

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

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

**Cleon H. Turner**  
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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 residents of the commonwealth from door-to-door solicitors.

\_\_\_\_\_  
PETITION OF:

NAME:

Cleon H. Turner

DISTRICT/ADDRESS:

1st Barnstable

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT PROTECTING RESIDENTS OF THE COMMONWEALTH FROM DOOR-TO-DOOR SOLICITORS.

*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. Chapter 159 of the Massachusetts General Laws shall be amended by adding after Chapter  
2 159C the following section: Chapter 159D as follows:

3 Section 1. As used in this chapter, the following words shall, unless the context clearly requires  
4 otherwise, have the following meanings:--

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6 "Consumer", an individual who has a permanent or temporary home in the commonwealth the  
7 commonwealth and is a prospective recipient of consumer goods or services.

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9 "Consumer goods or services", any article or service that is purchased, leased, exchanged or received  
10 primarily for personal, family or household purposes including, but not limited to, consumer goods of  
11 every kind and nature, stocks, bonds, mutual funds, annuities and other financial products.

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13 "Existing customer", a consumer with whom the person or entity making a sales visit has maintained an  
14 account or had a business relationship within the previous 24 months.

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16 "Marketing or sales solicitation", the initiation of a visit to the property of a consumer to encourage the  
17 purchase or rental of consumer goods of any kind or nature, or investment in, property, goods or services  
18 but not including a; (i) a visit to a consumer with that consumer's prior express written or verbal invitation  
19 or permission; (ii) by a tax-exempt nonprofit organization; (iii) by an individual or organization for a  
20 noncommercial purpose, such as a poll or survey; or (iv) to a consumer in response to a visit made by  
21 such consumer to an establishment selling, leasing or exchanging consumer goods or services at a fixed  
22 location.

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"Office", the office of consumer affairs and business regulation.

"Property of a Consumer", Any property where a consumer resides permanently or temporarily whether or not such property is actually owned by the consumer.

"Sales visit ", a visit made by a solicitor to a consumer for the purpose of: (i) engaging in a marketing or sales solicitation; (ii) soliciting an extension of credit for consumer goods or services; or (iii) obtaining information that will or may be used for marketing or sales solicitation or exchange of or extension of credit for consumer goods or services.

"Solicitor", an individual, association, corporation, partnership, limited partnership, limited liability company or other business entity, or a subsidiary or affiliate thereof, doing business in the commonwealth and any employee, agent, representative, person going door to door selling products for such person or entity who makes or causes to be made a sales visit to the home of a consumer. This definition shall include transient vendors licensed under chapter 101.

"Unsolicited sales visit", a sales visit to any residential property for the purpose of selling any item, product or service other than a visit made: (i) in response to an express written or verbal request of the consumer called; (ii) primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of the visit; (iii) to an existing customer unless such customer has stated to the solicitor that such customer no longer wishes to receive the sales visits of such solicitor; or (iv) in which the sale of goods and services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the solicitor or a meeting between the solicitor and customer. Nothing in this definition shall prevent legislation that specifically exempts certain sales visits from the operation of this law. This definition shall include visits by transient vendors licensed under Chapter 101.

Section 2. In any city where this Chapter is accepted by a majority vote by the city council or, in a town by a majority vote of the town meeting, the police department shall establish and maintain a no sales solicitation listing of residents who do not wish to receive unsolicited visits by sales people at their home. The police department may contract with a private vendor to establish and maintain such listing, provided that the contract requires the vendor to provide the no sales solicitation visits listing in a printed hard copy format and in any other format offered at a cost that does not exceed the production cost of the format offered. The police department shall provide notice to consumers of the establishment of a no sales solicitation visits listing. A consumer who wishes to be included on the listing shall notify the police department by calling a toll-free number provided by the police department, or in such other manner and at such times as the police department may prescribe which may include electronic notification. A consumer on such listing shall be deleted from such listing upon the consumer's written request or in such other manner and at such times as the division may prescribe which may include electronic notification. The police department shall update such listing not less than quarterly and shall make such listing available to solicitors and other persons for a fee as the police department shall prescribe.

65 Nothing in this chapter shall prevent a consumer from including on such list more than one of the places  
66 where he or she resides either permanently or temporarily.

67 Section 3. Company Registration.

68 (a) Any company or individual who uses transient vendors to conduct door to door sales in the  
69 commonwealth whether such transient vendor is an employee or independent sales person, shall,  
70 before allowing such vendor to conduct door to door sales on the company or individual's behalf,  
71 register with the Secretary of State in a manner prescribed by the Secretary of State. The Secretary  
72 of State shall promulgate regulations and adopt fees for such registration that promote the intention  
73 of this Chapter and minimize the costs to the commonwealth for maintaining a registration  
74 program.

75 (b) Every transient vendor shall, before conducting door to door sales in any municipality in the  
76 commonwealth, provide the police department in each community in which said individual intends  
77 to conduct door to door sales, with sufficient information to allow the police department to  
78 conduct an inquiry known as a "missing and wanted" check and a Criminal Offender Record  
79 Information check on such individual. The police department may develop a form for the purposes  
80 of obtaining such information from transient vendors. Said information shall include the solicitor's  
81 name, age, home address and local address, social security number or other identifying number if  
82 the solicitor is not a citizen of the United States, a form of identification with photograph, the  
83 registration certificate of each vehicle to be used while soliciting. The police agency may require  
84 any additional information necessary to complete a missing and wanted and CORI search. The  
85 police agency shall provide each such transient vendor with a simple form indicating that the  
86 vendor has complied with this section.

87 (c) Every solicitor shall, when registering with any police agency, include the name and address of  
88 any person or entity the solicitor is representing or whose product the solicitor is selling.

89 (d) Solicitors shall carry their local solicitation registration certificate and other positive identification  
90 with them while soliciting door to door and selling consumer goods and shall produce such  
91 certificate upon the request of any law enforcement officer or person who is then being solicited.

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93 Any company or individual who uses transient vendors to conduct door to door sales in the  
94 commonwealth and fails to register as provided in this chapter shall, for a first offense receive a warning  
95 and be advised of the need to register with the Secretary of State if the company or individual intends to  
96 continue to use transient vendors to conduct door to door sales in the commonwealth. Any company or  
97 individual who continues to use transient vendors to conduct door to door sales in the commonwealth  
98 without registering after being advised of the need to register shall be assessed a civil penalty of \$500.00.

99 Whoever violates this section by failing to register with the local police department, failing to produce a  
100 town issued registration certificate or failing to produce positive identification when requested by a police  
101 officer shall be assessed, for a first offense, a civil punished by a fine of \$50.00. Any second or  
102 subsequent offense shall be deemed a misdemeanor and shall be punishable by a fine of not less than  
103 \$50.00 nor more than \$100.00.

104 A police officer may take any solicitor into custody pending positive identification and other checks who  
105 has not registered as required or who could not produce either a valid registration certificate or positive  
106 identification when requested to do so. Any solicitor taken into custody under this chapter may be held for  
107 up to four hours pending such determinations as described above. Such solicitor may be held for more  
108 than four hours if the police have probable cause to believe the solicitor has committed a crime or is  
109 wanted in that or any other jurisdiction.

110 Section 4. Unsolicited sales visits; limitations. A solicitor shall not make or cause to be made an  
111 unsolicited sales visit to a consumer if the consumer's address or name appears on the then current  
112 quarterly no sales solicitation visits listing made available by the police department under section 2.

113 Whoever violates the provisions of this section may be assessed a civil penalty of not more than \$50.00  
114 for a first offence and a criminal penalty of not more than \$50.00 for any second or subsequent offence.  
115 In the case of any second or subsequent offense, if the consumer solicited in violation of this chapter is a  
116 senior citizen over the age of 65, said fine shall not be less than \$150.00. Each property entered when the  
117 name of the occupant or the address is on the do not knock list shall be deemed to be a separate violation.  
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119 Section 5. Disclosures by solicitors; information provided to consumers prior to payment. (a) A  
120 solicitor shall disclose all of the following information within the first minute of a sales visit and before  
121 requesting, accepting or arranging for payment by a consumer: (i) that the purpose of the visit is to make a  
122 sale or solicit funds; (ii) the correct name of the marketing company that employs the individual solicitor  
123 who is making the call or who makes or distributes the product that is being sold; (iii) the correct name of  
124 the ultimate seller or distributor whose goods or services are being offered by means of the marketing  
125 visit; and (iv) a complete and accurate description of the goods or services being offered including, but  
126 not limited to, the retail market value of the goods or services.

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128 (b) The solicitor shall provide all of the following information before requesting, accepting or arranging  
129 for payment by a consumer: (i) the cost to the consumer of the goods or services that are the subject of the  
130 sales call including, but not limited to, any applicable tax, shipping and handling fees; (ii) any restrictions,  
131 limitations or conditions attached to purchasing the goods or services; (iii) the complete terms of any  
132 applicable refund, return, cancellation, exchange or repurchase policies; (iv) any material aspect of an  
133 investment opportunity being offered including, but not limited to, the price of the land or other  
134 investment, the location of the investment and the fact that an investor may lose some or all of their  
135 original investment.  
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137 Section 6. Consumer objections to receipt of unsolicited sales visits; methods of compilation;  
138 notification of solicitors. The police department shall promulgate regulations to carry out this chapter  
139 which shall: (i) specify the methods by which each such consumer shall give notice to the police  
140 department or its contractor of the consumer's objection to receiving such sales visits or revocation of  
141 such notice; provided, however, that there shall be no cost to the consumer for joining the listing; (ii)  
142 specify the length of time for which a notice of objection shall be effective and the effect of a change of  
143 address on such notice; (iv) specify the methods by which such objections and revocations shall be  
144 collected and added to the no sales solicitations visits listing; (v) specify the methods by which a person  
145 or entity desiring to make sales visits may obtain access to the no sales solicitation visits listing as

146 required to avoid visiting the properties of consumer included in such listing; and (vi) specify such other  
147 matters relating to the listing that the police department deems desirable.

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149 The police department may create a computer access form to be completed electronically by consumers or  
150 local police agencies to add consumers to the list.

151 The police department shall determine the best method for maintaining said data but shall ensure that  
152 solicitors can obtain the data on a town by town basis.

153 Section 7. National consumer database; inclusion of commonwealth portion in no sales solicitation  
154 calls listing. If any federal agency establishes a single national database of consumers who do not wish to  
155 receive unsolicited sales visits the police department shall include that part of such single national  
156 database that relates to the commonwealth in the listing established pursuant to this chapter.

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158 Section 8. Violations; enforcement; consumer action; penalties; attorney's fees and costs. (a) If, in  
159 the opinion of the Attorney General of the commonwealth, repeat violations of this chapter appear to be  
160 calculated or flagrant, the attorney general may initiate proceedings relating to a knowing violation or  
161 threatened knowing violation of this chapter. Such proceedings may include, without limitation, criminal  
162 actions for trespass, an injunction, a civil penalty of not more than \$5,000 for each knowing violation, but  
163 not less than \$1,500 for a knowing violation involving a consumer who is 65 years of age or older, and  
164 additional relief in a court of competent jurisdiction. The attorney general may also issue investigative  
165 demands and subpoenas, administer oaths and conduct hearings in the course of investigating a violation  
166 of this chapter. Criminal actions for trespass may be brought by any police agency having jurisdiction of  
167 the area in which the consumer complaining of a violation sits. Police officers may, based on probable  
168 cause, arrest any person believed to be in violation of this chapter without a warrant.

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170 (b) A person who has received more than 1 unsolicited sales visit within a 12-month period by or on  
171 behalf of the same person or entity in violation of this chapter may: (i) bring an action to enjoin the  
172 violation; (ii) bring an action to recover for actual monetary loss from such knowing violation or to  
173 receive not more than \$5,000 in damages for such knowing violation, whichever is greater; or (iii) bring  
174 both such actions.

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176 (c) In a civil proceeding resulting from a violation of this chapter, the consumer, after judgment in the  
177 consumer's favor and exhaustion of all appeals, if any, shall be awarded reasonable attorney's fees and  
178 costs from the defendant in the action.

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180 Section 9. Time limitations for actions or proceedings. No criminal or civil action or proceeding  
181 shall be brought pursuant to this chapter: (i) more than 3 years after the person bringing the action knew  
182 or should have known of the occurrence of the alleged violation; or (ii) more than 3 years after the  
183 termination of a proceeding or action arising out of the same violation by the commonwealth, whichever  
184 is later.

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186 Section 10. Use of information contained in no sales solicitation listing. Information contained in the  
187 no sales solicitation listing established pursuant to this chapter shall be used only for the purposes of  
188 compliance with this chapter or in a proceeding or action under section 8. Such information shall not be  
189 subject to public inspection or disclosure.  
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191 Section 11. Remedies not exclusive. The remedies, duties, prohibitions and penalties provided in  
192 this chapter shall not be exclusive and shall be in addition to all other causes of action, remedies and  
193 penalties provided by law, including any applicable remedies pursuant to chapter 93A.  
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195 Section 12. Advisory group; availability of educational materials; written and electronic information.  
196 The police department shall disseminate to citizens in a manner of the department's choosing information  
197 about the availability of and instructions on how to have their names and residential addresses placed on  
198 the no solicitation list. The police department shall include on its internet website, if it has such a site,  
199 information that informs consumers of their rights to be placed on the no sales solicitation visits listing  
200 and the various methods, including notice to the department, of placing their names on the no sales  
201 solicitation visits listing.