

# HOUSE . . . . . No. 333

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## The Commonwealth of Massachusetts

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PRESENTED BY:

*Denise Provost*

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*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 direct mailings.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/15/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/1/2019</i>

# HOUSE . . . . . No. 333

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By Ms. Provost of Somerville, a petition (accompanied by bill, House, No. 333) of Denise Provost and James K. Hawkins relative to direct mailings. Consumer Protection and Professional Licensure.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1995 OF 2017-2018.]

## The Commonwealth of Massachusetts

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

An Act relative to direct mailings.

*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 93 of the General Laws is hereby amended by adding the following 4 sections:-

2           Section 115. As used in sections 115 to 118, inclusive, the following words shall, unless  
3 the context clearly requires otherwise, have the following meanings:-

4           “Affirmative consent”, (1) a recipient has expressly consented to receive the direct mail,  
5 either in response to a clear and conspicuous request for such consent or at the recipient's own  
6 initiative; and (2) if the message is from a party other than the party to which the recipient  
7 communicated such consent, the recipient was given clear and conspicuous notice at the time the  
8 consent was communicated that the recipient's mailing address could be transferred to such other  
9 party for the purpose of initiating direct mailings.

“Direct mail” advertising materials sent to, or otherwise left or deposited at, prospective customers’ home or mailing address, whether or not sent through the United States Postal Service, the primary purpose of which is to market or advertise a sender’s goods or services. Such materials may be in the form of letters, catalogs, postcards, newsletters, brochures or other similar means. Direct mail shall not include materials that: (1) provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient; (2) facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender; (3) notify the recipient of a change in the terms, standing, status, regular account balance, or other features of a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender; or (4) provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled.

“Initiate”, to originate the sending of direct mail or to procure the origination of such direct mail, but not including actions that constitute routine conveyance or transmission of such direct mail. More than 1 person may initiate a particular direct mailing.

“Sender”, a person who initiates a direct mailing and whose product or service is advertised or promoted by the direct mail.

Section 116. (a) No person shall initiate a direct mailing that does not include a valid return mailing address, electronic mail address, or phone number clearly and consciously displayed, that: (1) a recipient may use to submit, in a manner specified in the message, a request not to receive future direct mailings from that sender at the mailing address where the message

was received; and (2) remains capable of receiving such requests for no less than 30 days after the date on which the direct mail was sent. A violation of this subsection shall be punishable by a fine of not more \$1,500.

(b) A person may comply with subsection (a) by providing the recipient a list or menu from which the recipient may choose the specific types of direct mail the recipient wants to receive or does not want to receive from the sender; provided, that the list or menu includes an option under which the recipient may choose not to receive any direct mail from the sender.

(c) A return mailing address, electronic mail address, or phone number shall not fail to satisfy the requirements of subsection (a) if it is unexpectedly and temporarily unable to receive messages or process requests due to a technical problem beyond the control of the sender; provided, that the problem is corrected within a reasonable time period.

(d) If a recipient makes a request pursuant to subsection (a) not to receive some or any direct mail a sender, it shall be unlawful:

(1) for the sender to initiate a mailing to the recipient, more than 10 business days after the receipt of such request, of direct mail that falls within the scope of the request;

(2) for any person acting on behalf of the sender to initiate, or assist in, a mailing to the recipient, more than 10 business days after the receipt of such request, of direct mail with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such direct mail falls within the scope of the request; or

(3) for the sender, or any other person who knows that the recipient has made such a request, to sell, lease, exchange, or otherwise transfer or release the address of the recipient for any purpose other than compliance with this chapter or other provision of law.

A violation of this subsection shall be punishable by a fine of not less than \$1,000 and not more than \$5,000.

(e) This subsection shall not apply to any direct mailings to which a recipient has given affirmative consent.

Section 117. (a) No person shall promote, or allow the promotion of, that person's trade or business, or goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business, in a direct mailing that does not satisfy the requirements of subsection (a) of section 116; provided, that the person:

(1) knows, or should have known in the ordinary course of that person's trade or business, that the goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business were being promoted in such direct mail;

(2) received or expected to receive an economic benefit from such direct mail; and

(3) took no reasonable action to prevent the direct mail.

A violation of this subsection shall be punishable by a fine of not more than \$5,000.

(b) A person, hereinafter referred to as the "third party", that provides goods, products, property, or services to another person that violates subsection (a) shall not be held liable for such violation unless that third party:

(1) owns, or has a greater than 50 per cent ownership or economic interest in, the trade or business of the person that violated subsection (a); or

(2) has actual knowledge that goods, products, property, or services are promoted in a commercial electronic mail message the transmission of which is in violation of subsection (a) of section 116, and receives, or expects to receive, an economic benefit from such promotion.

A violation of this subsection shall be punishable by a fine of not more than \$5,000.

Section 118. The department of telecommunications and cable shall promulgate rules and regulations to implement sections 116 and 117, which may modify the definition of “direct mail” as necessary to accomplish the purposes of this chapter.