

CHAPTER 10

(Senate Bill 10)

AN ACT concerning

Consumer Protection – False Advertising – Misrepresentations in Advertisements and Telephone Directory Listings – ~~Publication of Local Numbers by Nonlocal Businesses~~

FOR the purpose of ~~prohibiting certain nonlocal businesses from publishing an advertisement containing a local telephone number in certain directories except under certain circumstances; prohibiting certain nonlocal businesses from listing or causing to be listed a local telephone number in certain directories except under certain circumstances; providing that a telephone company or directory provider is not liable for this Act by a nonlocal business; providing that a violation of this Act is an unfair or deceptive trade practice under the Maryland Consumer Protection Act and is subject to certain enforcement and penalty provisions; providing that a person is in violation of a certain provision of law prohibiting false advertising if the person causes an advertisement that misrepresents the location of the person to be published in a certain directory, or causes a telephone listing that misrepresents the location of the person to be listed in a certain directory; exempting publishers, printers, and distributors of certain advertisements or telephone listings from certain provisions of law governing false advertising; providing for the application of certain provisions of this Act; defining certain terms; and generally relating to the publication of local numbers in telephone directories by nonlocal businesses.~~ false advertising and misrepresentations in advertisements and telephone directory listings.

BY repealing and reenacting, with amendments,

Article – Commercial Law

Section ~~13-301(14)~~ 11-701 and 11-702

Annotated Code of Maryland

(2005 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, without amendments,

Article – Commercial Law

Section 11-703 and 11-705

Annotated Code of Maryland

(2005 Replacement Volume and 2008 Supplement)

BY adding to

Article – Commercial Law

Section ~~14-1322~~ 11-704.1

Annotated Code of Maryland

(2005 Replacement Volume and 2008 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 or deceptive trade practices include any:~~

~~(14) Violation of a provision of:~~

~~(i) This title;~~

~~(ii) An order of the Attorney General or agreement of a party relating to unit pricing under Title 14, Subtitle 1 of this article;~~

~~(iii) Title 14, Subtitle 2 of this article, the Maryland Consumer Debt Collection Act;~~

~~(iv) Title 14, Subtitle 3 of this article, the Maryland Door to Door Sales Act;~~

~~(v) Title 14, Subtitle 9 of this article, Kosher Products;~~

~~(vi) Title 14, Subtitle 10 of this article, Automotive Repair Facilities;~~

~~(vii) Section 14-1302 of this article;~~

~~(viii) Title 14, Subtitle 11 of this article, Maryland Layaway Sales Act;~~

~~(ix) Section 22-415 of the Transportation Article;~~

~~(x) Title 14, Subtitle 20 of this article;~~

~~(xi) Title 14, Subtitle 15 of this article, the Automotive Warranty Enforcement Act;~~

~~(xii) Title 14, Subtitle 21 of this article;~~

~~(xiii) Section 18-107 of the Transportation Article;~~

~~(xiv) Title 14, Subtitle 22 of this article, the Maryland Telephone Solicitations Act;~~

~~(xv) Title 14, Subtitle 23 of this article, the Automotive Crash Parts Act;~~

~~(xvi) Title 10, Subtitle 6 of the Real Property Article;~~

~~(xvii) Title 14, Subtitle 25 of this article, the Hearing Aid Sales Act;~~

~~(xviii) Title 14, Subtitle 26 of this article, the Maryland Door-to-Door Solicitations Act;~~

~~(xix) Title 14, Subtitle 31 of this article, the Maryland Household Goods Movers Act;~~

~~(xx) Title 14, Subtitle 32 of this article, the Maryland Telephone Consumer Protection Act;~~

~~(xxi) Title 14, Subtitle 34 of this article, the Social Security Number Privacy Act;~~

~~(xxii) Section 14-1319 or § 14-1320 of this article;~~

~~(xxiii) Section 7-304 of the Criminal Law Article;~~

~~(xxiv) Title 7, Subtitle 3 of the Real Property Article, the Protection of Homeowners in Foreclosure Act;~~

~~(xxv) Title 6, Subtitle 13 of the Environment Article; [or]~~

~~(xxvi) Section 7-405(c)(2)(ii) of the Health Occupations Article; or~~

~~(xxvii) SECTION 14-1322 OF THIS ARTICLE; OR~~

~~14-1322.~~

11-701.

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

(b) (1) “Advertise falsely” means to use any advertisement, including a label, which is misleading in a material respect.

(2) "Advertise falsely" includes the use of an advertisement that contains an affirmative representation that the Maryland Sales and Use Tax sales and use tax will not be collected by the retailer on a particular transaction without notifying the purchaser of the purchaser's duty to pay the sales and use tax directly to the Comptroller of this State.

(c) "Person" includes an individual, corporation, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(D) "TELEPHONE COMPANY" HAS THE MEANING STATED IN § 1-101 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

11-702.

This subtitle does not apply to any:

(1) Television or radio broadcasting station which broadcasts an advertisement; [or]

(2) Publisher or printer of a newspaper, magazine, or other form of printed advertisement who publishes or prints an advertisement; OR

(3) PUBLISHER, PRINTER, OR DISTRIBUTOR, INCLUDING A TELEPHONE COMPANY OR DIRECTORY PROVIDER, OF AN ADVERTISEMENT OR TELEPHONE LISTING IN A TELEPHONE DIRECTORY.

11-703.

A person may not advertise falsely in the conduct of any business, trade, or commerce or in the provision of any service.

11-704.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

~~(2) (i) "LOCAL AREA" MEANS THE AREA IN AND FOR WHICH A TELEPHONE DIRECTORY IS DISTRIBUTED FREE OF CHARGE.~~

~~(ii) A LOCAL AREA MAY CONSIST OF ONE OR MORE TOWNS, CITIES, COUNTIES, COMMUNITIES, OR OTHER GEOGRAPHICAL AREAS IN THE STATE.~~

~~(3)~~ (I) "LOCAL TELEPHONE CLASSIFIED ADVERTISING DIRECTORY" MEANS A TELEPHONE DIRECTORY THAT:

1. CONTAINS CLASSIFIED ADVERTISEMENTS; AND
2. IS DISTRIBUTED FREE OF CHARGE TO RESIDENTS IN THE STATE.

(II) "LOCAL TELEPHONE CLASSIFIED ADVERTISING DIRECTORY" INCLUDES A DIRECTORY DISTRIBUTED BY A PERSON OTHER THAN A TELEPHONE COMPANY.

~~(4)~~ (3) (I) "LOCAL TELEPHONE DIRECTORY" MEANS A TELEPHONE DIRECTORY THAT IS:

1. AVAILABLE FREE OF CHARGE TO TELEPHONE SUBSCRIBERS IN AN AREA OF THE STATE; AND
2. DOES NOT CONTAIN CLASSIFIED ADVERTISEMENTS.

(II) "LOCAL TELEPHONE DIRECTORY" INCLUDES A DIRECTORY DISTRIBUTED BY A PERSON OTHER THAN A TELEPHONE COMPANY.

~~(5) "LOCAL TELEPHONE NUMBER" MEANS A TELEPHONE NUMBER THAT:~~

~~(I) HAS AN AREA CODE AND A THREE-NUMBER EXCHANGE PREFIX TYPICALLY USED BY A LOCAL TELEPHONE COMPANY FOR TELEPHONE LINES PROVIDED WITHIN THE LOCAL AREA; AND~~

~~(II) THAT IS NOT REASONABLY IDENTIFIABLE AS THE NUMBER OF A BUSINESS THAT IS OR MAY BE LOCATED OUTSIDE THE LOCAL AREA.~~

~~(6) "NONLOCAL BUSINESS" MEANS A BUSINESS THAT DOES NOT HAVE A PHYSICAL PLACE OF BUSINESS IN THE LOCAL AREA THAT PROVIDES THE GOODS OR SERVICES THAT ARE THE SUBJECT OF THE ADVERTISEMENT OR LISTING.~~

~~(7) "TELEPHONE COMPANY" HAS THE MEANING STATED IN TITLE 1 OF THE PUBLIC UTILITIES ARTICLE.~~

(4) "LOCATION" MEANS ANY PART OF THE ADDRESS OF A PERSON, INCLUDING THE STREET, THE CITY, OR THE STATE.

(B) (1) THIS SECTION APPLIES ONLY TO BUSINESS TELEPHONE LISTINGS AND ADVERTISEMENTS.

(2) THIS SECTION DOES NOT APPLY TO ANY BANK, TRUST COMPANY, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, OR CREDIT UNION INCORPORATED OR CHARTERED UNDER THE LAWS OF THIS STATE OR THE UNITED STATES OR ANY OTHER STATE BANK HAVING A BRANCH IN THIS STATE.

(C) (1) A PERSON IS IN VIOLATION OF § 11-703 OF THIS SUBTITLE IF THE PERSON:

~~(1) (I) CAUSES TO BE PUBLISHED IN A LOCAL TELEPHONE CLASSIFIED ADVERTISING DIRECTORY AN ADVERTISEMENT THAT MISREPRESENTS THE LOCATION OF THE PERSON; OR~~

~~(2) (II) CAUSES TO BE LISTED IN A LOCAL TELEPHONE DIRECTORY A TELEPHONE LISTING THAT MISREPRESENTS THE LOCATION OF THE PERSON.~~

(2) FOR PURPOSES OF THIS SUBSECTION, A PERSON COMMITS A SEPARATE VIOLATION FOR EACH EDITION OF A LOCAL TELEPHONE DIRECTORY OR LOCAL TELEPHONE ADVERTISING DIRECTORY IN WHICH THE ADVERTISEMENT OR TELEPHONE LISTING IS PUBLISHED.

~~(B) A NONLOCAL BUSINESS MAY NOT PUBLISH AN ADVERTISEMENT CONTAINING A LOCAL TELEPHONE NUMBER FOR THE BUSINESS IN A LOCAL TELEPHONE CLASSIFIED ADVERTISING DIRECTORY UNLESS THE ADVERTISEMENT CLEARLY STATES THE NONLOCAL LOCATION OF THE BUSINESS.~~

~~(C) A NONLOCAL BUSINESS MAY NOT LIST OR CAUSE TO BE LISTED A LOCAL TELEPHONE NUMBER FOR THE BUSINESS IN A LOCAL TELEPHONE DIRECTORY IF:~~

~~(1) CALLS TO THE LOCAL TELEPHONE NUMBER ARE ROUTINELY FORWARDED OR TRANSFERRED TO THE NONLOCAL BUSINESS LOCATION THAT IS OUTSIDE THE LOCAL AREA COVERED BY THE LOCAL TELEPHONE DIRECTORY; AND~~

~~(2) THE TELEPHONE LISTING DOES NOT CLEARLY STATE THE LOCATION OF THE NONLOCAL BUSINESS.~~

~~(D) A TELEPHONE COMPANY OR DIRECTORY PROVIDER IS NOT LIABLE FOR A VIOLATION OF THIS SECTION BY A NONLOCAL BUSINESS.~~

~~(E) A VIOLATION OF THIS SECTION IS:~~

~~(1) AN UNFAIR OR DECEPTIVE TRADE PRACTICE UNDER TITLE 13 OF THIS ARTICLE; AND~~

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

11-705.

(a) Any person who violates any provision of this subtitle is subject to a penalty not exceeding \$500 for each violation, which penalty the Attorney General may recover for the State in a civil action.

(b) Before the Attorney General commences any action under this section, he shall give to the person against whom the action is proposed:

(1) Notice by registered or certified mail of the proposed action; and

(2) An opportunity to show cause orally or in writing why the action should not be commenced.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

Approved by the Governor, April 14, 2009.