

SENATE BILL 674

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SB 641/01 - FIN

2002 Regular Session
2lr2242

By: **Senators Roesser, Frosh, and Hooper**
Introduced and read first time: February 1, 2002
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; prohibiting a person engaged in telephone solicitation from blocking
23 or otherwise preventing or controlling the transmission of information that
24 identifies the solicitor to the recipient of the call; providing that a violation of
25 this Act is an unfair and deceptive trade practice and may be a violation of the
26 State Credit Services Businesses Act under certain circumstances; establishing
27 certain penalties for certain violations of this Act; providing for the application
28 of this Act; providing for certain exceptions to this Act; defining certain terms
29 and redefining a certain term; requiring that the Public Service Commission
30 and the Office of the Attorney General report on certain matters to certain
31 committees of the General Assembly by certain dates; and generally relating to
32 telephone solicitations in the State.

33 BY repealing

34 Article - Commercial Law

1 Section 14-2205
2 Annotated Code of Maryland
3 (2000 Replacement Volume and 2001 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article - Commercial Law
6 Section 14-2201 and 14-2202
7 Annotated Code of Maryland
8 (2000 Replacement Volume and 2001 Supplement)

9 BY repealing and reenacting, without amendments,
10 Article - Commercial Law
11 Section 14-2203 and 14-2204
12 Annotated Code of Maryland
13 (2000 Replacement Volume and 2001 Supplement)

14 BY adding to
15 Article - Commercial Law
16 Section 14-2205, 14-2206, and 14-2207
17 Annotated Code of Maryland
18 (2000 Replacement Volume and 2001 Supplement)

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

21 **Article - Commercial Law**

22 14-2201.

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

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

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

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

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

33 (ii) "Consumer services" includes any solicitation offering credit
34 services where:

1 fixed permanent location and where consumer goods are displayed or offered for sale
2 on a continuing basis;

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

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

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

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

8 (4) In which:

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

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

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

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

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

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

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

22 (b) Notwithstanding subsection (a) of this section, this subtitle applies to any
23 solicitation offering credit services where:

24 (1) The consumer is required to call a telephone number;

25 (2) The consumer is charged a separate toll fee for the call; and

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

28 14-2203.

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

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

- 1 (1) Shall be reduced to writing and signed by the consumer;
- 2 (2) Shall comply with all other applicable laws and regulations;
- 3 (3) Shall match the description of goods or services as that principally
4 used in the telephone solicitation;
- 5 (4) Shall contain the name, address, and telephone number of the seller,
6 the total price of the contract, and a detailed description of the goods or services being
7 sold;
- 8 (5) Shall contain, in at least 12 point type, immediately preceding the
9 signature, the following statement:

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

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

14 14-2204.

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

18 [14-2205.

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

- 21 (1) An unfair and deceptive trade practice under Title 13, Subtitle 3 of
22 this article; and
- 23 (2) If the violation involves a solicitation offering credit services, a
24 violation of the Maryland Credit Services Businesses Act.]

25 14-2205.

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

- 28 (1) MADE BY A PERSON TO A RESIDENTIAL SUBSCRIBER IF:
- 29 (I) THE PERSON IS RESPONDING TO AN EXPRESS REQUEST OR
30 INQUIRY BY THE RESIDENTIAL SUBSCRIBER; OR
- 31 (II) THE RESIDENTIAL SUBSCRIBER GAVE PRIOR EXPRESS
32 PERMISSION FOR THE PERSON TO MAKE THE TELEPHONE SOLICITATION;

1 (2) MADE BY OR ON BEHALF OF A PERSON WITH WHOM A RESIDENTIAL
2 SUBSCRIBER HAS A PRIOR OR CURRENT BUSINESS OR PERSONAL RELATIONSHIP;

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

5 (4) LIMITED TO SOLICITING THE EXPRESSION OF IDEAS, OPINIONS, OR
6 VOTES; OR

7 (5) MADE TO A BUSINESS.

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

12 (II) THE COMMISSION SHALL UPDATE THE DATABASE EVERY 3
13 MONTHS.

14 (III) THE COMMISSION MAY CONTRACT WITH ANOTHER ENTITY
15 THAT SUBMITS A COMPETITIVE BID TO CREATE, OPERATE, AND UPDATE THE
16 DATABASE.

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

21 (3) THE COMMISSION SHALL CREATE AND HAVE THE DATABASE IN
22 OPERATION ON OR BEFORE JANUARY 1, 2003.

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

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

28 (I) REQUIRING EACH LOCAL EXCHANGE COMPANY TO INFORM ITS
29 RESIDENTIAL SUBSCRIBERS; AND

30 (II) USING PUBLIC SERVICE ANNOUNCEMENTS, MAILINGS, OR
31 OTHER MEANS;

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

35 (3) SPECIFY THE METHODS BY WHICH A RESIDENTIAL SUBSCRIBER
36 WHO FILES A NOTICE IS INFORMED ABOUT THE EFFECTIVE DATE OF THE DATABASE

1 AND EACH UPDATE TO THE DATABASE THAT WILL CONTAIN THE RESIDENTIAL
2 SUBSCRIBER'S TELEPHONE NUMBER;

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

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

7 (II) FILE A CANCELLATION NOTICE WITH THE COMMISSION THAT
8 DELETES THE RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER FROM THE
9 DATABASE; AND

10 (III) FILE A RENEWAL NOTICE WITH THE COMMISSION THAT
11 CONTINUES THE RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER ON THE
12 DATABASE;

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

15 (6) WHERE A RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER
16 CHANGES, SPECIFY THE EFFECT THE CHANGE WILL HAVE ON THE RESIDENTIAL
17 SUBSCRIBER'S LISTING ON THE DATABASE;

18 (7) SPECIFY THE FEES THAT A RESIDENTIAL SUBSCRIBER MUST PAY TO
19 THE COMMISSION WHEN FILING AN INITIAL NOTICE AND A RENEWAL NOTICE WITH
20 THE COMMISSION;

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

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

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

30 (11) SPECIFY OTHER MATTERS RELATING TO THE DATABASE THAT THE
31 COMMISSION CONSIDERS DESIRABLE OR, AFTER CONSULTATION WITH THE
32 ATTORNEY GENERAL, THAT THE ATTORNEY GENERAL CONSIDERS DESIRABLE FOR
33 ENFORCEMENT.

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

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

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

6 (1) TO COMPLY WITH THIS SECTION; OR

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

8 (G) IN CONDUCTING TELEPHONE SOLICITATIONS, THE USE OF AN
9 AUTOMATED DIALING, PUSH-BUTTON, OR TONE-ACTIVATED DEVICE THAT
10 OPERATES SEQUENTIALLY OR IN A MANNER SO THAT THE USER IS OTHERWISE
11 UNABLE TO AVOID CONTACTING TELEPHONE NUMBERS IN THE RESIDENTIAL
12 SUBSCRIBER DATABASE IS PRIMA FACIE EVIDENCE OF AN INTENTION TO VIOLATE
13 THIS SECTION.

14 (H) A PERSON RECEIVING A TELEPHONE SOLICITATION IN VIOLATION OF
15 SUBSECTION (E) OR (F) OF THIS SECTION MAY BRING AN ACTION IN A COURT OF
16 COMPETENT JURISDICTION AGAINST THE PERSON MAKING THE TELEPHONE
17 SOLICITATION OR THE PERSON ON WHOSE BEHALF THE SOLICITATION WAS MADE
18 TO RECOVER:

19 (1) THE GREATER OF:

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

21 (II) ACTUAL DAMAGES; AND

22 (2) REASONABLE ATTORNEYS' FEES.

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

25 (1) 2 YEARS AFTER THE PERSON KNEW OR SHOULD HAVE KNOWN OF
26 THE ALLEGED VIOLATION OF SUBSECTION (E) OR (F) OF THIS SECTION; OR

27 (2) 2 YEARS AFTER THE TERMINATION OF ANY PROCEEDING OR ACTION
28 BY THE STATE AGAINST A PERSON CONDUCTING THE TELEPHONE SOLICITATION
29 FOR AN ALLEGED VIOLATION OF SUBSECTION (E) OR (F) OF THIS SECTION.

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

35 (K) IF, UNDER 47 U.S.C. § 227(C)(3), THE FEDERAL COMMUNICATIONS
36 COMMISSION ESTABLISHES A NATIONAL DATABASE OF TELEPHONE NUMBERS OF

1 RESIDENTIAL SUBSCRIBERS WHO OBJECT TO RECEIVING TELEPHONE
2 SOLICITATIONS, THE PUBLIC SERVICE COMMISSION SHALL INCLUDE INFORMATION
3 IN THE NATIONAL DATABASE THAT RELATES TO THE INFORMATION KEPT IN THE
4 MARYLAND DATABASE ESTABLISHED UNDER SUBSECTION (B) OF THIS SECTION.

5 14-2206.

6 (A) (1) IN THIS SECTION, "TELEPHONE SOLICITATION" INCLUDES:

7 (I) AN ORGANIZED ACTIVITY, PROGRAM, OR CAMPAIGN TO
8 COMMUNICATE BY TELEPHONE WITH A RESIDENTIAL SUBSCRIBER IN ORDER TO:

- 9 1. SELL, LEASE, OR RENT GOODS OR SERVICES;
- 10 2. ATTEMPT TO SELL , LEASE, OR RENT GOODS OR SERVICES;
- 11 3. OFFER OR ATTEMPT TO OFFER A GIFT OR PRIZE;
- 12 4. CONDUCT OR ATTEMPT TO CONDUCT A POLL; OR
- 13 5. REQUEST OR ATTEMPT TO REQUEST SURVEY
14 INFORMATION, IF THE RESULTS OF THE SURVEY WILL BE USED DIRECTLY TO
15 SOLICIT PERSONS TO PURCHASE, LEASE, OR RENT GOODS OR SERVICES; AND

16 (II) MANAGING, DIRECTING, OR SUPERVISING AN INDIVIDUAL
17 ENGAGED IN TELEPHONE SOLICITATION UNDER THIS SUBTITLE.

18 (B) THIS SECTION DOES NOT APPLY TO:

19 (1) A UNIT OF FEDERAL, STATE, OR LOCAL GOVERNMENT; OR

20 (2) A PERSON WHO HAS A PREEXISTING BUSINESS OR PERSONAL
21 RELATIONSHIP WITH, OR THE CONSENT OF, THE RESIDENTIAL SUBSCRIBER.

22 (C) A PERSON ENGAGED IN TELEPHONE SOLICITATION MAY NOT BLOCK OR
23 TAKE ANY OTHER ACTION TO PREVENT OR CONTROL THE TRANSMISSION OF
24 INFORMATION THAT IDENTIFIES THE PERSON ENGAGED IN TELEPHONE
25 SOLICITATION TO THE RECIPIENT OF THE CALL.

26 (D) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR
27 AND ON CONVICTION IS SUBJECT TO A FINE:

28 (1) NOT EXCEEDING \$1,000 FOR THE FIRST OFFENSE; AND

29 (2) NOT EXCEEDING \$5,000 FOR EACH SUBSEQUENT OFFENSE.

30 14-2207.

31 IN ADDITION TO ANY REMEDIES OTHERWISE AVAILABLE AT LAW, A VIOLATION
32 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 UNDER TITLE 14, SUBTITLE 19 OF THE COMMERCIAL LAW ARTICLE.

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

9 (1) November 1, 2002 on the status of the development of the database created
10 under this Act; and

11 (2) November 1, 2003 on the status of the implementation of the database.

12 SECTION 3. AND BE IT FURTHER ENACTED, That the Office of the
13 Attorney General shall report to the Senate Finance Committee and the House
14 Economic Matters Committee on or before November 1, 2003, on the status of
15 enforcement of the provisions of this Act.

16 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2002.