

HOUSE BILL 1228

I3, C5

EMERGENCY BILL

4lr2516

By: **Delegate Stewart**

Introduced and read first time: February 8, 2024

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 3, 2024

CHAPTER _____

1 AN ACT concerning

2 **Consumer Protection – Telephone Solicitation – Exemptions and ~~Waiver of~~**
3 **Remedies**

4 FOR the purpose of establishing that certain provisions of law that prohibit a person from
5 making or causing to make a certain telephone solicitation that involves using a
6 certain automated system or playing a recorded message do not apply to a
7 noncommercial telephone solicitation for public opinion research; authorizing a
8 certain called party who is aggrieved by a person who violates certain provisions of
9 law to bring an action to enjoin further violations and to recover certain damages;
10 prohibiting the waiver of requirements and remedies relating to telephone
11 solicitations under certain circumstances; and generally relating to the regulation of
12 telephone solicitation in the State.

13 BY repealing and reenacting, without amendments,
14 Article – Commercial Law
15 Section 14–4501(a), (b), and (f)
16 Annotated Code of Maryland
17 (2013 Replacement Volume and 2023 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Commercial Law
20 Section 14–4502(a) and 14–4503
21 Annotated Code of Maryland
22 (2013 Replacement Volume and 2023 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, without amendments,
2 Article – Public Utilities
3 Section 8–205(a)
4 Annotated Code of Maryland
5 (2020 Replacement Volume and 2023 Supplement)

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

8 **Article – Commercial Law**

9 14–4501.

10 (a) In this subtitle the following words have the meanings indicated.

11 (b) “Called party” means a person who is a regular user of a telephone number
12 that receives a telephone solicitation.

13 (f) “Telephone solicitation” has the meaning stated in § 8–205 of the Public
14 Utilities Article.

15 14–4502.

16 (a) (1) This subsection does not apply to:

17 (i) A telephone solicitation that is an isolated transaction and not
18 performed in the course of a pattern of repeated transactions of a similar nature;

19 (ii) Subject to paragraph (2) of this subsection, a noncommercial
20 telephone solicitation for religious, charitable, political, or educational purposes;

21 (iii) A business-to-business sale where the telephone solicitor has
22 been lawfully operating continuously for at least 3 years under the same business name;

23 (iv) A person who solicits contracts for the maintenance or repair of
24 goods previously purchased from the person making the solicitation or on whose behalf the
25 solicitation is made;

26 (v) A single telephone solicitation made to a customer or client in
27 response to an inquiry or request from the customer or client; [or]

28 (vi) A communication between a business and a customer that have
29 an existing business contract or relationship with each other if:

30 1. The communication is initially intended for informational
31 purposes only; and

1 2. Based on further inquiry from the customer, the
2 communication becomes a telephone solicitation; OR

3 **(VII) A NONCOMMERCIAL TELEPHONE SOLICITATION FOR THE**
4 **PURPOSE OF PUBLIC OPINION RESEARCH.**

5 (2) A person soliciting for noncommercial purposes under paragraph (1)(ii)
6 of this subsection is exempt only if:

7 (i) The person is soliciting for a nonprofit entity; and

8 (ii) The entity is:

9 1. Registered with the Secretary of State in accordance with
10 Title 6 of the Business Regulation Article; and

11 2. Exempt from taxation under § 501(c)(3), (4), or (6) of the
12 Internal Revenue Code.

13 (3) Without the prior express written consent of the called party, a person
14 may not make or cause to be made a telephone solicitation that involves:

15 (i) An automated system for the selection or dialing of telephone
16 numbers; or

17 (ii) The playing of a recorded message when a connection is
18 completed to the number called.

19 14-4503.

20 (a) **(1) A SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A** violation of
21 this subtitle is:

22 ~~(1)~~ **(I)** An unfair, abusive, or deceptive trade practice within the
23 meaning of Title 13 of this article; and

24 ~~(2)~~ **(II)** Subject to the enforcement and penalty provisions contained in
25 Title 13 of this article.

26 **(2) (I) A CALLED PARTY WHO IS AGGRIEVED BY A PERSON WHO**
27 **VIOLATES THIS SUBTITLE MAY BRING AN ACTION IN ACCORDANCE WITH § 13-408 OF**
28 **THIS ARTICLE TO ENJOIN FURTHER VIOLATIONS AND TO RECOVER DAMAGES UP TO**
29 **\$500 OR ACTUAL DAMAGES, WHICHEVER IS GREATER.**

30 **(II) IF THE COURT FINDS THE DEFENDANT WILLFULLY OR**
31 **KNOWINGLY VIOLATED THIS SUBTITLE, THE COURT MAY AWARD DAMAGES UP TO**

1 THREE TIMES THE AMOUNT OF DAMAGES UNDER SUBPARAGRAPH (I) OF THIS
 2 PARAGRAPH.

3 (b) There is a rebuttable presumption that a telephone solicitation made to any
 4 area code in the State is made to a resident or a person who is reasonably presumed to
 5 reside or have a place of business in the State at the time the call is made.

6 (c) This subtitle does not preclude the applicability of §§ 8–204 and 8–205 and
 7 Title 13 of the Public Utilities Article to a telephone solicitation subject to this subtitle.

8 (D) EXCEPT AS PROVIDED IN § 14–4502(A)(3) OF THIS SUBTITLE, THE
 9 REQUIREMENTS AND REMEDIES PROVIDED UNDER THIS SUBTITLE MAY NOT BE
 10 WAIVED BY AN AGREEMENT, UNLESS THE AGREEMENT IS PART OF A SETTLEMENT
 11 OF A LEGAL DISPUTE OR ACTION.

12 (E) NOTHING IN THIS SUBTITLE PROHIBITS AN AGREEMENT FROM
 13 ESTABLISHING MORE EXTENSIVE REQUIREMENTS OR REMEDIES THAN THE
 14 REQUIREMENTS AND REMEDIES CONTAINED IN THIS SUBTITLE.

15 **Article – Public Utilities**

16 8–205.

17 (a) (1) In this section, “telephone solicitation” means an organized activity,
 18 program, or campaign to communicate by telephone with residents of Maryland in order to:

19 (i) sell, lease, or rent goods or services;

20 (ii) attempt to sell, lease, or rent goods or services;

21 (iii) offer or attempt to offer a gift or prize;

22 (iv) conduct or attempt to conduct a poll; or

23 (v) request or attempt to request survey information, if the results
 24 of the survey will be used directly to solicit persons to purchase, lease, or rent goods or
 25 services.

26 (2) “Telephone solicitation” includes the act of managing, directing, or
 27 supervising an individual engaged in telephone solicitation under paragraph (1) of this
 28 subsection.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
 30 measure, is necessary for the immediate preservation of the public health or safety, has
 31 been passed by a yea and nay vote supported by three–fifths of all the members elected to

1 each of the two Houses of the General Assembly, and shall take effect from the date it is
2 enacted.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.