

## **Legislation Needed to Clarify the Maryland Telephone Solicitations Act (MTSA)**

**The Issue:** Under a recent Maryland Supreme Court decision, Maryland is the only state in U.S. history to interpret a telephone solicitations act as a legal violation when a telephone call is actually placed by a consumer to a merchant, as opposed to what the language of the MTSA plainly states, which is that a violation may only occur when the merchant initiates the telephone call. The Court's decision obliterates the longstanding way of doing business via telephone and requires a signed contract every time a consumer calls and agrees to buy a product or service during the phone call. Legislation is needed to avoid confusion and uncertainty throughout Maryland's marketplaces and to allow consumers to buy what they want when they want it without unnecessary complexity.

**The Problem:** The MTSA protects consumers that receive "telephone solicitations" from merchants trying to sell them something. If a call is a "telephone solicitation," the merchant is required to send the customer a written contract to be signed and returned to the merchant to consummate the sale. In other words, the consumer's oral agreement, even if recorded, is insufficient.

Consumers routinely call stores or service companies because they see or hear an advertisement or because their friend or family recommends the merchant. The customer may ask for a specific product, provide payment information, and the merchant is expected to perform. This is the way commerce has worked since perhaps the invention of the telephone. Consumers should be able to call merchants to purchase goods and services without imposing unreasonable signed contract obligations.

Maryland businesses have long interpreted the term "telephone solicitations" to apply to outbound calls made by merchants to consumers, but not to inbound calls from consumers to merchants. This interpretation: (1) allows Maryland consumers to call companies to purchase goods and services without the need for a signed contract; and (2) is consistent with the MTSA's protections for consumers who receive annoying cold calls from unfamiliar companies.

Because of the Court's novel decision, consumers may no longer be able to call a business and buy everyday products such as pizzas, mulch for their gardens, lawnmowing services, apparel, and other consumer goods or services unless they sign an actual contract after the call ends and return it to the merchant. For every sale made over the phone, the merchant would have to satisfy one of the MTSA's exemptions to avoid having to obtain a signed contract, and the consumer would have to wait to obtain the product they want to buy. The unintended results are higher costs for businesses, more complexity for customers when all they want is a pizza, and negative customer experiences.

**The Solution:** The attached proposed legislation addresses the unintended consequences of the Court's novel interpretation: Without a legislative fix:

- Maryland businesses of all sizes will incur additional costs to comply, and those costs likely will be passed on to customers;
- Maryland customers will face unnecessary complexity when all they want to do is order food or buy products like bike parts, TVs, computers, medication, and flowers; and
- Maryland's most vulnerable will be most affected, as they typically purchase products and services by phone as opposed to using an app or the internet.

SENATE [HOUSE] BILL \_\_\_\_\_

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By:

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A BILL ENTITLED

AN ACT concerning

**Commercial Law – Consumer Protection – Telephone Solicitations**

FOR the purpose of....

BY adding to

Article – Commercial Law

Section 14-2201(f)

Annotated Code of Maryland

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

**Article – Commercial Law**

14-2201.

(f) “Telephone solicitation” means the attempt by a merchant to sell or lease consumer goods, services, or realty to a consumer located in this State that is:

- (1) Made entirely by telephone; and
- (2) Initiated by the merchant.

**(G) “TELEPHONE SOLICITATION” SHALL NOT INCLUDE TELEPHONE CALLS MADE BY A CONSUMER TO A MERCHANT.**

14-2205

**(A)** In addition to any remedies otherwise available at law, a violation of this subtitle shall be:

(1) An unfair or deceptive trade practice under Title 13, Subtitle 3 of this article;

and

(2) If the violation involves a solicitation offering credit services, a violation of the

Maryland Credit Services Businesses Act.

**(B) NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO AFFECT THE AUTHORITY OF THE DIVISION OF CONSUMER PROTECTION IN THE OFFICE OF THE ATTORNEY GENERAL, OR OTHER APPLICABLE STATE AGENCY, TO ENFORCE VIOLATIONS OF LAW RELATING TO TITLES 13 AND 14 OF THE COMMERCIAL LAW ARTICLE OR OTHER APPLICABLE STATE LAW OR REGULATION IN CONNECTION WITH THE ACTIVITIES OF MERCHANTS OPERATING IN THE STATE.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all agreements entered into or renewed as of the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2024.

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