

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1092

(Delegate Smigiel, *et al.*)

Judiciary

Consumer Protection - Telephone Calls from Debt Collectors and Telemarketers
- Exception to Wiretapping Prohibition

This bill creates an exception to the law prohibiting a person from willfully intercepting, disclosing, or using any wire, oral, or electronic communication. The bill permits a person to intercept a wire or electronic communication in order to secure evidence of a violation of the Maryland Consumer Debt Collection Act or the Maryland Telephone Consumer Protection Act if • the person is a party to the communication; and • the communication is made to the person by another person for the purpose of debt collection or telemarketing.

Fiscal Summary

State Effect: The bill would not directly affect State finances or operations.

Local Effect: The bill would not directly affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law: State statutory law currently makes it unlawful for any person to • willfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication; • willfully disclose, or endeavor to disclose, to any other person the contents of any such communication, knowing or having reason to know that the information was obtained through the unlawful interception of such a communication; or • willfully use, or endeavor to use, the

contents of such communication, knowing or having reason to know that the information was obtained through the interception of such a communication.

Any person who violates these prohibitions is guilty of a felony and is subject to imprisonment for up to five years or a fine of up to \$10,000, or both. The law makes a number of exceptions for communications companies and law enforcement agencies.

Background: For decades, residents of Maryland have relied on the Maryland Consumer Debt Collection Act for protection against some creditors and third-party collection organizations that resort to abusive or harassing debt collection practices. Under MCDCA, a debt collector collecting or attempting to collect an alleged debt may not • use or threaten force or violence; • threaten criminal prosecution, unless the transaction involved a criminal violation; • disclose or threaten to disclose information about the debtor's reputation for creditworthiness under specified circumstances; • except as otherwise permitted, contact a person's employer about a debt before obtaining a final judgment; • except as otherwise permitted, disclose or threaten to disclose information that affects the debtor's reputation under specified circumstances; • communicate with the debtor or a person related to the debtor with the frequency, at the unusual hours, or in any other manner as reasonably can be expected to abuse or harass the debtor; • use obscene or grossly abusive language; • claim, attempt, or threaten to enforce a right with knowledge that the right does not exist; or • use a communication that simulates legal or judicial process or gives the appearance of being authorized, issued, or approved by a government, government agency, or lawyer when it is not.

Under the Maryland Telephone Consumer Protection Act, a person may not violate the federal Telephone Consumer Protection Act as implemented by Federal Communications Commission regulations. FCC regulations prohibit the initiation of any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, except under specified circumstances, including when a call is not made for commercial purposes. All artificial or prerecorded telephone messages must clearly state the identity of the business, individual, or other entity responsible for the call at the beginning of the message. The telephone number of the business, individual, or other entity must also be clearly stated during or after the message and may not be the number of the auto-dialer or prerecorded message player that placed the call or any number for which charges exceed local or long distance transmission charges.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division);
Department of Legislative Services

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ncs/ljm

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