

SENATE BILL 185

Unofficial Copy
C5

2000 Regular Session
01r1127
CF 01r1902

By: **Senators Roesser, Dorman, Baker, Green, Munson, Hooper, Astle,
Jacobs, Della, Kelley, and Ferguson**

Introduced and read first time: January 24, 2000

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Telecommunications - Telephone Solicitations - Regulation**

3 FOR the purpose of requiring the Public Service Commission to create, maintain, and
4 update a database of residential telephone subscribers in the State who choose
5 not to receive telephone solicitations; authorizing the Commission to contract
6 with another entity to create and operate the database; requiring the database
7 to be in operation on or before a certain date; requiring the Commission to issue
8 an order or adopt certain regulations relating to notice of the database, fees to be
9 charged for use of and inclusion in the database, access to the database,
10 inclusion in the database, and other matters; requiring a person who intends to
11 engage in telephone solicitation to purchase the updated version of the
12 database; prohibiting a person who engages in telephone solicitation from
13 soliciting or causing a solicitation to a listed residential telephone subscriber;
14 requiring the Commission to make the database available to persons engaged in
15 telephone solicitation at a certain time; limiting the use of the information
16 contained in the database; authorizing certain legal action against a person
17 engaged in telephone solicitation for a violation of this Act and authorizing the
18 recovery of certain damages and fees; providing a limitation on legal action;
19 providing for a certain affirmative defense against a legal action; requiring the
20 Public Service Commission to provide certain information relating to the
21 information in the database for inclusion in any database established under
22 federal law; providing that a violation of this Act is an unfair and deceptive
23 trade practice and may be a violation of the State Credit Services Businesses Act
24 under certain circumstances; providing for the application of this Act; providing
25 for certain exceptions to the Act; defining certain terms and redefining a certain
26 term; requiring that the Public Service Commission and the State Attorney
27 General make certain reports to certain committees of the General Assembly by
28 certain dates; and generally relating to the establishment, updating,
29 maintenance, and use of a database of residential telephone subscribers for
30 purposes of limiting and regulating telephone solicitations in the State.

31 BY repealing and reenacting, with amendments,
32 Article - Commercial Law
33 Section 14-2201 and 14-2202

1 Annotated Code of Maryland
2 (1990 Replacement Volume and 1999 Supplement)

3 BY repealing and reenacting, without amendments,
4 Article - Commercial Law
5 Section 14-2203 and 14-2204
6 Annotated Code of Maryland
7 (1990 Replacement Volume and 1999 Supplement)

8 BY repealing
9 Article - Commercial Law
10 Section 14-2205
11 Annotated Code of Maryland
12 (1990 Replacement Volume and 1999 Supplement)

13 BY adding to
14 Article - Commercial Law
15 Section 14-2205 and 14-2206
16 Annotated Code of Maryland
17 (1990 Replacement Volume and 1999 Supplement)

18 Preamble

19 WHEREAS, Due to the increased use of cost-effective telemarketing
20 techniques, the telephone is now used pervasively to market goods and services to
21 residential telephone subscribers; and

22 WHEREAS, Over 30,000 businesses actively telemarket goods and services to
23 business and residential customers; and

24 WHEREAS, Every day, over 300,000 solicitors place calls to more than 18
25 million Americans, including citizens of this State; and

26 WHEREAS, Telemarketing can be an intrusive and relentless invasion of the
27 privacy and peacefulness of the home; and

28 WHEREAS, Many citizens of this State are outraged over the proliferation of
29 nuisance calls to their homes from telemarketers; and

30 WHEREAS, Commercial freedom of speech must be balanced against the
31 privacy rights of individuals to accommodate both those privacy rights and the right
32 of businesses to engage in legitimate telemarketing practices; and

33 WHEREAS, The federal Telephone Consumer Protection Act governs
34 telephone solicitation in several ways, including allowing calls only between 8 a.m.
35 and 9 p.m. and requiring companies that telemarket to maintain an internal list of

1 consumers who have asked that they not be called, with each residential telephone
2 subscriber's name required to be kept on the list for 10 years; and

3 WHEREAS, It is in the public interest to establish a mechanism under which
4 the individual citizens of this State can decide whether or not to receive
5 telemarketing calls in their homes; and

6 WHEREAS, Other states, including Georgia and Florida, have established as
7 their mechanism a statewide database of telephone numbers of those residential
8 telephone subscribers who do not wish to receive telephone solicitations and who
9 telemarketers are prohibited from calling; now, therefore,

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

12 **Article - Commercial Law**

13 14-2201.

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

15 (B) "COMMISSION" MEANS THE PUBLIC SERVICE COMMISSION.

16 [(b)] (C) "Consumer" means an actual or prospective purchaser, lessee, or
17 recipient of consumer goods, consumer services, or consumer realty.

18 [(c)] (D) (1) "Consumer goods", "consumer realty", and "consumer services"
19 mean, respectively, goods, real property, and services which are primarily for
20 personal, household, family, or agricultural purposes.

21 (2) (i) [Subject] IN §§ 14-2203 AND 14-2204 OF THIS SUBTITLE, AND
22 SUBJECT to subparagraph (ii) of this paragraph, "consumer services" does not include
23 financial services or securities sales.

24 (ii) "Consumer services" includes any solicitation offering credit
25 services where:

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

27 2. The consumer is charged a separate toll fee for the call;

28 and

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

31 [(d)] (E) "Credit services" means providing or offering to provide any service in
32 return for the payment of money or other consideration, where the service is held out
33 to provide assistance to a consumer with regard to:

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

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

4 (F) "DATABASE" MEANS A LIST CONSISTING SOLELY OF THE TELEPHONE
5 NUMBERS OF MARYLAND RESIDENTIAL SUBSCRIBERS WHO DO NOT WISH TO
6 RECEIVE TELEPHONE SOLICITATIONS.

7 [(e)] (G) (1) "Merchant" means a person who, directly or indirectly, offers or
8 makes available to consumers any consumer goods, consumer services, or consumer
9 realty.

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

12 (H) "RESIDENTIAL SUBSCRIBER" MEANS:

13 (1) AN INDIVIDUAL WHO HAS SUBSCRIBED TO RESIDENTIAL
14 TELEPHONE SERVICE FROM A LOCAL EXCHANGE COMPANY; AND

15 (2) ANY INDIVIDUAL WHO RESIDES WITH THE SUBSCRIBER.

16 [(f)] (I) "Telephone solicitation" means [the attempt by a merchant to sell or
17 lease consumer goods, services, or realty to a consumer located in this State that is:

18 (1) Made entirely by telephone; and

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

22 14-2202.

23 (a) [The provisions of this] SECTIONS 14-2203 AND 14-2204 OF THIS subtitle do
24 not apply to a transaction:

25 (1) Made in accordance with prior negotiations in the course of a visit by
26 the consumer to a merchant operating a retail business establishment which has a
27 fixed permanent location and where consumer goods are displayed or offered for sale
28 on a continuing basis;

29 (2) In which the person making the solicitation or the business
30 enterprise for which the person is calling:

31 (i) Has made a previous sale to the consumer; or

32 (ii) Has a preexisting business relationship with the consumer;

33 (3) Which is covered by the provisions of Subtitle 3 of this title;

1 (4) In which:

2 (i) The consumer may obtain a full refund for the return of
3 undamaged and unused goods to the seller within 7 days of receipt by the consumer;
4 and

5 (ii) The seller will process the refund within 30 days of receipt of
6 the returned merchandise by the consumer;

7 (5) In which the consumer purchases goods or services pursuant to an
8 examination of a television, radio, or print advertisement or a sample, brochure,
9 catalogue, or other mailing material of the merchant that contains:

10 (i) The name, address, and telephone number of the merchant;

11 (ii) A description of the goods or services being sold; and

12 (iii) Any limitations or restrictions that apply to the offer; or

13 (6) In which the merchant is a bona fide charitable organization as
14 defined in § 6-101 of the Business Regulation Article.

15 (b) Notwithstanding subsection (a) of this section, this subtitle applies to any
16 solicitation offering credit 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; and

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

21 14-2203.

22 (a) A contract made pursuant to a telephone solicitation is not valid and
23 enforceable against a consumer unless made in compliance with this subtitle.

24 (b) A contract made pursuant to a telephone solicitation:

25 (1) Shall be reduced to writing and signed by the consumer;

26 (2) Shall comply with all other applicable laws and regulations;

27 (3) Shall match the description of goods or services as that principally
28 used in the telephone solicitation;

29 (4) Shall contain the name, address, and telephone number of the seller,
30 the total price of the contract, and a detailed description of the goods or services being
31 sold;

1 (5) Shall contain, in at least 12 point type, immediately preceding the
2 signature, the following statement:

3 "You are not obligated to pay any money unless you sign this contract and return
4 it to the seller."; and

5 (6) May not exclude from its terms any oral or written representations
6 made by the merchant to the consumer in connection with the transaction.

7 14-2204.

8 A merchant engaging in a telephone solicitation may not make or submit any
9 charge to the consumer's credit account until after the merchant receives from the
10 consumer a copy of the contract which complies with this subtitle.

11 [14-2205.

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

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

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

18 14-2205.

19 (A) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO A TELEPHONE
20 SOLICITATION THAT IS:

21 (1) MADE BY A PERSON TO A RESIDENTIAL SUBSCRIBER IF:

22 (I) THE PERSON IS RESPONDING TO AN EXPRESS REQUEST OR
23 INQUIRY BY THE RESIDENTIAL SUBSCRIBER;

24 (II) THE RESIDENTIAL SUBSCRIBER GAVE PRIOR EXPRESS
25 PERMISSION FOR THE PERSON TO MAKE THE TELEPHONE SOLICITATION;

26 (III) THE CALL IS DIRECTLY CONNECTED WITH CONSUMER GOODS
27 OR SERVICES PURCHASED BY THE RESIDENTIAL SUBSCRIBER AND IS MADE WITHIN 6
28 MONTHS OF THE DATE OF PURCHASE; OR

29 (IV) THE CALL IS DIRECTLY CONNECTED WITH AN ON-GOING OR
30 MONTHLY CONSUMER SERVICE CONTRACT BETWEEN THE CALLER AND THE
31 RESIDENTIAL SUBSCRIBER THAT HAS NOT EXPIRED OR BEEN TERMINATED;

32 (2) MADE BY OR ON BEHALF OF A CHARITABLE ORGANIZATION, AS
33 DEFINED IN § 6-101 OF THE BUSINESS REGULATION ARTICLE;

1 (3) LIMITED TO SOLICITING THE EXPRESSION OF IDEAS, OPINIONS, OR
2 VOTES; OR

3 (4) MADE TO A BUSINESS.

4 (B) (1) (I) THE COMMISSION SHALL ESTABLISH AND PROVIDE FOR THE
5 CREATION AND OPERATION OF A DATABASE THAT CONSISTS SOLELY OF TELEPHONE
6 NUMBERS OF MARYLAND RESIDENTIAL SUBSCRIBERS WHO DO NOT WISH TO
7 RECEIVE TELEPHONE SOLICITATIONS.

8 (II) THE COMMISSION SHALL UPDATE THE DATABASE EVERY
9 THREE MONTHS.

10 (III) THE COMMISSION MAY CONTRACT WITH ANOTHER ENTITY
11 THAT SUBMITS A COMPETITIVE BID TO CREATE, OPERATE, AND UPDATE THE
12 DATABASE.

13 (2) FOR THE PURPOSES OF SUBSECTION (D) OF THIS SECTION, THE
14 COMMISSION SHALL MAKE EACH UPDATE TO THE DATABASE AVAILABLE TO
15 PERSONS ENGAGED IN TELEPHONE SOLICITATION AT A REASONABLE TIME PRIOR TO
16 THE EFFECTIVE DATE OF THE UPDATE.

17 (3) THE COMMISSION SHALL CREATE AND HAVE THE DATABASE IN
18 OPERATION ON OR BEFORE JANUARY 1, 2001.

19 (C) THE COMMISSION SHALL ISSUE AN ORDER OR ADOPT REGULATIONS TO:

20 (1) SPECIFY THE METHODS BY WHICH RESIDENTIAL SUBSCRIBERS ARE
21 TO BE INFORMED OF THE OPPORTUNITY TO FILE A NOTICE WITH THE COMMISSION
22 REQUESTING THAT THE RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER BE
23 ADDED TO THE DATABASE, INCLUDING:

24 (I) REQUIRING EACH LOCAL EXCHANGE COMPANY TO INFORM ITS
25 RESIDENTIAL SUBSCRIBERS; AND

26 (II) USING PUBLIC SERVICE ANNOUNCEMENTS, MAILINGS, OR
27 OTHER MEANS;

28 (2) SPECIFY THE METHODS BY WHICH A RESIDENTIAL SUBSCRIBER IS
29 TO BE INFORMED ABOUT THE TYPES OF CALLS THAT ARE EXEMPT FROM THIS
30 SECTION;

31 (3) SPECIFY THE METHODS BY WHICH A RESIDENTIAL SUBSCRIBER
32 WHO FILES A NOTICE IS INFORMED ABOUT THE EFFECTIVE DATE OF THE DATABASE
33 AND EACH UPDATE TO THE DATABASE THAT WILL CONTAIN THE RESIDENTIAL
34 SUBSCRIBER'S TELEPHONE NUMBER;

35 (4) SPECIFY THE METHODS BY WHICH A RESIDENTIAL SUBSCRIBER
36 MAY:

1 (I) FILE AN INITIAL NOTICE WITH THE COMMISSION THAT ADDS
2 THE RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER TO THE DATABASE;

3 (II) FILE A CANCELLATION NOTICE WITH THE COMMISSION THAT
4 DELETES THE RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER FROM THE
5 DATABASE; AND

6 (III) FILE A RENEWAL NOTICE WITH THE COMMISSION THAT
7 CONTINUES THE RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER ON THE
8 DATABASE;

9 (5) SPECIFY THE LENGTH OF TIME THAT AN INITIAL NOTICE AND A
10 RENEWAL NOTICE WILL REMAIN EFFECTIVE;

11 (6) WHERE A RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER
12 CHANGES, SPECIFY THE EFFECT THE CHANGE WILL HAVE ON THE RESIDENTIAL
13 SUBSCRIBER'S LISTING ON THE DATABASE;

14 (7) SPECIFY THE FEES THAT A RESIDENTIAL SUBSCRIBER MUST PAY TO
15 THE COMMISSION WHEN FILING AN INITIAL NOTICE AND A RENEWAL NOTICE WITH
16 THE COMMISSION;

17 (8) SPECIFY WHETHER AND UNDER WHAT CIRCUMSTANCES THE FEES
18 SPECIFIED IN PARAGRAPH (7) OF THIS SUBSECTION MAY BE REDUCED OR WAIVED
19 FOR A RESIDENTIAL SUBSCRIBER WHO SHOWS THAT THE PAYMENT OF THE FEES
20 WOULD CAUSE AN UNDUE ECONOMIC HARDSHIP;

21 (9) SPECIFY THE METHODS BY WHICH A PERSON INTENDING TO MAKE A
22 TELEPHONE SOLICITATION CAN OBTAIN ACCESS TO THE LATEST UPDATED VERSION
23 OF THE DATABASE;

24 (10) SPECIFY THE FEES THAT A PERSON MUST PAY TO THE COMMISSION
25 TO OBTAIN A COPY OF THE LATEST UPDATED VERSION OF THE DATABASE; AND

26 (11) SPECIFY OTHER MATTERS RELATING TO THE DATABASE THAT THE
27 COMMISSION CONSIDERS DESIRABLE OR, AFTER CONSULTATION WITH THE
28 ATTORNEY GENERAL, THAT THE ATTORNEY GENERAL CONSIDERS DESIRABLE FOR
29 ENFORCEMENT.

30 (D) A PERSON WHO INTENDS TO MAKE A TELEPHONE SOLICITATION TO A
31 RESIDENTIAL SUBSCRIBER IN THE STATE SHALL PURCHASE THE LATEST UPDATED
32 VERSION OF THE DATABASE FROM THE COMMISSION.

33 (E) A PERSON MAY NOT MAKE OR CAUSE TO BE MADE ANY TELEPHONE
34 SOLICITATION TO A TELEPHONE NUMBER THAT IS LISTED ON THE LATEST UPDATED
35 VERSION OF THE DATABASE.

36 (F) A PERSON MAY USE INFORMATION CONTAINED IN THE DATABASE AND
37 INFORMATION USED TO CREATE AND OPERATE THE DATABASE ONLY:

1 (1) TO COMPLY WITH THIS SECTION; OR

2 (2) IN A PROCEEDING OR ACTION TO ENFORCE THIS SECTION.

3 (G) IN CONDUCTING TELEPHONE SOLICITATIONS, THE USE OF AN
4 AUTOMATED DIALING, PUSH-BUTTON, OR TONE-ACTIVATED DEVICE THAT
5 OPERATES SEQUENTIALLY OR IN A MANNER THAT THE USER IS OTHERWISE UNABLE
6 TO AVOID CONTACTING TELEPHONE NUMBERS THAT ARE IN THE RESIDENTIAL
7 SUBSCRIBER DATABASE IS PRIMA FACIE EVIDENCE OF AN INTENTION TO VIOLATE
8 THIS SECTION.

9 (H) A PERSON RECEIVING A TELEPHONE SOLICITATION IN VIOLATION OF
10 SUBSECTION (E) OR (F) OF THIS SECTION MAY BRING AN ACTION IN A COURT OF
11 COMPETENT JURISDICTION AGAINST THE PERSON MAKING THE TELEPHONE
12 SOLICITATION OR THE PERSON ON WHOSE BEHALF THE SOLICITATION WAS MADE
13 TO RECOVER:

14 (1) THE GREATER OF:

15 (I) LIQUIDATED DAMAGES OF \$1,000; OR

16 (II) ACTUAL DAMAGES; AND

17 (2) REASONABLE ATTORNEYS' FEES.

18 (I) A PERSON MAY NOT BRING AN ACTION UNDER SUBSECTION (E) OR (F) OF
19 THIS SECTION AFTER THE LATER OF:

20 (1) 2 YEARS AFTER THE PERSON KNEW OR SHOULD HAVE KNOWN OF
21 THE ALLEGED VIOLATION OF SUBSECTION (E) OR (F) OF THIS SECTION; OR

22 (2) 2 YEARS AFTER THE TERMINATION OF ANY PROCEEDING OR ACTION
23 BY THE STATE AGAINST A PERSON CONDUCTING THE TELEPHONE SOLICITATION
24 FOR AN ALLEGED VIOLATION OF SUBSECTION (E) OR (F) OR THIS SECTION.

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

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

1 14-2206.

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

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

6 (2) IF THE VIOLATION INVOLVES A SOLICITATION OFFERING CREDIT
7 SERVICES, A VIOLATION OF THE MARYLAND CREDIT SERVICES BUSINESSES ACT,
8 UNDER TITLE 14, SUBTITLE 19 OF THE COMMERCIAL LAW ARTICLE.

9 SECTION 2. AND BE IT FURTHER ENACTED, That the Public Service
10 Commission shall report to the Senate Finance Committee and the House
11 Environmental Matters Committee on or before:

12 (1) November 1, 2000 on the status of the development of the database created
13 under this Act; and

14 (2) November 1, 2001 on the status of the implementation of the database.

15 SECTION 3. AND BE IT FURTHER ENACTED, That the Office of the Attorney
16 General shall report to the Senate Finance Committee and the House Economic
17 Matters Committee by November 1, 2001, on the status of enforcement of the
18 provisions of this Act.

19 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2000.