

By Mr. Ayers of Quincy, petition of Bruce J. Ayers for legislation to protect consumers from telemarketing fraud. Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

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:*

1 Chapter 93 of the General Laws, as appearing in the 1992 Offi-  
2 cial Edition, is hereby amended by inserting after Section 106 the  
3 following new section:—

4 Section 107(a). For the purposes of this section the following  
5 words shall have the following meanings:

6 “Active solicitation:” a telephone call or telephone solicitation  
7 relating to covered products or services made (i) by the seller on  
8 an unsolicited basis, (ii) by the seller in response to a consumer  
9 submitted entry form or inquiry arising out of a non-excluded  
10 advertisement, or (iii) by the consumer as a result of receiving a  
11 qualified mailing or a previous related telephone solicitation from  
12 the seller. Solicitations or contracts made as results of the buyer  
13 responding to a particular advertising except for advertisements in  
14 the classified section of a magazine or newspaper, shall not con-  
15 stitute active solicitations even if a transaction is subsequently  
16 entered into by telephone. These exceptions shall not apply where  
17 use of such advertisements are designed to circumvent the cancel-  
18 lation rights provided by this section.

19 “Business day:” Monday through Friday, excluding national,  
20 state or local holidays.

21 “Buyer:” a consumer, whether a prospective or actual pur-  
22 chaser.

23 “Covered products or service:” any product or service, tangible  
24 or intangible, including the provision of information. To be cov-

25 ered, the following must apply: (1) there is an active solicitation;  
26 (2) the transaction is with a seller with whom the buyer does not  
27 have a pre-existing relationship; (3) the transaction is made pri-  
28 marily by telephone; and (4) the telephone call results in the buyer  
29 incurring a financial obligation to the seller directly or indirectly,  
30 as when the buyer accepts the seller's offer, places an order, or  
31 pays or agrees to pay the seller. Without limiting the scope of cov-  
32 ered products and services, solicitations which include the  
33 offering of a gift, prize, award, premium or other incentive,  
34 whether such bonus is being offered alone or in conjunction with  
35 purchase of other products or services, are explicitly covered if  
36 the aforementioned conditions are met. Covered products and  
37 services shall not include the following: food orders to be deliv-  
38 ered in the same day, airline reservation payments made directly  
39 to the air carrier for non-refundable fares, fund-raising solicita-  
40 tions if chance plays no part in any accompanying promotional  
41 offer, telephone sales from mail order catalogs where the call was  
42 initiated by the buyer, purchases made by computer through a  
43 modem from the buyer's home, newspaper subscriptions for home  
44 delivery, a pay-per-call service whose primary service is a chat  
45 line, sex line, product technical support line, stock quotations,  
46 horoscopes, weather, medical advice, polling or voting line, or  
47 other category of products or services specified in regulations of  
48 the Attorney General.

49 "Pay-per-call service:" shall be defined as such term is used in  
50 47 Code of Federal Regulations 64,709 as it may from time to  
51 time be amended.

52 "Pre-established relationship:" a relationship where prior non-  
53 canceled transactions have been made by the buyer with the same  
54 seller, but not including transactions made with a related seller.

55 "Qualified mailing:" any solicitation delivered by mail, except  
56 solicitations to join book or record clubs, to order identified maga-  
57 zines where the price is disclosed, for computer software and  
58 hardware, and any other category specified by the Attorney  
59 General.

60 "Seller:" shall not include private party sellers offering covered  
61 goods or services only on an occasional basis.

62 "Transaction date:" the date the buyer makes a transaction for  
63 covered products or services.

64 (b) Any transaction made primarily by telephone for covered  
65 products or services for personal, family or household use, may be  
66 canceled by the buyer without obligation or cost within three busi-  
67 ness days after receipt of the confirmation and cancellation rights  
68 notice required herein. Notice of cancellation by the buyer may be  
69 made by telephone or by regular or certified mail. The seller shall  
70 clearly and conspicuously disclose to the buyer the three-business-  
71 day right to cancel before the consummation of the transaction  
72 either in (i) each oral solicitation or telephone call where business  
73 is solicited, or in (ii) the initial written solicitation of the buyer. In  
74 addition, the right to cancel shall be disclosed in writing as part of  
75 the confirmation and cancellation rights notice mailed which the  
76 seller shall mail to the buyer within one week after the transaction  
77 date. The cancellation disclosure shall be made in the following  
78 words, with the blanks to be filled in with the appropriate infor-  
79 mation, and provided further that any cancellation telephone  
80 number not be a pay-per-call service:

81 “Massachusetts law allows you to cancel this transaction no  
82 later than three business days not including Saturday and Sunday  
83 after you receive a confirmation and cancellation rights notice  
84 from us. To cancel, call [telephone number] or send a letter by  
85 regular or certified mail to [address].”

86 Oral disclosures shall be stated with equal speed and clarity  
87 compared to the rest of the call. Oral disclosures may not be made  
88 during the portion of any pay-per-call messages to which charges  
89 apply, nor at a place in the oral solicitation which has a substantial  
90 likelihood not to be heard by the buyer, or at a time when that dis-  
91 closure will not be meaningful or relevant to the buyer.

92 Disclosures made in writing before the transaction shall be  
93 made clearly and conspicuously in bold capitalized type no  
94 smaller than one-third the type of the largest type in the solici-  
95 tation, but not less than 12-point bold type, on the principal page of  
96 the solicitation.

97 The confirmation and cancellation rights notice provided after  
98 the transaction date shall be made on a separate sheet of paper  
99 with no other information other than that necessary to identify the  
100 seller, a detailed description of the product or service which is the  
101 subject of the transaction, the date of the transaction, the price, the

102 buyer's name and address, and the required cancellation statement  
103 in at least 12-point bold capitalized type.

104 Compliance with the cancellation deadline will be determined  
105 based on the date the consumer notified the seller by telephone or  
106 the date of mailing of the cancellation. Upon cancellation, the  
107 seller shall issue a full refund to the buyer within 14 days of  
108 receipt of said cancellation, and cancel any obligations associated  
109 with the transactions. Services or products if provided during the  
110 cancellation period are done so at the risk of the seller. Buyers  
111 may be required to return any tangible products as a prerequisite  
112 to receipt of a refund.

113 Failure to provide the cancellation notice as required above  
114 shall entitle the consumer to cancel the transaction without  
115 penalty until the appropriate cancellation notice is provided.  
116 Failure to comply with the cancellation notification provisions of  
117 this section or to provide the refund as required therein shall be  
118 sufficient cause for the buyer's credit-card issuer to charge back  
119 the payment amount to the seller, if the transaction was consum-  
120 mated by means of a credit card or by electronic means. The  
121 three-business-day right to cancel shall be extended to three busi-  
122 ness days after the day of receipt of any covered product or  
123 service in cases where the price charged the customer is higher  
124 than that which was represented, or the transaction was entered  
125 into by the buyer based on a material misrepresentation of facts by  
126 the seller.

127 (c) The cancellation rights provided by this section may not be  
128 waived by agreement or otherwise. The Attorney General may  
129 issue guidelines or promulgate rules and regulations for the imple-  
130 mentation and interpretation of this section. Any violation of this  
131 section shall constitute an unfair or deceptive act or practice under  
132 the provisions of Chapter 93A.

133 (d) This section shall not apply to telephone calls made by a  
134 person registered pursuant to Chapter 110A, or who is registered  
135 as a broker-dealer, registered representative, or salesperson of a  
136 broker-dealer under federal securities laws, when performing acts  
137 within the scope of that registration.