
By: **Delegate Barve**

Introduced and read first time: February 11, 1999

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation - Unsolicited Electronic Mail Advertisements**

3 FOR the purpose of prohibiting certain electronic, telephonic, or wireless
4 transmissions to an electronic mail device for the purpose of a commercial
5 solicitation; authorizing certain persons to recover certain damages and civil
6 penalties under certain circumstances; authorizing a court to award attorney's
7 fees and court costs under certain circumstances; defining certain terms;
8 providing for venue; and generally relating to transmissions to an electronic
9 mail device for the purpose of commercial solicitation.

10 BY adding to

11 Article - Business Regulation

12 Section 19-103

13 Annotated Code of Maryland

14 (1998 Replacement Volume)

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

17 **Article - Business Regulation**

18 19-103.

19 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
20 INDICATED.

21 (2) "ADVERTISEMENT" MEANS A MESSAGE SOLICITING THE SALE OF
22 GOODS OR SERVICES, SOLICITING A CONTRIBUTION, OR OTHERWISE SEEKING THE
23 MONETARY BENEFIT FOR THE PERSON WHO INITIATED THE MESSAGE OR ON WHOSE
24 BEHALF THE MESSAGE IS INITIATED.

25 (3) "INTERNET" MEANS THE NONPROPRIETARY NONPROFIT
26 COOPERATIVE PUBLIC COMPUTER NETWORK, POPULARLY KNOWN AS THE
27 INTERNET.

28 (4) "TELECOMMUNICATION" MEANS:

1 (I) A TELEPHONE CALL, INCLUDING A CALL MADE BY AN
2 AUTOMATED DIALING ANNOUNCING DEVICE;

3 (II) A TRANSMISSION TO OR FROM A FACSIMILE DEVICE OR OTHER
4 TELECOPIER; OR

5 (III) A COMMUNICATION MADE OVER THE INTERNET OR A SIMILAR
6 PUBLIC COMPUTER NETWORK.

7 (B) A PERSON MAY NOT INITIATE A TELECOMMUNICATION FOR THE
8 DELIVERY OF AN ADVERTISEMENT IF THE DELIVERY CAUSES THE RECIPIENT OF THE
9 ADVERTISEMENT OR A SERVICE PROVIDER WHO STORES OR TRANSFERS THE
10 ADVERTISEMENT TO INCUR A FEE, EXPENSE, OR OTHER DAMAGES.

11 (C) IT IS A DEFENSE TO AN ACTION UNDER THIS SECTION THAT THE
12 PLAINTIFF, IN WRITING OR ELECTRONIC FORMAT, REQUESTED OR CONSENTED TO
13 THE INITIATION OF THE TELECOMMUNICATION.

14 (D) A PERSON DAMAGED BY A VIOLATION OF SUBSECTION (B) OF THIS
15 SECTION MAY BRING AN ACTION AGAINST THE PERSON WHO INITIATED THE
16 TELECOMMUNICATION FOR ONE OR MORE OF THE FOLLOWING:

17 (1) AN INJUNCTION;

18 (2) DAMAGES IN THE AMOUNT PROVIDED IN SUBSECTION (E) OF THIS
19 SECTION;

20 (3) RESTITUTION OF ANY PROPERTY ACQUIRED AS A RESULT OF THE
21 VIOLATION;

22 (4) COURT COSTS AND REASONABLE ATTORNEY'S FEES; AND

23 (5) ANY OTHER RELIEF THE COURT CONSIDERS PROPER.

24 (E) A PLAINTIFF PREVAILING IN AN ACTION FOR DAMAGES UNDER THIS
25 SECTION IS ENTITLED TO THE GREATER OF \$500 FOR EACH VIOLATION OR THE
26 PERSON'S ACTUAL DAMAGES, EXCEPT THAT:

27 (1) IF THE TRIER OF FACT FINDS THAT THE DEFENDANT COMMITTED
28 THE VIOLATION KNOWINGLY, THE PLAINTIFF IS ENTITLED TO THE GREATER OF
29 \$1,500 FOR EACH VIOLATION OR THREE TIMES THE PERSON'S ACTUAL DAMAGES; OR

30 (2) IF THE TRIER OF FACT FINDS THAT THE DEFENDANT COMMITTED
31 THE VIOLATION INTENTIONALLY, THE PLAINTIFF IS ENTITLED TO THE GREATER OF
32 \$3,000 FOR EACH VIOLATION OR SIX TIMES THE PERSON'S ACTUAL DAMAGES.

33 (F) IF THE COURT FINDS THAT AN ACTION BROUGHT UNDER THIS SECTION IS
34 BROUGHT FOR THE PURPOSE OF HARASSMENT OR IS GROUNDLESS AND OTHERWISE
35 BROUGHT IN BAD FAITH, THE DEFENDANT IS ENTITLED TO RECOVER COURT COSTS
36 AND REASONABLE ATTORNEY'S FEES.

1 (G) FAILURE OF A DEFENDANT TO SATISFY A JUDGMENT AGAINST THE
2 DEFENDANT UNDER THIS SECTION BEFORE THE EXPIRATION OF 3 MONTHS AFTER
3 THE DATE OF THE JUDGMENT IS FINAL IS GROUNDS FOR REVOCATION OF THE
4 DEFENDANT'S LICENSE OR OTHER AUTHORITY TO DO BUSINESS IN THIS STATE OR
5 FOR APPOINTMENT OF A RECEIVER TO TAKE OVER THE DEFENDANT'S AFFAIRS. THE
6 REVOCATION MUST BE MADE BY:

7 (1) AN AGENCY AUTHORIZED TO MAKE SUCH REVOCATION OR
8 APPOINTMENT; OR

9 (2) IF NO AGENCY HAS AUTHORITY TO MAKE SUCH REVOCATION OR
10 APPOINTMENT, AN ORDER OF THE COURT THAT RENDERED THE JUDGMENT.

11 (H) THE COST OF ANY RECEIVERSHIP UNDER THIS SECTION SHALL BE PAID
12 BY THE DEFENDANT.

13 (I) THIS SECTION APPLIES TO A TELECOMMUNICATION FOR THE DELIVERY
14 OF AN ADVERTISEMENT REGARDLESS OF WHETHER THE PERSON INITIATING THE
15 TELECOMMUNICATION RESIDES IN THIS STATE OR THE TELECOMMUNICATION IS
16 INITIATED IN THIS STATE, IF THE PERSON WHO INITIATES THE
17 TELECOMMUNICATION KNOWS, OR WITH REASONABLE DILIGENCE SHOULD KNOW
18 THAT THE RECIPIENT OF THE ADVERTISEMENT OR A SERVICE PROVIDER STORING
19 OR TRANSFERRING THE ADVERTISEMENT IS A RESIDENT OF THIS STATE.

20 (J) IN ADDITION TO VENUE OTHERWISE PROVIDED BY LAW, AN ACTION
21 UNDER THIS SECTION MAY BE BROUGHT IN THE COUNTY IN WHICH:

22 (1) THE PLAINTIFF RESIDES; OR

23 (2) THE TELECOMMUNICATION IS INITIATED.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 1999.