

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 37
Economic Matters

(Delegate Stewart)

Finance

Commercial Law - Consumer Protection - Telephone Solicitation (Stop the Spam
Calls Act of 2023)

This bill establishes numerous restrictions on telephone solicitations made to residents of the State. Unless prior express written consent is provided by the “called party,” the bill prohibits a person from making (or causing to be made) a telephone solicitation that involves (1) an automated system for the selection or dialing of telephone numbers or (2) the playing of a recorded message when a connection is completed to the number called. The bill also restricts the methods, times, and identifying information that a solicitor may utilize and establishes a rebuttable presumption that a telephone solicitation made to any area code in the State is made to a resident (or a person) who is reasonably presumed to reside or have a place of business in the State at the time the call is made. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions. **The bill takes effect January 1, 2024.**

Fiscal Summary

State Effect: The bill’s imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General *may* incur minimal costs to handle additional complaints under the bill; however, any such impact is not anticipated to materially affect State finances.

Local Effect: The bill’s imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: A “called party” means a person who is a regular user of a telephone number that receives a telephone solicitation.

General Requirements

A person who makes (or causes to be made) a telephone solicitation may not:

- fail to transmit (or cause not to be transmitted) the originating telephone number and, when made available by the caller’s carrier, the name of the caller to any caller identification service in use by a called party;
- intentionally act to prevent the transmission of the telephone solicitor’s name or telephone number to the called party when the equipment or service used by the solicitor is capable of creating and transmitting the solicitor’s name and telephone number; or
- in order to conceal the true identity of the caller, use technology that deliberately displays a different caller identification number than the number the call is originating from.

However, it is not a violation of this requirement to substitute (1) the name of the seller or other entity for whom the telephone solicitation is placed and (2) the customer service telephone number of the seller or other entity.

Times Restrictions and Other Prohibitions

A person may not make (or cause to be made) a telephone solicitation, including a call made through automated dialing or a recorded message:

- to a called party during the hours between 8 p.m. and 8 a.m. in the called party’s time zone;
- more than three times to the same called party during a 24-hour period on the same subject matter or issue, regardless of the telephone numbers used to make the call; or
- by intentionally altering the voice of the caller in an attempt to disguise or conceal the identity of the caller in order to (1) defraud, confuse, or financially or otherwise injure the called party or (2) obtain personal information from the called party that may be used in a fraudulent or unlawful manner.

Applicability

The bill establishes various entities and circumstances to which its requirements do not apply. For example, the bill specifies it does not apply to:

- a telephone solicitation that is an isolated transaction and not performed in the course of a pattern of repeated transactions of a similar nature;
- a noncommercial telephone solicitation for religious, charitable, political, or educational purposes, as specified;
- certain business-to-business sales; or
- a person who solicits contracts for the maintenance or repair of goods previously purchased from the person making the solicitation (or on whose behalf the solicitation is made).

Additionally, the bill's requirements do not preclude the applicability of specified provisions of the Public Utilities Article relating to telephone solicitations and automated dialing.

Current Law: A “telephone solicitation” is an organized activity, program, or campaign to communicate by telephone with residents of the State in order to:

- sell, lease, or rent goods or services (or attempt to do so);
- offer (or attempt to offer) a gift or prize;
- conduct (or attempt to conduct) a poll; or
- request (or attempt to request) survey information, if the results of the survey will be used directly to solicit persons to purchase, lease, or rent goods or services.

A telephone solicitation includes the act of managing, directing, or supervising an individual engaged in telephone solicitation.

A person may not use an automated dialing, push-button, or tone-activated address signaling system with a prerecorded message to:

- solicit persons to purchase, lease, or rent goods or services;
- offer a gift or prize;
- conduct a poll; or
- request survey information if the results will be used directly to solicit persons to purchase, lease, or rent goods or services.

The sender of an automated dialing, push-button, or tone-activated address signaling call must disconnect the prerecorded message machine from the recipient's telephone line within five seconds after the termination of the call by either the person calling or the person called.

A person who violates these requirements is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to \$1,000 for a first offense and \$5,000 for each subsequent offense.

Maryland Consumer Protection Act

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind, which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 90 (Senator Kramer, *et al.*) - Finance.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of People's Counsel; Public Service Commission; Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

Fiscal Note History:
rh/jkb

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