

SENATE BILL 90

C5, I3

(PRE-FILED)

3lr0925
CF HB 37

By: **Senator Kramer**

Requested: November 18, 2022

Introduced and read first time: January 11, 2023

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Consumer Protection – Telephone Solicitation**
3 **(Stop the Spam Calls Act of 2023)**

4 FOR the purpose of prohibiting a person from making certain telephone solicitations to a
5 certain called party in a certain manner by restricting the methods, times, and
6 identifying information that the person making the call may utilize; making a
7 violation of this Act an unfair, abusive, or deceptive trade practice that is subject to
8 enforcement and penalties under the Maryland Consumer Protection Act; and
9 generally relating to the regulation of telephone solicitation in the State.

10 BY repealing and reenacting, with amendments,
11 Article – Commercial Law
12 Section 13–301(14)(xxxv)
13 Annotated Code of Maryland
14 (2013 Replacement Volume and 2022 Supplement)

15 BY repealing and reenacting, without amendments,
16 Article – Commercial Law
17 Section 13–301(14)(xxxvi)
18 Annotated Code of Maryland
19 (2013 Replacement Volume and 2022 Supplement)

20 BY adding to
21 Article – Commercial Law
22 Section 13–301(14)(xxxvii); and 14–4501 through 14–4504 to be under the new
23 subtitle “Subtitle 45. Telephone Solicitations”
24 Annotated Code of Maryland
25 (2013 Replacement Volume and 2022 Supplement)

26 BY repealing and reenacting, without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Public Utilities
Section 8–205(a)
Annotated Code of Maryland
(2020 Replacement Volume and 2022 Supplement)

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

Article – Commercial Law

13–301.

Unfair, abusive, or deceptive trade practices include any:

(14) Violation of a provision of:

(xxv) Section 11–210 of the Education Article; [or]

(xxvi) Title 14, Subtitle 44 of this article; or

(xxvii) TITLE 14, SUBTITLE 45 OF THIS ARTICLE; OR

SUBTITLE 45. TELEPHONE SOLICITATIONS.

14–4501.

**(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
INDICATED.**

**(B) “CALLED PARTY” MEANS A PERSON WHO IS A REGULAR USER OF A
TELEPHONE NUMBER THAT RECEIVES A TELEPHONE SOLICITATION.**

**(C) “CALLER IDENTIFICATION SERVICE” MEANS A SERVICE THAT ALLOWS A
TELEPHONE SUBSCRIBER TO HAVE THE TELEPHONE NUMBER AND, WHERE
AVAILABLE, THE NAME OF THE CALLING PARTY TRANSMITTED SIMULTANEOUSLY
WITH THE TELEPHONE CALL AND DISPLAYED ON A DEVICE CONNECTED TO THE
SUBSCRIBER’S TELEPHONE.**

**(D) “PRIOR EXPRESS WRITTEN CONSENT” MEANS A WRITTEN AGREEMENT
THAT:**

(1) BEARS THE SIGNATURE OF THE CALLED PARTY;

**(2) CLEARLY AUTHORIZES THE PERSON MAKING OR ALLOWING THE
PLACEMENT OF A TELEPHONE SOLICITATION BY TELEPHONE CALL, TEXT MESSAGE,**

1 OR VOICEMAIL TO DELIVER OR CAUSE TO BE DELIVERED TO THE CALLED PARTY:

2 (I) A TELEPHONE SOLICITATION USING AN AUTOMATED
3 SYSTEM FOR THE SELECTION OR DIALING OF TELEPHONE NUMBERS;

4 (II) THE PLAYING OF A RECORDED MESSAGE WHEN A
5 CONNECTION IS COMPLETED TO A NUMBER CALLED; OR

6 (III) THE TRANSMISSION OF A PRERECORDED VOICEMAIL; AND

7 (3) INCLUDES:

8 (I) THE TELEPHONE NUMBER TO WHICH THE SIGNATORY
9 AUTHORIZES A TELEPHONE SOLICITATION TO BE DELIVERED; AND

10 (II) A CLEAR AND CONSPICUOUS DISCLOSURE INFORMING THE
11 CALLED PARTY THAT:

12 1. BY EXECUTING THE AGREEMENT, THE CALLED PARTY
13 AUTHORIZES THE PERSON MAKING OR ALLOWING THE PLACEMENT OF A
14 TELEPHONE SOLICITATION TO DELIVER OR CAUSE TO BE DELIVERED A TELEPHONE
15 SOLICITATION TO THE CALLED PARTY USING:

16 A. AN AUTOMATED SYSTEM FOR THE SELECTION OR
17 DIALING OF TELEPHONE NUMBERS; OR

18 B. THE PLAYING OF A RECORDED MESSAGE WHEN A
19 CONNECTION IS COMPLETED TO A NUMBER CALLED; AND

20 2. THE CALLED PARTY IS NOT REQUIRED TO DIRECTLY
21 OR INDIRECTLY:

22 A. SIGN THE WRITTEN AGREEMENT; OR

23 B. AGREE TO ENTER INTO THE AGREEMENT AS A
24 CONDITION OF PURCHASING ANY PROPERTY, GOODS, OR SERVICES.

25 (E) "SIGNATURE" INCLUDES AN ELECTRONIC OR DIGITAL SIGNATURE TO
26 THE EXTENT THAT THE FORM OF SIGNATURE IS RECOGNIZED AS A VALID SIGNATURE
27 UNDER APPLICABLE FEDERAL LAW OR STATE CONTRACT LAW.

28 (F) "TELEPHONE SOLICITATION" HAS THE MEANING STATED IN § 8-205 OF
29 THE PUBLIC UTILITIES ARTICLE.

1 14-4502.

2 (A) WITHOUT THE PRIOR EXPRESS WRITTEN CONSENT OF THE CALLED
3 PARTY, A PERSON MAY NOT MAKE OR CAUSE TO BE MADE A TELEPHONE
4 SOLICITATION THAT INVOLVES:

5 (1) AN AUTOMATED SYSTEM FOR THE SELECTION OR DIALING OF
6 TELEPHONE NUMBERS; OR

7 (2) THE PLAYING OF A RECORDED MESSAGE WHEN A CONNECTION IS
8 COMPLETED TO THE NUMBER CALLED.

9 (B) (1) A PERSON WHO MAKES OR CAUSES TO BE MADE A TELEPHONE
10 SOLICITATION MAY NOT FAIL TO TRANSMIT OR CAUSE NOT TO BE TRANSMITTED:

11 (I) THE ORIGINATING TELEPHONE NUMBER; AND

12 (II) WHEN MADE AVAILABLE BY THE CALLER'S CARRIER, THE
13 NAME OF THE CALLER TO ANY CALLER IDENTIFICATION SERVICE IN USE BY A
14 CALLED PARTY.

15 (2) IT IS NOT A VIOLATION OF THIS SUBSECTION TO SUBSTITUTE FOR
16 THE NAME AND TELEPHONE NUMBER USED IN OR BILLED FOR MAKING THE CALL:

17 (I) THE NAME OF THE SELLER OR OTHER ENTITY FOR WHOM
18 THE TELEPHONE SOLICITATION IS PLACED; AND

19 (II) THE CUSTOMER SERVICE TELEPHONE NUMBER OF THE
20 SELLER OR OTHER ENTITY.

21 (C) A PERSON MAY NOT MAKE OR CAUSE TO BE MADE A TELEPHONE
22 SOLICITATION BY INTENTIONALLY ALTERING THE VOICE OF THE CALLER IN AN
23 ATTEMPT TO DISGUISE OR CONCEAL THE IDENTITY OF THE CALLER IN ORDER TO:

24 (1) DEFRAUD, CONFUSE, OR FINANCIALLY OR OTHERWISE INJURE
25 THE CALLED PARTY; OR

26 (2) OBTAIN PERSONAL INFORMATION FROM THE CALLED PARTY
27 THAT MAY BE USED IN A FRAUDULENT OR UNLAWFUL MANNER.

28 14-4503.

(A) (1) THIS SECTION DOES NOT APPLY TO:

(I) A TELEPHONE SOLICITATION THAT IS AN ISOLATED TRANSACTION AND NOT PERFORMED IN THE COURSE OF A PATTERN OF REPEATED TRANSACTIONS OF A SIMILAR NATURE;

(II) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A NONCOMMERCIAL TELEPHONE SOLICITATION FOR RELIGIOUS, CHARITABLE, POLITICAL, OR EDUCATIONAL PURPOSES;

(III) A BUSINESS-TO-BUSINESS SALE WHERE:

1. THE TELEPHONE SOLICITOR HAS BEEN LAWFULLY OPERATING CONTINUOUSLY FOR AT LEAST 3 YEARS UNDER THE SAME BUSINESS NAME AND HAS AT LEAST 50% OF ITS DOLLAR VOLUME CONSISTING OF REPEAT SALES TO EXISTING BUSINESSES; OR

2. A PURCHASER BUSINESS INTENDS TO:

A. RESELL OR OFFER THE PROPERTY OR GOODS PURCHASED FOR PURPOSES OF ADVERTISEMENT OR AS A PROMOTIONAL ITEM; OR

B. USE THE PROPERTY OR GOODS PURCHASED IN A RECYCLING, REUSE, MANUFACTURING, OR MANUFACTURING PROCESS; OR

(IV) 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.

(2) A PERSON SOLICITING FOR NONCOMMERCIAL PURPOSES UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION IS EXEMPT ONLY IF:

(I) THE PERSON IS SOLICITING FOR A NONPROFIT ENTITY; AND

(II) THE ENTITY IS:

1. REGISTERED WITH THE SECRETARY OF STATE IN ACCORDANCE WITH TITLE 6 OF THE BUSINESS REGULATION ARTICLE; AND

2. EXEMPT FROM TAXATION UNDER § 501(C)(3), (4), OR (6) OF THE INTERNAL REVENUE CODE.

(B) A PERSON MAY NOT MAKE OR CAUSE TO BE MADE A TELEPHONE

SOLICITATION, INCLUDING A CALL MADE THROUGH AUTOMATED DIALING OR A
RECORDED MESSAGE:

(1) TO A CALLED PARTY DURING THE HOURS BETWEEN 8 P.M. AND 8
A.M. IN THE CALLED PARTY'S TIME ZONE; OR

(2) 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.

(C) A PERSON WHO MAKES OR CAUSES TO BE MADE A TELEPHONE
SOLICITATION MAY NOT:

(1) 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 TELEPHONE SOLICITOR IS
CAPABLE OF CREATING AND TRANSMITTING THE TELEPHONE SOLICITOR'S NAME
AND TELEPHONE NUMBER; OR

(2) 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.

14-4504.

(A) A VIOLATION OF THIS SUBTITLE IS:

(1) AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICE WITHIN
THE MEANING OF TITLE 13 OF THIS ARTICLE; AND

(2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS
CONTAINED IN TITLE 13 OF THIS ARTICLE.

(B) THERE IS A REBUTTABLE PRESUMPTION THAT A TELEPHONE
SOLICITATION MADE TO ANY AREA CODE IN THE STATE IS MADE TO A RESIDENT OR
A PERSON IN THE STATE AT THE TIME THE CALL IS MADE.

(C) THIS SUBTITLE DOES NOT PRECLUDE THE APPLICABILITY OF §§ 8-204
AND 8-205 AND TITLE 13 OF THE PUBLIC UTILITIES ARTICLE TO A TELEPHONE
SOLICITATION SUBJECT TO THIS SUBTITLE.

Article – Public Utilities

8-205.

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

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

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

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

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

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

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

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2023.