

SENATE BILL 88

Unofficial Copy
C5

2004 Regular Session
4r0646
CF 4r0742

By: **Senators Frosh, Ruben, and Hooper**
Introduced and read first time: January 16, 2004
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law - Maryland Telephone Consumer Protection Act**

3 FOR the purpose of prohibiting a person from violating the federal Telemarketing and
4 Consumer Fraud and Abuse Prevention Act or the federal Telephone Consumer
5 Protection Act; providing that a violation of this Act is an unfair or deceptive
6 trade practice and is subject to certain enforcement actions and penalties;
7 authorizing an individual who is affected by a violation of this Act to bring an
8 action against a violator to recover reasonable attorney's fees and damages in a
9 certain amount; providing that each prohibited telephone solicitation and each
10 prohibited practice during a telephone solicitation is a separate violation of this
11 Act; defining certain terms; and generally relating to telephones and consumer
12 protection.

13 BY repealing and reenacting, with amendments,
14 Article - Commercial Law
15 Section 13-301(14)
16 Annotated Code of Maryland
17 (2000 Replacement Volume and 2003 Supplement)

18 BY adding to
19 Article - Commercial Law
20 Section 14-3201 through 14-3203, inclusive, to be under the new subtitle
21 "Subtitle 32. Maryland Telephone Consumer Protection Act"
22 Annotated Code of Maryland
23 (2000 Replacement Volume and 2003 Supplement)

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

1

Article - Commercial Law

2 13-301.

3 Unfair or deceptive trade practices include any:

4 (14) Violation of a provision of:

5 (i) This title;

6 (ii) An order of the Attorney General or agreement of a party
7 relating to unit pricing under Title 14, Subtitle 1 of this article;8 (iii) Title 14, Subtitle 2 of this article, the Maryland Consumer Debt
9 Collection Act;10 (iv) Title 14, Subtitle 3 of this article, the Maryland Door-to-Door
11 Sales Act;

12 (v) Title 14, Subtitle 9 of this article, Kosher Products;

13 (vi) Title 14, Subtitle 10 of this article, Automotive Repair Facilities;

14 (vii) Section 14-1302 of this article;

15 (viii) Title 14, Subtitle 11 of this article, Maryland Layaway Sales
16 Act;

17 (ix) Section 22-415 of the Transportation Article;

18 (x) Title 14, Subtitle 20 of this article;

19 (xi) Title 14, Subtitle 15 of this article, the Automotive Warranty
20 Enforcement Act;

21 (xii) Title 14, Subtitle 21 of this article;

22 (xiii) Section 18-107 of the Transportation Article;

23 (xiv) Title 14, Subtitle 22 of this article, the Maryland Telephone
24 Solicitations Act;25 (xv) Title 14, Subtitle 23 of this article, the Automotive Crash Parts
26 Act;

27 (xvi) Title 10, Subtitle 6 of the Real Property Article;

28 (xvii) Title 10, Subtitle 8 of the Real Property Article;

29 (xviii) Title 14, Subtitle 25 of this article, the Hearing Aid Sales Act;

1 (xix) Title 14, Subtitle 26 of this article, the Maryland Door-to-Door
2 Solicitations Act;

3 (xx) Title 14, Subtitle 31 of this article, the Maryland Household
4 Goods Movers Act; or

5 (XXI) TITLE 14, SUBTITLE 32 OF THIS ARTICLE, THE MARYLAND
6 TELEPHONE CONSUMER PROTECTION ACT; OR

7 SUBTITLE 32. MARYLAND TELEPHONE CONSUMER PROTECTION ACT.

8 14-3201.

9 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
10 INDICATED.

11 (B) "CONSUMER" HAS THE MEANING STATED IN § 13-101 OF THIS ARTICLE.

12 (C) "CONSUMER CREDIT", "CONSUMER GOODS", "CONSUMER REALTY", AND
13 "CONSUMER SERVICES" HAVE THE MEANINGS STATED IN § 13-101 OF THIS ARTICLE.

14 (D) "DIVISION" MEANS THE DIVISION OF CONSUMER PROTECTION OF THE
15 OFFICE OF THE ATTORNEY GENERAL.

16 (E) "TELEPHONE SOLICITATION" MEANS A TELEPHONE CALL INITIATED FOR
17 THE PURPOSE OF ENCOURAGING THE SALE, LEASE, RENTAL, LOAN, OR BAILMENT OF
18 CONSUMER CREDIT, CONSUMER GOODS, CONSUMER REALTY, OR CONSUMER
19 SERVICES.

20 14-3202.

21 A PERSON MAY NOT VIOLATE:

22 (1) THE TELEMARKETING AND CONSUMER FRAUD AND ABUSE
23 PREVENTION ACT, 15 U.S.C. §§ 6101 THROUGH 6108, AS IMPLEMENTED BY THE
24 FEDERAL TRADE COMMISSION IN THE TELEMARKETING SALES RULE (16 C.F.R. PART
25 310); OR

26 (2) THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, AS
27 IMPLEMENTED BY THE FEDERAL COMMUNICATIONS COMMISSION IN THE
28 RESTRICTIONS ON TELEMARKETING AND TELEPHONE SOLICITATIONS RULE (64 C.F.R.
29 SUBPART L).

30 14-3203.

31 (A) A VIOLATION OF THIS SUBTITLE IS AN UNFAIR OR DECEPTIVE TRADE
32 PRACTICE WITHIN THE MEANING OF TITLE 13 OF THIS ARTICLE AND IS SUBJECT TO
33 THE ENFORCEMENT AND PENALTY PROVISIONS CONTAINED IN TITLE 13 OF THIS
34 ARTICLE.

1 (B) IN ADDITION TO THE REMEDIES PROVIDED IN § 13-408 OF THIS ARTICLE,
2 AN INDIVIDUAL WHO IS AFFECTED BY A VIOLATION OF THIS SUBTITLE MAY BRING
3 AN ACTION AGAINST A PERSON THAT VIOLATES THIS SUBTITLE TO RECOVER:

4 (1) REASONABLE ATTORNEY'S FEES; AND

5 (2) DAMAGES IN THE AMOUNT OF THE GREATER OF:

6 (I) \$500 FOR EACH VIOLATION; OR

7 (II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE
8 VIOLATION.

9 (C) FOR PURPOSES OF THIS SECTION, EACH PROHIBITED TELEPHONE
10 SOLICITATION AND EACH PROHIBITED PRACTICE DURING A TELEPHONE
11 SOLICITATION IS A SEPARATE VIOLATION.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 June 1, 2004.