HOUSE DOCKET, NO. FILED ON: 1/6/2009

**HOUSE . . . . . . . . . . . . . . . No.**

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The Commonwealth of Massachusetts

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PRESENTED BY:

**Bruce J. Ayers**

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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 passage of the accompanying bill:

An Act protecting consumers from telemarketing fraud.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PETITION OF:

|  |  |
| --- | --- |
| Name: | District/Address: |
| Bruce J. Ayers | 1st Norfolk |

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 79 OF 2007-2008.]

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

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An Act protecting consumers from telemarketing fraud..

 *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.  Chapter 93 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after Section 107 the following new section:—
Section 108(a). For the purposes of this section the following words shall have the following meanings:
“Active solicitation:” a telephone call or telephone solicitation relating to covered products or services made (i) by the seller on an unsolicited basis, (ii) by the seller in response to a consumer submitted entry form or inquiry arising out of a non-excluded advertisement, or (iii) by the consumer as a result of receiving a qualified mailing or a previous related telephone solicitation from the seller. Solicitations or contracts made as results of the buyer responding to a particular advertising except for advertisements in the classified section of a magazine or newspaper, shall not constitute active solicitations even if a transaction is subsequently entered into by telephone. These exceptions shall not apply where use of such advertisements are designed to circumvent the cancellation rights provided by this section.
“Business day:” Monday through Friday, excluding national, state or local holidays.
“Buyer:” a consumer, whether a prospective or actual purchaser.
“Covered products or service:” any product or service, tangible or intangible, including the provision of information. To be covered, the following must apply: (1) there is an active solicitation; (2) the transaction is with a seller with whom the buyer does not have a pre-existing relationship; (3) the transaction is made primarily by telephone; and (4) the telephone call results in the buyer incurring a financial obligation to the seller directly or indirectly, as when the buyer accepts the seller’s offer, places an order, or pays or agrees to pay the seller. Without limiting the scope of covered products and services, solicitations which include the offering of a gift, prize, award, premium or other incentive, whether such bonus is being offered alone or in conjunction with purchase of other products or services, are explicitly covered if the aforementioned conditions are met. Covered products and services shall not include the following: food orders to be delivered in the same day, airline reservation payments made directly to the air carrier for non-refundable fares, fund-raising solicitations if chance plays no part in any accompanying promotional offer, telephone sales from mail order catalogs where the call was initiated by the buyer, purchases made by computer through a modem from the buyer’s home, newspaper subscriptions for home delivery, a pay-per-call service whose primary service is a chat line, sex line, product technical support line, stock quotations, horoscopes, weather, medical advice, polling or voting line, or other category of products or services specified in regulations of the Attorney General.
“Pay-per-call service:” shall be defined as such term is used in 47 Code of Federal Regulations 64,709 as it may from time to time be amended.
“Pre-established relationship:” a relationship where prior non-canceled transactions have been made by the buyer with the same seller, but not including transactions made with a related seller.
“Qualified mailing:” any solicitation delivered by mail, except solicitations to join book or record clubs, to order identified magazines where the price is disclosed, for computer software and hardware, and any other category specified by the Attorney General.
“Seller:” shall not include private party sellers offering covered goods or services only on an occasional basis.
“Transaction date:” the date the buyer makes a transaction for covered products or services.
(b) Any transaction made primarily by telephone for covered products or services for personal, family or household use, may be canceled by the buyer without obligation or cost within three business days after receipt of the confirmation and cancellation rights notice required herein. Notice of cancellation by the buyer may be made by telephone or by regular or certified mail. The seller shall clearly and conspicuously disclose to the buyer the three-business-day right to cancel before the consummation of the transaction either in (i) each oral solicitation or telephone call where business is solicited, or in (ii) the initial written solicitation of the buyer. In addition, the right to cancel shall be disclosed in writing as part of the confirmation and cancellation rights notice mailed which the seller shall mail to the buyer within one week after the transaction date. The cancellation disclosure shall be made in the following words, with the blanks to be filled in with the appropriate information, and provided further that any cancellation telephone number not be a pay-per-call service:
“Massachusetts law allows you to cancel this transaction no later than three business days not including Saturday and Sunday after you receive a confirmation and cancellation rights notice from us. To cancel, call [telephone number] or send a letter by regular or certified mail to [address].”
Oral disclosures shall be stated with equal speed and clarity compared to the rest of the call. Oral disclosures may not be made during the portion of any pay-per-call messages to which charges apply, nor at a place in the oral solicitation which has a substantial likelihood not to be heard by the buyer, or at a time when that disclosure will not be meaningful or relevant to the buyer.
Disclosures made in writing before the transaction shall be made clearly and conspicuously in bold capitalized type no smaller than one-third the type of the largest type in the solicitation, but not less than 12-point bold type, on the principal page of the solicitation.
The confirmation and cancellation rights notice provided after the transaction date shall be made on a separate sheet of paper with no other information other than that necessary to identify the seller, a detailed description of the product or service which is the subject of the transaction, the date of the transaction, the price, the buyer’s name and address, and the required cancellation statement in at least 12-point bold capitalized type.
Compliance with the cancellation deadline will be determined based on the date the consumer notified the seller by telephone or the date of mailing of the cancellation. Upon cancellation, the seller shall issue a full refund to the buyer within 14 days of receipt of said cancellation, and cancel any obligations associated with the transactions. Services or products if provided during the cancellation period are done so at the risk of the seller. Buyers may be required to return any tangible products as a prerequisite to receipt of a refund.
Failure to provide the cancellation notice as required above shall entitle the consumer to cancel the transaction without penalty until the appropriate cancellation notice is provided. Failure to comply with the cancellation notification provisions of this section or to provide the refund as required therein shall be sufficient cause for the buyer’s credit-card issuer to charge back the payment amount to the seller, if the transaction was consummated by means of a credit card or by electronic means. The three-business-day right to cancel shall be extended to three business days after the day of receipt of any covered product or service in cases where the price charged the customer is higher than that which was represented, or the transaction was entered into by the buyer based on a material misrepresentation of facts by the seller.
(c) The cancellation rights provided by this section may not be waived by agreement or otherwise. The Attorney General may issue guidelines or promulgate rules and regulations for the implementation and interpretation of this section. Any violation of this section shall constitute an unfair or deceptive act or practice under the provisions of Chapter 93A.
(d) This section shall not apply to telephone calls made by a person registered pursuant to Chapter 110A, or who is registered as a broker-dealer, registered representative, or salesperson of a broker-dealer under federal securities laws, when performing acts within the scope of that registration.