

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1228
Economic Matters

(Delegate Stewart)

Finance

Consumer Protection - Telephone Solicitation - Exemptions and Remedies

This emergency bill establishes that certain provisions that prohibit a person from making (or causing to make) a telephone solicitation that involves (1) an automated system for selection or dialing of telephone numbers or (2) the playing of a recorded message when a connection is completed to the number called do not apply to a noncommercial telephone solicitation for the purpose of public opinion research. Additionally, the bill establishes that the requirements and remedies provided under the State’s telephone solicitations law (Title 14, Subtitle 45 of the Commercial Law Article) may not be waived by an agreement, unless the agreement is part of a settlement of a legal dispute or action. However, an agreement may establish more extensive requirements or remedies than those established under State law. Pursuant to existing statute, a violation of Title 14, Subtitle 45 of the Commercial Law Article is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions. Finally, the bill authorizes a “called party” who is aggrieved by a person in violation of Title 14, Subtitle 45 to bring an action in accordance with a specified provision of MCPA to enjoin further violations and recover damages of up to \$500 or actual damages, whichever is greater; however, on a finding of a willful or knowing violation, the court may award damages up to three times of the applicable amount.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations.

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

Current Law: A “telephone solicitation” is an organized activity, program, or campaign to communicate by telephone with residents of the State in order to:

- sell, lease, or rent goods or services (or attempt to do so);
- offer (or attempt to offer) a gift or prize;
- conduct (or attempt to conduct) a poll; or
- request (or attempt to request) survey information, if the results of the survey will be used directly to solicit persons to purchase, lease, or rent goods or services.

A telephone solicitation includes the act of managing, directing, or supervising an individual engaged in telephone solicitation. A “called party” means a person who is a regular user of a telephone number that receives a telephone solicitation.

Chapters 413 and 414 of 2023 specify that, unless prior express written consent is provided by the called party, a person is prohibited from making (or causing to be made) a telephone solicitation that involves (1) an automated system for the selection or dialing of telephone numbers or (2) the playing of a recorded message when a connection is completed to the number called. Chapters 413 and 414 also restrict the methods, times, and identifying information that a solicitor may utilize and establishes a rebuttable presumption that a telephone solicitation made to any area code in the State is made to a resident (or a person) who is reasonably presumed to reside or have a place of business in the State at the time the call is made. Certain entities and circumstances are not subject to these requirements. For example, Chapters 413 and 414 do not apply to:

- a telephone solicitation that is an isolated transaction and not performed in the course of a pattern of repeated transactions of a similar nature;
- a noncommercial telephone solicitation for religious, charitable, political, or educational purposes, as specified;
- certain business-to-business sales; or
- a person who solicits contracts for the maintenance or repair of goods previously purchased from the person making the solicitation (or on whose behalf the solicitation is made).

A violation under the Acts is an unfair, abusive, or deceptive trade practice under MCPA, subject to MCPA’s civil and criminal penalty provisions.

Additionally, the requirements of Chapters 413 and 414 do not preclude the applicability of specified provisions of the Public Utilities Article relating to telephone solicitations and automated dialing.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Public Service Commission; Department of Legislative Services

Fiscal Note History: First Reader - March 1, 2024
km/jkb Third Reader - March 26, 2024
 Revised - Amendment(s) - March 26, 2024

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