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By: **Senators Frosh and Ruben**

Introduced and read first time: January 21, 2005

Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection - Unsolicited Facsimiles - Private Cause of Action**

3 FOR the purpose of authorizing an individual who is affected by a violation of certain  
4 provisions relating to unsolicited commercial transmissions by facsimile  
5 machines to bring a civil action against the violator; authorizing the recovery of  
6 reasonable attorney's fees and damages in a certain amount; authorizing the  
7 court to award treble damages under certain circumstances; and generally  
8 relating to the creation of a private cause of action for violations of certain  
9 provisions relating to unsolicited commercial transmissions by facsimile  
10 machines.

11 BY repealing and reenacting, with amendments,  
12 Article - Commercial Law  
13 Section 14-1313  
14 Annotated Code of Maryland  
15 (2000 Replacement Volume and 2004 Supplement)

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

18 **Article - Commercial Law**

19 14-1313.

20 (a) (1) In this section the following words have the meanings indicated.

21 (2) "Facsimile device" means a machine that receives and copies  
22 reproductions or facsimiles of documents or photographs that have been transmitted  
23 electronically or telephonically over telecommunications lines.

24 (3) (i) "Commercial solicitation" means the unsolicited electronic or  
25 telephonic transmission in the State to a facsimile device to encourage a person to  
26 purchase goods, realty, or services.

27 (ii) "Commercial solicitation" does not include:

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- 1 1. An electronic or telephonic transmission made in the  
2 course of prior negotiations; or
- 3 2. An electronic or telephonic transmission made in the  
4 course of a preexisting business relationship with the person receiving the  
5 transmission.

6 (b) A person may not make intentionally an electronic or telephonic  
7 transmission to a facsimile device for the purpose of commercial solicitation.

8 (c) (1) The Attorney General may initiate a civil action against any person  
9 who violates this section to recover for the State a penalty not to exceed \$1,000 for  
10 each violation.

11 (2) For the purposes of this section, each prohibited commercial  
12 solicitation is a separate violation.

13 (D) IN ADDITION TO ANY ACTION BY THE ATTORNEY GENERAL, ANY  
14 RECIPIENT OF A COMMERCIAL SOLICITATION PROHIBITED UNDER THIS SECTION  
15 MAY BRING AN ACTION TO RECOVER:

16 (1) DAMAGES IN THE AMOUNT OF THE GREATER OF:

17 (I) \$250; OR

18 (II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE  
19 VIOLATION; AND

20 (2) REASONABLE ATTORNEY'S FEES.

21 (E) IF THE COURT FINDS THAT THE DEFENDANT WILLFULLY OR KNOWINGLY  
22 VIOLATED THIS SECTION, THE COURT MAY AWARD UP TO THREE TIMES THE  
23 AMOUNT OF DAMAGES AUTHORIZED UNDER SUBSECTION (D) OF THIS SECTION.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 October 1, 2005.