

SENATE No. 192

The Commonwealth of Massachusetts

PRESENTED BY:

Dean A. Tran

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 protecting consumers from text solicitation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Dean A. Tran</i>	<i>Worcester and Middlesex</i>	
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>	<i>2/2/2019</i>

SENATE No. 192

By Mr. Tran, a petition (accompanied by bill, Senate, No. 192) of Dean A. Tran and Donald F. Humason, Jr. for legislation to protect consumers from text solicitation. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

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

An Act protecting consumers from text solicitation.

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, as so appearing, is hereby amended by adding the
2 following 3 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.

20 “Robocall telephone solicitation” shall include a political message if the message is
21 communicated by use of an automatic dialing 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 “Informational call” means a commercial call from, or on behalf of, an entity with whom
27 the called party has a pre-existing business relationship, but such term does not include a
28 robocall.

29 "pre-existing business relationship" means a prior or existing relationship formed by a
30 voluntary two-way communication between a person or entity and a residential subscriber with
31 or without an exchange of consideration, on the basis of an inquiry, application, purchase or

32 transaction by the residential subscriber regarding products or services offered by such person or
33 entity, which relationship has not been previously terminated by either party.

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

36 This chapter shall not apply to: (1) messages from school districts to students, parents or
37 employees; (2) messages advising employees of work schedules; (3) messages on behalf of
38 correctional facilities advising victims; (4) messages on behalf of municipalities and
39 government; (5) Informational calls; (6) messages from public utilities pertaining to the service
40 of the customer of record; or (7) messages from doctors, hospitals, or other healthcare providers
41 concerning the care, services or supplies related to the health of an individual.

42 Section 16. Violations; Enforcement by Attorney General; Consumer Action; Penalties;
43 Attorney's Fees and Costs

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

51 (b) A person who has received more than 1 unsolicited telephonic call within a 12-month
52 period by or on behalf of the same person or entity in violation of this section may: (i) bring an

53 action to enjoin the violation; (2) bring an action to recover for actual monetary loss from such
54 knowing violation or to receive not less than \$10,000 in damages for such willful and knowing
55 violation, whichever is greater; or (iii) bring both such actions. In a civil proceeding resulting
56 from a transaction involving a violation of this section, the

57 prevailing party, after judgment in the trial court and exhaustion of all appeals, if any,
58 shall be awarded reasonable attorney's fees and costs from the nonprevailing party.

59 Section 17. Time Limitations for Actions or Proceedings

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

64 (b) Sections 15 through 17, inclusive, of this chapter shall not apply to any outbound
65 telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered
66 entity or its business associate, as those terms are defined in the HIPPA Privacy Rule, 45 CFR
67 160.103.