HOUSE DOCKET, NO. 3790 FILED ON: 1/18/2019

HOUSE . . . . . No. 265

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel J. Hunt

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:
Daniel J. Hunt	*13th Suffolk*	*1/18/2019*
Daniel R. Cullinane	*12th Suffolk*	*2/1/2019*
Paul Brodeur	*32nd Middlesex*	*2/1/2019*

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HOUSE . . . . . No. 265

By Mr. Hunt of Boston, a petition (accompanied by bill, House, No. 265) of Daniel J. Hunt, Daniel R. Cullinane and Paul Brodeur for legislation to require transparency in solicitations via telephone and similar devices. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *138* OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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:

SECTION 1. Section one of chapter 159C of the General Laws is hereby amended by inserting the following definitions in their appropriate alphabetically-ordered locations, and by striking out any existing definitions of the same terms:--

"Charitable contribution" shall have the same meaning as "contributions" in section 18 of chapter 68 of the General Laws.

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

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

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

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

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

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

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

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

"and (v) in the case of a professional solicitor or commercial co-venturer making a telephonic sales call soliciting a charitable contribution, if a consumer asks in substance for information about what amount or proportion of a contribution would be retained or received by the professional solicitor or commercial co-venturer, or by the charitable organization for charitable purposes, the telemarketer shall provide either (A) the guaranteed minimum

percentage of the gross receipts from fundraising that will be utilized exclusively for the charitable purposes described in the solicitation, as stated in the contract or written agreement between the professional solicitor or commercial co-venturer and the charitable organization, or (B) any comparable disclosure that may be required by regulations promulgated under section 29 of said chapter 68.

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

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

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

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

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

SECTION 8: This act shall take effect on January 1, 2021.