

HOUSE BILL 37

C5, I3

(PRE-FILED)

3lr0700
CF SB 90

By: **Delegate Stewart**

Requested: November 4, 2022

Introduced and read first time: January 11, 2023

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 3, 2023

CHAPTER _____

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

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.



Section 13–301(14)(xxxvii); and 14–4501 through ~~14–4504~~ 14–4503 to be under the new subtitle “Subtitle 45. Telephone Solicitations” Annotated Code of Maryland (2013 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, without amendments, 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:

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

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

(XXXVII) 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 **(1) BEARS THE SIGNATURE OF THE CALLED PARTY;**

2 **(2) CLEARLY AUTHORIZES THE PERSON MAKING OR ALLOWING THE**
3 **PLACEMENT OF A TELEPHONE SOLICITATION BY TELEPHONE CALL, TEXT MESSAGE,**
4 **OR VOICEMAIL TO DELIVER OR CAUSE TO BE DELIVERED TO THE CALLED PARTY:**

5 **(I) A TELEPHONE SOLICITATION USING AN AUTOMATED**
6 **SYSTEM FOR THE SELECTION OR DIALING OF TELEPHONE NUMBERS;**

7 **(II) THE PLAYING OF A RECORDED OR ARTIFICIAL VOICE**
8 **MESSAGE WHEN A CONNECTION IS COMPLETED TO A NUMBER CALLED; OR**

9 **(III) THE TRANSMISSION OF A PRERECORDED VOICEMAIL; AND**

10 **(3) INCLUDES:**

11 **(I) THE TELEPHONE NUMBER TO WHICH THE SIGNATORY**
12 **AUTHORIZES A TELEPHONE SOLICITATION TO BE DELIVERED; AND**

13 **(II) A CLEAR AND CONSPICUOUS DISCLOSURE INFORMING THE**
14 **CALLED PARTY THAT:**

15 **1. BY EXECUTING THE AGREEMENT, THE CALLED PARTY**
16 **AUTHORIZES THE PERSON MAKING OR ALLOWING THE PLACEMENT OF A**
17 **TELEPHONE SOLICITATION TO DELIVER OR CAUSE TO BE DELIVERED A TELEPHONE**
18 **SOLICITATION TO THE CALLED PARTY USING:**

19 **A. AN AUTOMATED SYSTEM FOR THE SELECTION OR**
20 **DIALING OF TELEPHONE NUMBERS; OR**

21 **B. THE PLAYING OF A RECORDED MESSAGE WHEN A**
22 **CONNECTION IS COMPLETED TO A NUMBER CALLED; AND**

23 **2. THE CALLED PARTY IS NOT REQUIRED TO DIRECTLY**
24 **OR INDIRECTLY:**

25 **A. SIGN THE WRITTEN AGREEMENT; OR**

26 **B. AGREE TO ENTER INTO THE AGREEMENT AS A**
27 **CONDITION OF PURCHASING ANY PROPERTY, GOODS, OR SERVICES.**

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

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

14-4502.

(A) (1) THIS SUBSECTION 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 THE TELEPHONE SOLICITOR HAS BEEN LAWFULLY OPERATING CONTINUOUSLY FOR AT LEAST 3 YEARS UNDER THE SAME BUSINESS NAME;

(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;

(V) A SINGLE TELEPHONE SOLICITATION MADE TO A CUSTOMER OR CLIENT IN RESPONSE TO AN INQUIRY OR REQUEST FROM THE CUSTOMER OR CLIENT; OR

(VI) A COMMUNICATION BETWEEN A BUSINESS AND A CUSTOMER THAT HAVE AN EXISTING BUSINESS CONTRACT OR RELATIONSHIP WITH EACH OTHER IF:

1. THE COMMUNICATION IS INITIALLY INTENDED FOR INFORMATIONAL PURPOSES ONLY; AND

2. BASED ON FURTHER INQUIRY FROM THE CUSTOMER, THE COMMUNICATION BECOMES A TELEPHONE SOLICITATION.

(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.

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

~~(1)~~ (I) AN AUTOMATED SYSTEM FOR THE SELECTION OR DIALING OF TELEPHONE NUMBERS; OR

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

(B) (1) A PERSON WHO MAKES OR CAUSES TO BE MADE A TELEPHONE SOLICITATION MAY NOT ~~FAIL~~:

(I) FAIL TO TRANSMIT OR CAUSE NOT TO BE TRANSMITTED:

~~(1)~~ 1. THE ORIGINATING TELEPHONE NUMBER; AND

~~(2)~~ 2. WHEN MADE AVAILABLE BY THE CALLER'S CARRIER, THE NAME OF THE CALLER TO ANY CALLER IDENTIFICATION SERVICE IN USE BY A CALLED PARTY;

(II) 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

(III) 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.

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

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

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

(C) A PERSON MAY NOT MAKE OR CAUSE TO BE MADE A TELEPHONE
SOLICITATION ~~BY~~, 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;

(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; OR

(3) BY INTENTIONALLY ALTERING THE VOICE OF THE CALLER IN AN
ATTEMPT TO DISGUISE OR CONCEAL THE IDENTITY OF THE CALLER IN ORDER TO:

~~(1)~~ (I) DEFRAUD, CONFUSE, OR FINANCIALLY OR OTHERWISE
INJURE THE CALLED PARTY; OR

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

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 WHO IS REASONABLY PRESUMED TO RESIDE OR HAVE A PLACE OF
BUSINESS 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.

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

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

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

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

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

(v) 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.

1 (2) "Telephone solicitation" includes the act of managing, directing, or
2 supervising an individual engaged in telephone solicitation under paragraph (1) of this
3 subsection.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 ~~October 1, 2023~~ January 1, 2024.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.