



ECOMMERCE INNOVATION ALLIANCE

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VIA EMAIL

Joint Committee on Consumer Protection and Professional Licensure
JointCommittee.ConsumerProtection&ProfessionalLicensure@malegislature.gov

Re: HB 363, An Act Clarifying Telephone Solicitation

Chairs Chan and Payano and Members of the Joint Committee:

Thank you for the opportunity to provide testimony regarding HB 363.

My name is David Carter, and I serve as the President and CEO of the Ecommerce Innovation Alliance, or EIA, is a nonprofit trade association of over 17,000 ecommerce companies and technology providers. These are small businesses creating jobs in local communities, including many in Massachusetts.

As an initial matter, we share the desire to stop unwanted and unsolicited robocalls and applaud the drafters of HB 363 for seeking to regulate not only commercial speech, but also political calls and text messages, which the data shows is actually the largest source of spam complaints. Nevertheless, we have several concerns about HB 363.

My first point is that these state laws do not produce the intended result of stopping unwanted calls or texts. Stopping unwanted calls and texts is a complex, international effort, with most of these scams originating overseas. Over the past few years, the FCC and the industry have collaborated on technical approaches to stop the delivery of spam calls and texts at the network level. New call tracing teams help law enforcement identify the source of scam calls and the FCC has begun to block traffic from carriers who are not taking sufficient steps to stop this traffic from being originated on their networks. This technology-first approach is working and has reduced unwanted robocalls by more than 50% in just a few short years.

State laws like HB 363, however, do not lead to a decrease in *unwanted* robocalls; instead, they primarily provide a “payday” for plaintiffs' lawyers who use the costs of defending class action litigation to pursue "shakedown" lawsuits. The current legal landscape has unfortunately fostered an environment where private litigation- rather than truly targeting bad actors - has become a tool to extract settlements

from legitimate U.S. companies. State laws that introduce conflicting or inconsistent requirements exacerbate this existing problem.

A key concern for businesses is understanding which laws apply to which text messages. The FCC considers real-time location data to be confidential and subject to strict federal rules prohibiting carriers from sharing this sensitive data with third parties, including businesses making calls or sending texts.

This technical impossibility means businesses engaged in nationwide communications lack a reliable and legal means to know where a mobile subscriber is physically located *before* a text message is sent. It is important to understand that relying on area codes to determine which state's laws apply is not a reliable methodology when you extend regulations to mobile phones.

Finally, Mr. Chair, we urge the Committee to reconsider the scope and language of HB 363, particularly concerning its application to consented communications and the penalties involved.

While HB 363 does provide an exception for "Informational calls" relating to a pre-existing business relationship, referring to marketing communications as "informational calls" flies in the face of decades of well-established legal precedent at the federal level. This approach, therefore, will create widespread confusion for businesses across the country.

And, while HB 363 is titled an "An Act Clarifying Telephone Solicitation," unfortunately the draft includes a number of other inconsistencies that raise substantial concerns about how it will be interpreted and applied in litigation, leading to unintended consequences. Therefore, we oppose the current bill and ask the committee to support a more consistent approach that focuses on stopping bad actors rather than exposing legitimate e-commerce businesses that are vital to our economy to the risk of more frivolous litigation.

Thank you for your time and attention to these complex matters.

Sincerely,



G. David Carter