
By: **Senator Roesser**

Introduced and read first time: February 5, 1999

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Telephone Solicitations - Regulations**

3 FOR the purpose of requiring the Public Service Commission, by a certain date, to
4 establish and provide for the operation of a database of residential subscribers
5 who object to receiving certain telephone solicitations; requiring under certain
6 circumstances a person that makes telephone solicitations to buy the database;
7 requiring the Public Service Commission to adopt certain regulations relating to
8 the establishment and operation of the database; prohibiting the telephone
9 solicitation of residential subscribers under certain circumstances; providing
10 that a certain person may bring a certain action and recover certain damages
11 and attorneys' fees; providing a limitation on when certain actions can be
12 brought; under certain circumstances making a violation of this Act an unfair
13 and deceptive trade practice and, under certain circumstances, a violation of the
14 Maryland Credit Services Businesses Act; providing a defense for certain
15 actions; providing for the incorporation of certain names from a certain database
16 into the database created by this Act; defining certain terms; and generally
17 relating to telephone solicitations and the creation of a database for residential
18 subscribers who object to receiving telephone solicitations.

19 BY repealing and reenacting, with amendments,
20 Article - Commercial Law
21 Section 14-2201
22 Annotated Code of Maryland
23 (1990 Replacement Volume and 1998 Supplement)

24 BY repealing
25 Article - Commercial Law
26 Section 14-2205
27 Annotated Code of Maryland
28 (1990 Replacement Volume and 1998 Supplement)

29 BY adding to
30 Article - Commercial Law
31 Section 14-2205 and 14-2206

1 Annotated Code of Maryland
2 (1990 Replacement Volume and 1998 Supplement)

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

5 **Article - Commercial Law**

6 14-2201.

7 (a) In this subtitle the following words have the meanings indicated.

8 (b) "Consumer" means an actual or prospective purchaser, lessee, or recipient
9 of consumer goods, consumer services, or consumer realty.

10 (c) (1) "Consumer goods", "consumer realty", and "consumer services" mean,
11 respectively, goods, real property, and services which are primarily for personal,
12 household, family, or agricultural purposes.

13 (2) (i) Subject to subparagraph (ii) of this paragraph, "consumer
14 services" does not include financial services or securities sales.

15 (ii) "Consumer services" includes any solicitation offering credit
16 services where:

17 1. The consumer is required to call a telephone number;

18 2. The consumer is charged a separate toll fee for the call;
19 and

20 3. The person making the solicitation receives any portion of
21 the separate telephone toll fee paid by the consumer.

22 (d) "Credit services" means providing or offering to provide any service in
23 return for the payment of money or other consideration, where the service is held out
24 to provide assistance to a consumer with regard to:

25 (1) Improving the consumer's credit history, credit rating, or credit
26 record; or

27 (2) Obtaining an extension of credit for the consumer.

28 (e) (1) "Merchant" means a person who, directly or indirectly, offers or
29 makes available to consumers any consumer goods, consumer services, or consumer
30 realty.

31 (2) "Merchant" does not include a person who is exempt under § 13-104
32 of this article.

1 (F) "RESIDENTIAL SUBSCRIBER" MEANS A PERSON OR ANY OTHER
2 INDIVIDUALS RESIDING WITH THE PERSON WHO HAVE SUBSCRIBED TO
3 RESIDENTIAL TELEPHONE SERVICE FROM A LOCAL EXCHANGE COMPANY.

4 [(f)] (G) (1) "Telephone solicitation" means [the attempt by a merchant to
5 sell or lease consumer goods, services, or realty to a consumer located in this State
6 that is:

7 (1) Made entirely by telephone; and

8 (2) Initiated by the merchant] ANY VOICE COMMUNICATION OVER A
9 TELEPHONE LINE FOR THE PURPOSE OF ENCOURAGING THE PURCHASE OR RENTAL
10 OF, OR INVESTMENT IN, PROPERTY, GOODS, OR SERVICES.

11 (2) "TELEPHONE SOLICITATION" DOES NOT INCLUDE A TELEPHONE
12 SOLICITATION MADE BY A PERSON:

13 (I) BASED ON:

14 1. PRIOR NEGOTIATIONS WITH THE RESIDENTIAL
15 SUBSCRIBER; OR

16 2. AN INQUIRY BY THE RESIDENTIAL SUBSCRIBER; OR

17 (II) IF THE PERSON:

18 1. HAS MADE A PREVIOUS SALE OR LEASE TO THE
19 RESIDENTIAL SUBSCRIBER; OR

20 2. HAS A PREEXISTING BUSINESS RELATIONSHIP WITH THE
21 RESIDENTIAL SUBSCRIBER.

22 [14-2205.

23 In addition to any remedies otherwise available at law, a violation of this
24 subtitle shall be:

25 (1) An unfair and deceptive trade practice under Title 13, Subtitle 3 of
26 this article; and

27 (2) If the violation involves a solicitation offering credit services, a
28 violation of the Maryland Credit Services Businesses Act.]

29 14-2205.

30 (A) (1) THE PUBLIC SERVICE COMMISSION SHALL ESTABLISH AND PROVIDE
31 FOR THE OPERATION OF A DATABASE TO COMPILE A LIST OF TELEPHONE NUMBERS
32 OF RESIDENTIAL SUBSCRIBERS WHO OBJECT TO RECEIVING TELEPHONE
33 SOLICITATIONS.

1 (2) THE PUBLIC SERVICE COMMISSION SHALL HAVE THE DATABASE IN
2 OPERATION NO LATER THAN JANUARY 1, 2000.

3 (3) THE PUBLIC SERVICE COMMISSION SHALL ADOPT REGULATIONS
4 THAT:

5 (I) REQUIRE EACH LOCAL EXCHANGE COMPANY TO INFORM ITS
6 RESIDENTIAL SUBSCRIBERS OF THE OPPORTUNITY TO PROVIDE TO THE PUBLIC
7 SERVICE COMMISSION A NOTICE OF OBJECTION INDICATING THAT THE
8 RESIDENTIAL SUBSCRIBER OBJECTS TO RECEIVING TELEPHONE SOLICITATIONS;

9 (II) SPECIFY THE METHODS BY WHICH A RESIDENTIAL
10 SUBSCRIBER MAY:

11 1. GIVE TO THE PUBLIC SERVICE COMMISSION A NOTICE OF
12 OBJECTION TO RECEIVING TELEPHONE SOLICITATIONS; OR

13 2. REVOKE A NOTICE OF OBJECTION;

14 (III) SPECIFY THE LENGTH OF TIME A NOTICE OF OBJECTION SHALL
15 BE EFFECTIVE AND THE EFFECT OF A CHANGE OF TELEPHONE NUMBER ON THE
16 NOTICE;

17 (IV) SPECIFY THE METHODS BY WHICH A PERSON DESIRING TO
18 MAKE TELEPHONE SOLICITATIONS CAN OBTAIN ACCESS TO THE DATABASE, AS
19 REQUIRED UNDER SUBSECTION (B) OF THIS SECTION, TO AVOID CALLING THE
20 TELEPHONE NUMBERS OF RESIDENTIAL SUBSCRIBERS INCLUDED IN THE
21 DATABASE;

22 (V) SPECIFY THE FEE THAT A PERSON MUST PAY TO OBTAIN A
23 COPY OF THE DATABASE OF RESIDENTIAL SUBSCRIBERS WHO OBJECT TO RECEIVING
24 TELEPHONE SOLICITATIONS; AND

25 (VI) SPECIFY OTHER MATTERS RELATING TO THE DATABASE THAT
26 THE ATTORNEY GENERAL DEEMS DESIRABLE.

27 (B) ANY PERSON DESIRING TO MAKE TELEPHONE SOLICITATIONS TO
28 RESIDENTIAL SUBSCRIBERS IN THE STATE SHALL PURCHASE FROM THE PUBLIC
29 SERVICE COMMISSION THE DATABASE OF RESIDENTIAL SUBSCRIBERS WHO OBJECT
30 TO RECEIVING TELEPHONE SOLICITATIONS.

31 (C) A PERSON MAY NOT MAKE OR CAUSE TO BE MADE ANY TELEPHONE
32 SOLICITATION TO A RESIDENTIAL SUBSCRIBER IN THE STATE WHO HAS GIVEN
33 NOTICE TO THE PUBLIC SERVICE COMMISSION, IN ACCORDANCE WITH
34 REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS SECTION, OF THE
35 RESIDENTIAL SUBSCRIBER'S OBJECTION TO RECEIVING TELEPHONE
36 SOLICITATIONS.

37 (D) (1) A PERSON WHO MAKES A TELEPHONE SOLICITATION TO A
38 RESIDENTIAL SUBSCRIBER IN THE STATE SHALL STATE CLEARLY THE IDENTITY OF

1 THE PERSON INITIATING THE CALL AT THE BEGINNING OF THE TELEPHONE
2 SOLICITATION.

3 (2) A PERSON WHO MAKES A TELEPHONE SOLICITATION TO A
4 RESIDENTIAL SUBSCRIBER IN THE STATE MAY NOT KNOWINGLY UTILIZE ANY
5 METHOD TO BLOCK OR OTHERWISE CIRCUMVENT THE RESIDENTIAL SUBSCRIBER'S
6 USE OF A CALLER IDENTIFICATION SERVICE.

7 (E) (1) THE USE OF AUTOMATED DIALING, PUSH BUTTON, OR TONE
8 ACTIVATED DEVICES THAT OPERATE SEQUENTIALLY OR ARE OTHERWISE UNABLE
9 TO AVOID CONTACTING RESIDENTIAL SUBSCRIBERS WHO ARE IN THE DATABASE OF
10 RESIDENTIAL SUBSCRIBERS WHO OBJECT TO RECEIVING TELEPHONE
11 SOLICITATIONS IS PRIMA FACIE EVIDENCE OF AN INTENTION TO VIOLATE THIS
12 SECTION.

13 (2) THIS SECTION DOES NOT PROHIBIT THE USE OF AUTOMATED
14 DIALING EQUIPMENT FOR THE PURPOSE OF ADVISING CUSTOMERS CONCERNING
15 MERCHANDISE OR GOODS OR SERVICES PREVIOUSLY ORDERED.

16 (F) ANY PERSON RECEIVING A TELEPHONE CALL IN VIOLATION OF
17 SUBSECTION (C) OF THIS SECTION MAY BRING AN ACTION TO RECOVER \$1,000 OR
18 ACTUAL DAMAGES, WHICHEVER IS GREATER, TOGETHER WITH REASONABLE
19 ATTORNEYS' FEES.

20 (G) A PERSON MAY NOT BRING AN ACTION UNDER SUBSECTION (F) OF THIS
21 SECTION AFTER THE LATER OF:

22 (1) 2 YEARS AFTER THE PERSON KNEW OR SHOULD HAVE KNOWN OF
23 THE ALLEGED VIOLATION OF SUBSECTION (C) OF THIS SECTION; OR

24 (2) 2 YEARS AFTER THE TERMINATION OF ANY PROCEEDING OR ACTION
25 BY THE STATE.

26 (H) IT SHALL BE A DEFENSE IN ANY ACTION OR PROCEEDING BROUGHT
27 UNDER SUBSECTION (C) OR (F) OF THIS SECTION OR § 14-2206 OF THIS SUBTITLE
28 THAT THE DEFENDANT HAS ESTABLISHED AND IMPLEMENTED, WITH DUE CARE,
29 REASONABLE PRACTICES AND PROCEDURES TO EFFECTIVELY PREVENT TELEPHONE
30 SOLICITATIONS IN VIOLATION OF THIS SECTION.

31 (I) IF, PURSUANT TO 47 U.S.C. § 227(C)(3), THE FEDERAL COMMUNICATION
32 COMMISSION ESTABLISHES A SINGLE NATIONAL DATABASE OF TELEPHONE
33 NUMBERS OF RESIDENTIAL SUBSCRIBERS WHO OBJECT TO RECEIVING TELEPHONE
34 SOLICITATIONS, THE PUBLIC SERVICE COMMISSION SHALL INCLUDE INFORMATION
35 IN THE SINGLE NATIONAL DATABASE THAT RELATES TO MARYLAND IN THE
36 DATABASE ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION.

37 14-2206.

38 IN ADDITION TO ANY REMEDIES OTHERWISE AVAILABLE AT LAW, A VIOLATION
39 OF THIS SUBTITLE SHALL BE:

1 (1) AN UNFAIR AND DECEPTIVE TRADE PRACTICE UNDER TITLE 13,
2 SUBTITLE 3 OF THIS ARTICLE; AND

3 (2) IF THE VIOLATION INVOLVES A SOLICITATION OFFERING CREDIT
4 SERVICES, A VIOLATION OF THE MARYLAND CREDIT SERVICES BUSINESSES ACT.

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