuant to
62 Section 8 of this chapter."

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

65 "(d) A for profit solicitor as defined by Section 18 of Chapter 68 of the General
66 Laws shall keep recordings of calls made or letters sent for the purpose of soliciting funds
67 pursuant to Section 18. The recordings of the phone calls shall be kept on file with the company
68 for a period of not less than 180 days. At any point during this period these recordings shall be
69 subject to audit and inspection by the Attorney General's Office. A for profit solicitor working
70 pursuant to Chapter 68 of the General Laws shall be subject to civil liabilities pursuant to
71 Chapter 93(A) of the General Laws for any violation of the section or any other remedy pursuant
72 to Section 8 of this chapter.

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

74 SECTION 8: This act shall take effect on January 1, 2019.