

SENATE BILL 93

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SB 66/02 - FIN

2003 Regular Session  
3lr0432

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By: **Senators Ruben, Hooper, Kelley, and Teitelbaum**  
Introduced and read first time: January 22, 2003  
Assigned to: Finance

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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; providing certain  
7 exceptions; authorizing certain legal action against a person engaged in certain  
8 telephone solicitation and authorizing the recovery of certain damages and fees;  
9 providing a limitation on certain legal action related to telephone solicitation;  
10 providing for a certain affirmative defense against certain legal action related to  
11 telephone solicitation; and generally relating to telephone solicitation and use of  
12 automated answering 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 2002 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) (1) THIS SUBSECTION DOES NOT APPLY TO A TELEPHONE SOLICITATION  
18 BY OR ON BEHALF OF:

19 (I) A NONPROFIT ORGANIZATION; OR

20 (II) A POLITICAL PARTY.

21 (2) A PERSON ENGAGED IN TELEPHONE SOLICITATION MAY NOT  
22 INTENTIONALLY USE AN AUTOMATED ANSWERING DEVICE TO LEAVE A VOICE  
23 MESSAGE OR AN AUTOMATED VOICE MESSAGE RELATED TO THE TELEPHONE  
24 SOLICITATION FOR THE RECIPIENT OF THE TELEPHONE SOLICITATION OR A  
25 MEMBER OF THE RECIPIENT'S HOUSEHOLD.

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

30 (1) THE GREATER OF:

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

32 (II) ACTUAL DAMAGES; AND

33 (2) REASONABLE ATTORNEYS' FEES.

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

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

3 (2) 2 YEARS AFTER THE TERMINATION OF ANY PROCEEDING OR ACTION  
4 BY THE STATE AGAINST A PERSON CONDUCTING THE TELEPHONE SOLICITATION  
5 FOR AN ALLEGED VIOLATION OF THIS SECTION.

6 (G) IT IS AN AFFIRMATIVE DEFENSE IN ANY ACTION OR PROCEEDING  
7 BROUGHT UNDER THIS SECTION THAT THE DEFENDANT HAS ESTABLISHED AND  
8 IMPLEMENTED, WITH DUE CARE, REASONABLE PRACTICES AND PROCEDURES  
9 EFFECTIVELY TO PREVENT TELEPHONE SOLICITATIONS IN VIOLATION OF THIS  
10 SECTION.

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

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

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

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 2003.