

HOUSE BILL 610

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SB 674/02 - FIN

2003 Regular Session  
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By: **Delegates Doory, Lee, Anderson, Barkley, Bobo, Bohanan, Bronrott, Burns, Carter, V. Clagett, Conroy, Dumais, Feldman, Fulton, Gaines, Goldwater, Gordon, Gutierrez, Harrison, Holmes, Jones, Kaiser, Kelley, Kirk, Love, Madaleno, Mandel, McComas, McHale, McIntosh, Menes, Moe, Montgomery, Murray, Oaks, Paige, Petzold, Quinter, Ramirez, Simmons, Sophocleus, Stern, Trueschler, F. Turner, Vaughn, and Walkup**

Introduced and read first time: February 6, 2003

Assigned to: Economic Matters

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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 adopt  
8 certain regulations relating to notice of the database, fees to be charged for use  
9 of the database, access to the database, inclusion in the database, and other  
10 matters; requiring a person who intends to engage in telephone solicitation to  
11 purchase the updated version of the database for each client; prohibiting a  
12 person who engages in telephone solicitation from soliciting or causing a  
13 solicitation to a listed residential telephone subscriber; requiring the  
14 Commission to make the database available to persons engaged in telephone  
15 solicitation at a certain time; limiting the use of the information contained in the  
16 database; authorizing certain legal action against a person engaged in telephone  
17 solicitation for a violation of this Act and authorizing the recovery of certain  
18 damages and fees; providing a limitation on legal action; providing for a certain  
19 affirmative defense against a legal action; requiring the Commission to provide  
20 certain information relating to the information in the database for inclusion in  
21 any database established under federal law; providing that compliance with a  
22 certain federal program be allowed to be deemed compliance with this Act under  
23 certain circumstances; providing that a violation of this Act is an unfair and  
24 deceptive trade practice and may be a violation of the State Credit Services  
25 Businesses Act under certain circumstances; establishing certain penalties for  
26 certain violations of this Act; providing for the application of this Act; providing  
27 for certain exceptions to this Act; defining certain terms and redefining a certain  
28 term; requiring that the Commission and the Office of the Attorney General  
29 report on certain matters to certain committees of the General Assembly by  
30 certain dates; and generally relating to telephone solicitations in the State.

1 BY repealing and reenacting, with amendments,  
2 Article - Commercial Law  
3 Section 14-2201 and 14-2202  
4 Annotated Code of Maryland  
5 (2000 Replacement Volume and 2002 Supplement)

6 BY repealing and reenacting, without amendments,  
7 Article - Commercial Law  
8 Section 14-2203 and 14-2204  
9 Annotated Code of Maryland  
10 (2000 Replacement Volume and 2002 Supplement)

11 BY repealing  
12 Article - Commercial Law  
13 Section 14-2205  
14 Annotated Code of Maryland  
15 (2000 Replacement Volume and 2002 Supplement)

16 BY adding to  
17 Article - Commercial Law  
18 Section 14-2205 and 14-2206  
19 Annotated Code of Maryland  
20 (2000 Replacement Volume and 2002 Supplement)

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

23 **Article - Commercial Law**

24 14-2201.

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

26 (B) "CHARITABLE ORGANIZATION" HAS THE MEANING STATED IN § 6-101 OF  
27 THE BUSINESS REGULATION ARTICLE.

28 (C) "COMMISSION" MEANS THE PUBLIC SERVICE COMMISSION.

29 [(b)] (D) "Consumer" means an actual or prospective purchaser, lessee, or  
30 recipient of consumer goods, consumer services, or consumer realty.

31 [(c)] (E) (1) "Consumer goods", "consumer realty", and "consumer services"  
32 mean, respectively, goods, real property, and services which are primarily for  
33 personal, household, family, or agricultural purposes.

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

4 (ii) "Consumer services" includes any solicitation offering credit  
5 services where:

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

7 2. The consumer is charged a separate toll fee for the call;  
8 and

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

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

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

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

17 (G) "DATABASE" MEANS A LIST CONSISTING SOLELY OF THE TELEPHONE  
18 NUMBERS OF MARYLAND RESIDENTIAL SUBSCRIBERS WHO DO NOT WISH TO  
19 RECEIVE TELEPHONE SOLICITATIONS.

20 [(e)] (H) (1) "Merchant" means a person who, directly or indirectly, offers or  
21 makes available to consumers any consumer goods, consumer services, or consumer  
22 realty.

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

25 (I) (1) "RESIDENTIAL SUBSCRIBER" MEANS:

26 (I) AN INDIVIDUAL WHO HAS SUBSCRIBED TO RESIDENTIAL  
27 TELEPHONE SERVICE FROM A LOCAL EXCHANGE COMPANY;

28 (II) ANY INDIVIDUAL WHO RESIDES WITH THE SUBSCRIBER; OR

29 (III) AN INDIVIDUAL WHO HAS SUBSCRIBED TO WIRELESS  
30 TELEPHONE SERVICE WITH A MARYLAND AREA CODE.

31 (2) "RESIDENTIAL SUBSCRIBER" DOES NOT INCLUDE A COMMERCIAL  
32 SUBSCRIBER TO A TELEPHONE SERVICE.

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

1 (1) Made entirely by telephone; and

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

5 14-2202.

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

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

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

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

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

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

17 (4) In which:

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

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

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

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

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

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

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

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

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

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

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

4 14-2203.

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

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

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

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

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

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

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

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

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

21 14-2204.

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

25 [14-2205.

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

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

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

1 14-2205.

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

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

5 (I) THE PERSON IS RESPONDING TO AN EXPRESS, VERIFIABLE  
6 REQUEST OR INQUIRY BY THE RESIDENTIAL SUBSCRIBER; OR

7 (II) THE RESIDENTIAL SUBSCRIBER GAVE PRIOR EXPRESS,  
8 VERIFIABLE PERMISSION FOR THE PERSON TO MAKE THE TELEPHONE  
9 SOLICITATION;

10 (2) MADE BY OR ON BEHALF OF A CHARITABLE ORGANIZATION;

11 (3) LIMITED TO SOLICITING THE EXPRESSION OF IDEAS, OPINIONS, OR  
12 VOTES; OR

13 (4) MADE TO A BUSINESS.

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

18 (II) THE COMMISSION SHALL UPDATE THE DATABASE EVERY 3  
19 MONTHS.

20 (III) THE COMMISSION MAY CONTRACT WITH ANOTHER ENTITY  
21 THAT SUBMITS A COMPETITIVE BID TO CREATE, OPERATE, AND UPDATE THE  
22 DATABASE.

23 (2) FOR THE PURPOSES OF SUBSECTION (E) OF THIS SECTION, THE  
24 COMMISSION SHALL MAKE EACH UPDATE TO THE DATABASE AVAILABLE TO  
25 PERSONS ENGAGED IN TELEPHONE SOLICITATION AT A REASONABLE TIME PRIOR TO  
26 THE EFFECTIVE DATE OF THE UPDATE.

27 (3) THE COMMISSION SHALL CREATE AND HAVE THE DATABASE IN  
28 OPERATION ON OR BEFORE JANUARY 1, 2004.

29 (C) THE COMMISSION SHALL ADOPT REGULATIONS TO:

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

34 (I) REQUIRING EACH LOCAL EXCHANGE COMPANY AND WIRELESS  
35 TELEPHONE SERVICE PROVIDER TO INFORM ITS RESIDENTIAL SUBSCRIBERS; AND

1 (II) USING PUBLIC SERVICE ANNOUNCEMENTS, MAILINGS, OR  
2 OTHER MEANS;

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

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

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

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

14 (II) FILE A CANCELLATION NOTICE WITH THE COMMISSION THAT  
15 DELETES THE RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER FROM THE  
16 DATABASE;

17 (5) WHERE A RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER  
18 CHANGES, SPECIFY THE EFFECT THE CHANGE WILL HAVE ON THE RESIDENTIAL  
19 SUBSCRIBER'S LISTING ON THE DATABASE;

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

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

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

29 (D) (1) THE COMMISSION SHALL ESTABLISH FEES UNDER THIS SECTION  
30 SUFFICIENT TO COVER THE COSTS OF IMPLEMENTING, MAINTAINING, AND  
31 ADMINISTERING THE DATABASE.

32 (2) THE COMMISSION MAY NOT CHARGE A FEE TO A RESIDENTIAL  
33 SUBSCRIBER FOR LISTING THE SUBSCRIBER IN THE DATABASE OR FOR RENEWING  
34 THE SUBSCRIBER'S LISTING.

35 (E) (1) A PERSON WHO INTENDS TO MAKE A TELEPHONE SOLICITATION TO  
36 A RESIDENTIAL SUBSCRIBER IN THE STATE SHALL PURCHASE THE LATEST UPDATED  
37 VERSION OF THE DATABASE FROM THE COMMISSION.

1 (2) IF THE PERSON INTENDS TO MAKE TELEPHONE SOLICITATIONS ON  
2 BEHALF OF MORE THAN ONE CLIENT, THE PERSON MUST PURCHASE A SEPARATE  
3 COPY OF THE DATABASE FOR EACH CLIENT.

4 (F) A PERSON MAY NOT MAKE OR CAUSE TO BE MADE ANY TELEPHONE  
5 SOLICITATION TO A TELEPHONE NUMBER THAT IS LISTED ON THE LATEST UPDATED  
6 VERSION OF THE DATABASE.

7 (G) A PERSON MAY USE INFORMATION CONTAINED IN THE DATABASE AND  
8 INFORMATION USED TO CREATE AND OPERATE THE DATABASE ONLY:

9 (1) TO COMPLY WITH THIS SECTION; OR

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

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

17 (I) A PERSON RECEIVING A TELEPHONE SOLICITATION IN VIOLATION OF  
18 SUBSECTION (F) OR (G) OF THIS SECTION MAY BRING AN ACTION IN A COURT OF  
19 COMPETENT JURISDICTION AGAINST THE PERSON MAKING THE TELEPHONE  
20 SOLICITATION OR THE PERSON ON WHOSE BEHALF THE SOLICITATION WAS MADE  
21 TO RECOVER:

22 (1) THE GREATER OF:

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

24 (II) ACTUAL DAMAGES; AND

25 (2) REASONABLE ATTORNEY'S FEES.

26 (J) A PERSON MAY NOT BRING AN ACTION UNDER SUBSECTION (F) OR (G) OF  
27 THIS SECTION AFTER THE LATER OF:

28 (1) 2 YEARS AFTER THE PERSON KNEW OR SHOULD HAVE KNOWN OF  
29 THE ALLEGED VIOLATION OF SUBSECTION (F) OR (G) OF THIS SECTION; OR

30 (2) 2 YEARS AFTER THE TERMINATION OF ANY PROCEEDING OR ACTION  
31 BY THE STATE AGAINST A PERSON CONDUCTING THE TELEPHONE SOLICITATION  
32 FOR AN ALLEGED VIOLATION OF SUBSECTION (F) OR (G) OF THIS SECTION.

33 (K) A DEFENDANT MAY ASSERT AN AFFIRMATIVE DEFENSE IN ANY ACTION OR  
34 PROCEEDING BROUGHT UNDER SUBSECTION (I) OF THIS SECTION OR § 14-2206 OF  
35 THIS SUBTITLE THAT THE DEFENDANT HAS ESTABLISHED AND IMPLEMENTED



1 REASONABLE PRACTICES AND PROCEDURES EFFECTIVELY TO PREVENT TELEPHONE  
2 SOLICITATIONS IN VIOLATION OF THIS SECTION IF THE DEFENDANT:

3 (1) HAS ESTABLISHED AND IMPLEMENTED THOSE PRACTICES AND  
4 PROCEDURES WITH DUE CARE;

5 (2) HAS TRAINED ITS PERSONNEL, AND EACH PERSON ASSISTING IN  
6 COMPLIANCE, IN THOSE PRACTICES AND PROCEDURES AND HAS TAKEN  
7 REASONABLE STEPS TO ENSURE THAT THE PRACTICES AND PROCEDURES ARE  
8 FOLLOWED; AND

9 (3) MAINTAINS RECORDS DOCUMENTING THE IMPLEMENTATION AND  
10 TRAINING UNDER ITEMS (1) AND (2) OF THIS SUBSECTION.

11 (L) IF THE FEDERAL GOVERNMENT ESTABLISHES A NATIONAL DATABASE OF  
12 TELEPHONE NUMBERS OF RESIDENTIAL SUBSCRIBERS WHO OBJECT TO RECEIVING  
13 TELEPHONE SOLICITATIONS, THE COMMISSION SHALL INCLUDE INFORMATION IN  
14 THE NATIONAL DATABASE THAT RELATES TO THE INFORMATION KEPT IN THE  
15 MARYLAND DATABASE ESTABLISHED UNDER SUBSECTION (B) OF THIS SECTION.

16 (M) IF THE COMMISSION, IN CONSULTATION WITH THE OFFICE OF THE  
17 ATTORNEY GENERAL, FINDS THAT THE FEDERAL GOVERNMENT HAS ESTABLISHED A  
18 PROGRAM THAT IS IN EFFECT AND AFFORDS MARYLAND RESIDENTIAL SUBSCRIBERS  
19 PROTECTION EQUAL TO OR GREATER THAN THAT AFFORDED UNDER THIS SECTION,  
20 THE COMMISSION SHALL:

21 (1) REPORT THE FINDING TO THE GOVERNOR AND, SUBJECT TO § 2-1246  
22 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY; AND

23 (2) ALLOW COMPLIANCE WITH THE FEDERAL PROGRAM TO BE DEEMED  
24 COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION FOR SO LONG AS THE  
25 COMMISSION'S FINDING REMAINS IN EFFECT.

26 14-2206.

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

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

31 (2) IF THE VIOLATION INVOLVES A SOLICITATION OFFERING CREDIT  
32 SERVICES, A VIOLATION OF THE MARYLAND CREDIT SERVICES BUSINESSES ACT,  
33 UNDER TITLE 14, SUBTITLE 19 OF THIS ARTICLE.

34 SECTION 2. AND BE IT FURTHER ENACTED, That the Public Service  
35 Commission shall report to the Senate Finance Committee and the House Economic  
36 Matters Committee on or before:

1                   (1)       November 1, 2003, on the status of the development of the database  
2 created under this Act; and

3                   (2)       November 1, 2004, on the status of the implementation of the  
4 database.

5       SECTION 3. AND BE IT FURTHER ENACTED, That the Office of the Attorney  
6 General shall report to the Senate Finance Committee and the House Economic  
7 Matters Committee on or before November 1, 2004, on the status of enforcement of  
8 the provisions of this Act.

9       SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 July 1, 2003.