

SENATE BILL 88

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2004 Regular Session
(41r0646)

ENROLLED BILL
-- Finance/Economic Matters --

Introduced by **Senators Frosh, Ruben, and Hooper**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER 437

1 AN ACT concerning

2 **Commercial Law - Maryland Telephone Consumer Protection Act**

3 FOR the purpose of prohibiting a person from violating the federal Telemarketing and
4 Consumer Fraud and Abuse Prevention Act or the federal Telephone Consumer
5 Protection Act; providing that a violation of this Act is an unfair or deceptive
6 trade practice and is subject to certain enforcement actions and penalties;
7 authorizing an individual who is affected by a violation of this Act to bring an
8 action against a violator to recover reasonable attorney's fees and damages in a
9 certain amount; providing that each prohibited telephone solicitation and each
10 prohibited practice during a telephone solicitation is a separate violation of this
11 Act; ~~providing that this Act does not apply to certain telephone calls initiated for~~
12 ~~a charitable organization by certain persons; expressing the intent of the~~
13 ~~General Assembly; defining certain terms; requiring the Office of the Attorney~~
14 ~~General to report to certain committees of the General Assembly on or before a~~
15 ~~certain date on the enforcement of this Act; and generally relating to telephones~~
16 and consumer protection.

17 BY repealing and reenacting, with amendments,

1 Article - Commercial Law
 2 Section 13-301(14)
 3 Annotated Code of Maryland
 4 (2000 Replacement Volume and 2003 Supplement)

5 BY adding to
 6 Article - Commercial Law
 7 Section 14-3201 ~~through 14-3203-14-3204, inclusive, and 14-3202~~ to be under
 8 the new subtitle "Subtitle 32. Maryland Telephone Consumer Protection
 9 Act"
 10 Annotated Code of Maryland
 11 (2000 Replacement Volume and 2003 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article - Commercial Law**

15 13-301.

16 Unfair or deceptive trade practices include any:

- 17 (14) Violation of a provision of:
- 18 (i) This title;
- 19 (ii) An order of the Attorney General or agreement of a party
 20 relating to unit pricing under Title 14, Subtitle 1 of this article;
- 21 (iii) Title 14, Subtitle 2 of this article, the Maryland Consumer Debt
 22 Collection Act;
- 23 (iv) Title 14, Subtitle 3 of this article, the Maryland Door-to-Door
 24 Sales Act;
- 25 (v) Title 14, Subtitle 9 of this article, Kosher Products;
- 26 (vi) Title 14, Subtitle 10 of this article, Automotive Repair Facilities;
- 27 (vii) Section 14-1302 of this article;
- 28 (viii) Title 14, Subtitle 11 of this article, Maryland Layaway Sales
 29 Act;
- 30 (ix) Section 22-415 of the Transportation Article;
- 31 (x) Title 14, Subtitle 20 of this article;

- 1 (xi) Title 14, Subtitle 15 of this article, the Automotive Warranty
 2 Enforcement Act;
- 3 (xii) Title 14, Subtitle 21 of this article;
- 4 (xiii) Section 18-107 of the Transportation Article;
- 5 (xiv) Title 14, Subtitle 22 of this article, the Maryland Telephone
 6 Solicitations Act;
- 7 (xv) Title 14, Subtitle 23 of this article, the Automotive Crash Parts
 8 Act;
- 9 (xvi) Title 10, Subtitle 6 of the Real Property Article;
- 10 (xvii) Title 10, Subtitle 8 of the Real Property Article;
- 11 (xviii) Title 14, Subtitle 25 of this article, the Hearing Aid Sales Act;
- 12 (xix) Title 14, Subtitle 26 of this article, the Maryland Door-to-Door
 13 Solicitations Act;
- 14 (xx) Title 14, Subtitle 31 of this article, the Maryland Household
 15 Goods Movers Act; or

16 (XXI) TITLE 14, SUBTITLE 32 OF THIS ARTICLE, THE MARYLAND
 17 TELEPHONE CONSUMER PROTECTION ACT; OR

18 SUBTITLE 32. MARYLAND TELEPHONE CONSUMER PROTECTION ACT.

19 14-3201.

20 ~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~
 21 ~~INDICATED.~~

22 ~~(B) "CHARITABLE ORGANIZATION" HAS THE MEANING STATED IN § 6-101 OF~~
 23 ~~THE BUSINESS REGULATION ARTICLE.~~

24 ~~(B) (C) "CONSUMER" HAS THE MEANING STATED IN § 13-101 OF THIS~~
 25 ~~ARTICLE.~~

26 ~~(C) (D) "CONSUMER CREDIT", "CONSUMER GOODS", "CONSUMER REALTY",~~
 27 ~~AND "CONSUMER SERVICES" HAVE THE MEANINGS STATED IN § 13-101 OF THIS~~
 28 ~~ARTICLE.~~

29 ~~(D) (E) "DIVISION" MEANS THE DIVISION OF CONSUMER PROTECTION OF~~
 30 ~~THE OFFICE OF THE ATTORNEY GENERAL.~~

31 ~~(E) "PROFESSIONAL SOLICITOR" HAS THE MEANINGS STATED IN § 6-101 OF~~
 32 ~~THE BUSINESS REGULATION ARTICLE.~~

1 ~~(E)~~ ~~(G)~~ "TELEPHONE SOLICITATION" MEANS A TELEPHONE CALL
 2 INITIATED FOR THE PURPOSE OF ENCOURAGING THE SALE, LEASE, RENTAL, LOAN,
 3 OR BAILMENT OF CONSUMER CREDIT, CONSUMER GOODS, CONSUMER REALTY, OR
 4 CONSUMER SERVICES.

5 ~~14-3202.~~

6 ~~THIS SUBTITLE DOES NOT APPLY TO A TELEPHONE CALL INITIATED FOR A~~
 7 ~~CHARITABLE ORGANIZATION BY A PERSON THAT IS NOT A PROFESSIONAL~~
 8 ~~SOLICITOR.~~

9 ~~14-3202. 14-3203.~~

10 A PERSON MAY NOT VIOLATE:

11 (1) THE TELEMARKETING AND CONSUMER FRAUD AND ABUSE
 12 PREVENTION ACT, 15 U.S.C. §§ 6101 THROUGH 6108, AS IMPLEMENTED BY THE
 13 FEDERAL TRADE COMMISSION IN THE TELEMARKETING SALES RULE (16 C.F.R. PART
 14 310); OR

15 (2) THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, AS
 16 IMPLEMENTED BY THE FEDERAL COMMUNICATIONS COMMISSION IN THE
 17 RESTRICTIONS ON TELEMARKETING AND TELEPHONE SOLICITATIONS RULE (~~64~~ 47
 18 C.F.R. PART 64, SUBPART L).

19 ~~14-3203. 14-3204. 14-3202.~~

20 (A) A VIOLATION OF THIS SUBTITLE IS AN UNFAIR OR DECEPTIVE TRADE
 21 PRACTICE WITHIN THE MEANING OF TITLE 13 OF THIS ARTICLE AND IS SUBJECT TO
 22 THE ENFORCEMENT AND PENALTY PROVISIONS CONTAINED IN TITLE 13 OF THIS
 23 ARTICLE.

24 (B) IN ADDITION TO THE REMEDIES PROVIDED IN § 13-408 OF THIS ARTICLE,
 25 AN INDIVIDUAL WHO IS AFFECTED BY A VIOLATION OF THIS SUBTITLE MAY BRING
 26 AN ACTION AGAINST A PERSON THAT VIOLATES THIS SUBTITLE TO RECOVER:

27 (1) REASONABLE ATTORNEY'S FEES; AND

28 (2) DAMAGES IN THE AMOUNT OF THE GREATER OF:

29 (I) \$500 FOR EACH VIOLATION; OR

30 (II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE
 31 VIOLATION.

32 (C) FOR PURPOSES OF THIS SECTION, EACH PROHIBITED TELEPHONE
 33 SOLICITATION AND EACH PROHIBITED PRACTICE DURING A TELEPHONE
 34 SOLICITATION IS A SEPARATE VIOLATION.

35 ~~SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the~~
 36 ~~General Assembly that the Division of Consumer Protection of the Office of the~~

1 ~~Attorney General process and pursue, as authorized in Title 14, Subtitle 32 of the~~
2 ~~Commercial Law Article, as enacted by Section 1 of this Act, only extreme cases of~~
3 ~~violations of the National Do Not Call Registry in an effort to keep investigation and~~
4 ~~enforcement costs minimal or, to the extent possible, within existing resources.~~

5 SECTION 2. AND BE IT FURTHER ENACTED, That the Office of the Attorney
6 General shall report, in accordance with § 2-1246 of the State Government Article, to
7 the Senate Finance Committee and the House Economic Matters Committee on or
8 before July 1, 2005 on the status of enforcement of the provisions of this Act.

9 SECTION ~~2-3.~~ AND BE IT FURTHER ENACTED, That this Act shall take
10 effect June 1, 2004.