

SENATE BILL 66

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2002 Regular Session
2lr0414

(PRE-FILED)

By: **Senator Ruben**

Requested: September 12, 2001

Introduced and read first time: January 9, 2002

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Telephone Solicitation - Use of Automated Answering Devices**

3 FOR the purpose of prohibiting a person engaged in telephone solicitation from
4 intentionally using an automated answering device to leave a voice message or
5 an automated message related to the solicitation for the recipient of the
6 solicitation or a member of the recipient's household; authorizing certain legal
7 action against a person engaged in certain telephone solicitation and
8 authorizing the recovery of certain damages and fees; providing a limitation on
9 certain legal action related to telephone solicitation; providing for a certain
10 affirmative defense against certain legal action related to telephone solicitation;
11 and generally relating to telephone solicitation and use of automated answering
12 devices.

13 BY repealing and reenacting, with amendments,
14 Article - Public Utility Companies
15 Section 8-205
16 Annotated Code of Maryland
17 (1998 Volume and 2001 Supplement)

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

20 **Article - Public Utility Companies**

21 8-205.

22 (a) (1) In this section, "telephone solicitation" means an organized activity,
23 program, or campaign to communicate by telephone with residents of Maryland in
24 order to:

- 25 (i) sell, lease, or rent goods or services;
- 26 (ii) attempt to sell, lease, or rent goods or services;
- 27 (iii) offer or attempt to offer a gift or prize;

1 (iv) conduct or attempt to conduct a poll; or

2 (v) request or attempt to request survey information, if the results
3 of the survey will be used directly to solicit persons to purchase, lease, or rent goods or
4 services.

5 (2) "Telephone solicitation" includes the act of managing, directing, or
6 supervising an individual engaged in telephone solicitation under paragraph (1) of
7 this subsection.

8 (b) This section does not apply to a unit of federal, State, or local government.

9 (c) If the telephone service or equipment of a person engaged in telephone
10 solicitation allows that person to choose to restrict or display the transmission of the
11 person's telephone number to the recipient of a telephone solicitation, the person may
12 not:

13 (1) intentionally use any device or method to block the transmission of
14 the person's telephone number to a recipient; or

15 (2) take any other action to prevent or control the transmission of the
16 person's telephone number to a recipient.

17 (D) A PERSON ENGAGED IN TELEPHONE SOLICITATION MAY NOT
18 INTENTIONALLY USE AN AUTOMATED ANSWERING DEVICE TO LEAVE A VOICE
19 MESSAGE OR AN AUTOMATED VOICE MESSAGE RELATED TO THE TELEPHONE
20 SOLICITATION FOR THE RECIPIENT OF THE TELEPHONE SOLICITATION OR A
21 MEMBER OF THE RECIPIENT'S HOUSEHOLD.

22 (E) A PERSON RECEIVING A TELEPHONE SOLICITATION IN VIOLATION OF THIS
23 SECTION MAY BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION
24 AGAINST THE PERSON MAKING THE TELEPHONE SOLICITATION OR THE PERSON ON
25 WHOSE BEHALF THE SOLICITATION WAS MADE TO RECOVER:

26 (1) THE GREATER OF:

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

28 (II) ACTUAL DAMAGES; AND

29 (2) REASONABLE ATTORNEYS' FEES.

30 (F) A PERSON MAY NOT BRING AN ACTION UNDER THIS SECTION AFTER THE
31 LATER OF:

32 (1) 2 YEARS AFTER THE PERSON KNEW OR SHOULD HAVE KNOWN OF
33 THE ALLEGED VIOLATION OF THIS SECTION; OR

34 (2) 2 YEARS AFTER THE TERMINATION OF ANY PROCEEDING OR ACTION
35 BY THE STATE AGAINST A PERSON CONDUCTING THE TELEPHONE SOLICITATION
36 FOR AN ALLEGED VIOLATION OF THIS SECTION.

1 (G) IT IS AN AFFIRMATIVE DEFENSE IN ANY ACTION OR PROCEEDING
2 BROUGHT UNDER THIS SECTION THAT THE DEFENDANT HAS ESTABLISHED AND
3 IMPLEMENTED, WITH DUE CARE, REASONABLE PRACTICES AND PROCEDURES TO
4 EFFECTIVELY PREVENT TELEPHONE SOLICITATIONS IN VIOLATION OF THIS
5 SECTION.

6 [(d)] (H) A person who violates this section is guilty of a misdemeanor and on
7 conviction is subject to:

8 (1) for a first offense, a fine not exceeding \$1,000; and

9 (2) for each subsequent offense, a fine not exceeding \$5,000.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2002.