

HOUSE BILL 53

I3
SB 548/07 – FIN

(PRE-FILED)

8lr0747

By: **Delegate Montgomery**

Requested: October 9, 2007

Introduced and read first time: January 9, 2008

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Consumer Protection – Restricted Mailing Registry**

3 FOR the purpose of requiring the Division of Consumer Protection of the Office of the
4 Attorney General to establish and provide for the operation of a restricted
5 mailing registry; requiring a person that sends certain solicitations to certain
6 consumers to purchase the registry and updates to the registry from the
7 Division; prohibiting a person from sending certain solicitations to certain
8 consumers after a certain period of time; providing certain remedies and
9 penalties for a violation of this Act, including a private right of action; defining
10 certain terms; requiring the Division to take certain actions to ensure that the
11 restricted mailing registry is available on or before a certain date; requiring the
12 Division to adopt certain regulations on or before a certain date; and generally
13 relating to the establishment of a restricted mailing registry.

14 BY adding to

15 Article – Commercial Law

16 Section 14–1322

17 Annotated Code of Maryland

18 (2005 Replacement Volume and 2007 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 **14–1322.**

23 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
24 MEANINGS INDICATED.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) “CONSUMER” HAS THE MEANING STATED IN § 13-101 OF THIS
2 ARTICLE.

3 (3) “CONSUMER GOODS”, “CONSUMER REALTY”, AND
4 “CONSUMER SERVICES” MEAN, RESPECTIVELY, GOODS, REAL PROPERTY, AND
5 SERVICES THAT ARE PRIMARILY FOR PERSONAL, HOUSEHOLD, FAMILY, OR
6 AGRICULTURAL PURPOSES.

7 (4) “DIVISION” MEANS THE DIVISION OF CONSUMER
8 PROTECTION OF THE OFFICE OF THE ATTORNEY GENERAL.

9 (5) “REGISTRY” MEANS THE RESTRICTED MAILING REGISTRY
10 ESTABLISHED UNDER SUBSECTION (B) OF THIS SECTION.

11 (6) (I) “SOLICITATION” MEANS A COMMUNICATION THAT IS
12 SENT THROUGH THE UNITED STATES POSTAL SERVICE OR OTHER MAIL
13 CARRIER TO ENCOURAGE A CONSUMER TO PURCHASE, RENT, OR INVEST IN
14 CONSUMER GOODS, CONSUMER REALTY, OR CONSUMER SERVICES.

15 (II) “SOLICITATION” DOES NOT INCLUDE A
16 COMMUNICATION THAT IS SENT:

17 1. IN RESPONSE TO AN EXPRESS REQUEST FROM
18 THE CONSUMER RECEIVING THE SOLICITATION;

19 2. IN CONNECTION WITH AN EXISTING DEBT,
20 CONTRACT, PAYMENT, OR PERFORMANCE THAT HAS NOT BEEN COMPLETED AT
21 THE TIME THE COMMUNICATION IS SENT;

22 3. TO A CONSUMER WITH WHOM THE PERSON
23 SENDING THE COMMUNICATION HAS A PREEXISTING BUSINESS RELATIONSHIP;

24 4. BY OR ON BEHALF OF A NONPROFIT
25 ORGANIZATION THAT IS EXEMPT FROM TAXATION UNDER § 501(C)(3) OF THE
26 INTERNAL REVENUE CODE, IN CONNECTION WITH FUND-RAISING TO SUPPORT
27 THE CHARITABLE PURPOSE FOR WHICH THE ORGANIZATION WAS ESTABLISHED;

28 5. BY OR ON BEHALF OF A PERSON OVER WHICH A
29 FEDERAL AGENCY HAS REGULATORY AUTHORITY IF:

30 A. THE PERSON IS REQUIRED TO MAINTAIN A
31 LICENSE, PERMIT, OR CERTIFICATE TO SELL OR PROVIDE THE CONSUMER
32 GOODS, CONSUMER REALTY, OR CONSUMER SERVICES BEING OFFERED
33 THROUGH THE MAIL; AND

1 **B. THE PERSON IS REQUIRED BY LAW TO MAINTAIN A**
2 **RESTRICTED MAILING LIST COMPARABLE TO THE REGISTRY;**

3 **6. IN RESPONSE TO A REFERRAL;**

4 **7. BY AN INDIVIDUAL WHO WORKS FROM THE**
5 **INDIVIDUAL'S PRIMARY RESIDENCE; OR**

6 **8. BY AN INDIVIDUAL LICENSED BY THE STATE TO**
7 **CARRY OUT A TRADE, OCCUPATION, OR PROFESSION WHO IS ATTEMPTING TO**
8 **SET A WORK-RELATED APPOINTMENT WITH THE STATE OR A COUNTY IN THE**
9 **STATE.**

10 **(B) (1) THE DIVISION SHALL ESTABLISH AND PROVIDE FOR THE**
11 **OPERATION OF A RESTRICTED MAILING REGISTRY THAT CONTAINS A LIST OF**
12 **THE MAILING ADDRESSES OF CONSUMERS WHO RESIDE IN THE STATE AND WHO**
13 **CHOOSE NOT TO RECEIVE SOLICITATIONS.**

14 **(2) (I) THE DIVISION SHALL ADOPT REGULATIONS NECESSARY**
15 **TO CARRY OUT THIS SECTION.**

16 **(II) THE REGULATIONS SHALL SPECIFY:**

17 **1. THE METHOD BY WHICH A CONSUMER MAY**
18 **INCLUDE THE CONSUMER'S ADDRESS IN THE REGISTRY;**

19 **2. THE LENGTH OF TIME FOR WHICH A CONSUMER'S**
20 **ADDRESS WILL REMAIN IN THE REGISTRY;**

21 **3. THE METHOD BY WHICH A CONSUMER MAY**
22 **REMOVE THE CONSUMER'S ADDRESS FROM THE REGISTRY;**

23 **4. THE METHOD BY WHICH A PERSON WHO WANTS**
24 **TO SEND A SOLICITATION TO A CONSUMER MAY PURCHASE THE REGISTRY, AND**
25 **UPDATES TO THE REGISTRY, AS REQUIRED UNDER SUBSECTION (C) OF THIS**
26 **SECTION;**

27 **5. THE COST A PERSON MUST PAY FOR THE**
28 **REGISTRY AND UPDATES TO THE REGISTRY; AND**

29 **6. ANY OTHER MATTERS RELATING TO THE**
30 **REGISTRY THAT THE DIVISION CONSIDERS APPROPRIATE.**

1 **(3) THE INFORMATION CONTAINED IN THE REGISTRY SHALL BE**
2 **USED ONLY IN ACCORDANCE WITH THIS SECTION.**

3 **(C) (1) A PERSON THAT SENDS SOLICITATIONS TO CONSUMERS WHO**
4 **RESIDE IN THE STATE SHALL PURCHASE FROM THE DIVISION:**

5 **(I) THE REGISTRY; AND**

6 **(II) UPDATES TO THE REGISTRY AT LEAST EVERY 3**
7 **MONTHS.**

8 **(2) A PERSON MAY NOT SEND A SOLICITATION TO THE MAILING**
9 **ADDRESS OF A CONSUMER WHO RESIDES IN THE STATE MORE THAN 45 DAYS**
10 **AFTER THE PERSON OBTAINS THE REGISTRY OR ANY UPDATE TO THE REGISTRY**
11 **ON WHICH THE CONSUMER'S MAILING ADDRESS FIRST APPEARS.**

12 **(D) THE DIVISION MAY INITIATE A CIVIL ACTION AGAINST ANY PERSON**
13 **THAT VIOLATES THIS SECTION.**

14 **(E) A PERSON THAT VIOLATES THIS SECTION IS SUBJECT TO A FINE NOT**
15 **EXCEEDING \$5,000 FOR EACH VIOLATION.**

16 **(F) (1) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE UNDER**
17 **LAW, A CONSUMER WHO RECEIVES MORE THAN ONE SOLICITATION IN ANY**
18 **12-MONTH PERIOD SENT BY OR ON BEHALF OF THE SAME PERSON, IN**
19 **VIOLATION OF THIS SECTION, MAY BRING A CIVIL ACTION AGAINST THE PERSON**
20 **TO RECOVER:**

21 **(I) DAMAGES NOT EXCEEDING \$5,000 FOR EACH**
22 **VIOLATION;**

23 **(II) INJUNCTIVE RELIEF; AND**

24 **(III) ANY OTHER RELIEF THE COURT CONSIDERS**
25 **APPROPRIATE.**

26 **(2) A CONSUMER MAY NOT BRING A CIVIL ACTION AGAINST A**
27 **PERSON FOR A VIOLATION OF THIS SECTION:**

28 **(I) MORE THAN 2 YEARS AFTER THE ALLEGED VIOLATION**
29 **OCCURRED; OR**

30 **(II) MORE THAN 2 YEARS AFTER THE TERMINATION OF AN**
31 **ACTION BROUGHT BY THE STATE ARISING OUT OF THE SAME VIOLATION.**

1 **(G) FOR PURPOSES OF THIS SECTION, EACH PROHIBITED**
2 **SOLICITATION IS A SEPARATE VIOLATION.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That the Division of Consumer
4 Protection of the Office of the Attorney General shall:

5 (1) adopt regulations necessary to carry out this Act on or before
6 January 1, 2009; and

7 (2) take any actions necessary to ensure that the restricted mailing
8 registry required under Section 1 of this Act is available on or before July 1, 2009.

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 July 1, 2008.