

BY: Finance Committee

AMENDMENTS TO SENATE BILL NO. 142

(First Reading File Bill)

AMENDMENT NO. 1

On page 2, in line 14, after "Act;" insert "establishing a Joint Oversight Committee on Technology; providing for the membership and duties of the Joint Committee; providing for the effective dates of this Act; providing for the termination of a portion of this Act;".

AMENDMENT NO. 2

On page 2, after line 18, insert:

"BY repealing and reenacting, with amendments,

Article - Commercial Law

Section 13-101(c)

Annotated Code of Maryland

(1990 Replacement Volume and 1999 Supplement)";

in line 21, after "Section" insert "13-101.1;"; and in line 23, strike "21-215" and substitute "21-216".

AMENDMENT NO. 3

On page 3, after line 1, insert:

"13-101.

(c) (1) "Consumer" means an actual or prospective purchaser, lessee, or recipient of consumer goods, consumer services, consumer realty, or consumer credit.

(2) "Consumer" includes:

(Over)

(I) [a] A co-obligor or surety for a consumer[.] ; OR

(II) A LICENSEE OR RECIPIENT OF COMPUTER INFORMATION OR COMPUTER PROGRAMS UNDER A CONSUMER CONTRACT AS DEFINED IN § 21-102 OF THIS ARTICLE.

13-101.1.

THE PROVISIONS OF THIS TITLE APPLY TO THE SUBJECT MATTER OF A CONSUMER CONTRACT AS DEFINED IN § 21-102 OF THIS ARTICLE IN THE SAME MANNER THEY APPLY TO CONSUMER GOODS AND CONSUMER SERVICES."

On page 5, in line 1, strike "EQUAL TO OR".

On page 16, in line 36, after "REGULATION," insert "INCLUDING TITLE 13 OF THIS ARTICLE,".

AMENDMENT NO. 4

On page 8, after line 20, insert:

"(39) "INSURANCE SERVICES TRANSACTION" MEANS AN AGREEMENT THAT PROVIDES FOR, OR A TRANSACTION THAT IS, OR ENTAILS ACCESS TO, USE, TRANSFER, CLEARANCE, SETTLEMENT, OR PROCESSING OF:

(A) AN INSURANCE POLICY, CONTRACT, OR CERTIFICATE; OR

(B) A RIGHT TO PAYMENT UNDER AN INSURANCE POLICY, CONTRACT, OR CERTIFICATE.";

in lines 21, 23, 32, and 37, strike "(39)", "(40)", "(41)", and "(42)", respectively, and substitute "(40)", "(41)", "(42)", and "(43)", respectively.

On page 9, in lines 5, 7, and 27, strike "(43)", "(44)", and "(45)", respectively, and substitute "(44)", "(45)", and "(46)", respectively.

On page 10, in lines 3, 7, 9, 12, 14, 18, and 27, strike "(46)", "(47)", "(48)", "(49)", "(50)", "(51)", and "(52)", respectively, and substitute "(47)", "(48)", "(49)", "(50)", "(51)", "(52)", and "(53)", respectively.

On page 11, in lines 10, 11, 14, and 20, strike “(53)”, “(54)”, “(55)”, and “(56)”, respectively, and substitute “(54)”, “(55)”, “(56)”, and “(57)”, respectively.

On page 12, in lines 23, 30, and 32, strike “(57)”, “(58)”, and “(59)”, respectively, and substitute “(58)”, “(59)”, and “(60)”, respectively.

On page 13, in lines 8, 14, 17, 19, 22, and 31, strike “(60)”, “(61)”, “(62)”, “(63)”, “(64)”, and “(65)”, respectively, and substitute “(61)”, “(62)”, “(63)”, “(64)”, “(65)”, and “(66)”, respectively.

On page 15, after line 1, insert:

“(2) AN INSURANCE SERVICES TRANSACTION;”;

in lines 2, 12, 13, 16, and 21, strike “(2)”, “(3)”, “(4)”, “(5)”, and “(6)”, respectively, and substitute “(3)”, “(4)”, “(5)”, “(6)”, and “(7)”, respectively; in line 23, strike “(D)(2)(B)” and substitute “(D)(3)(B)”; and in line 39, strike “(1) OR (2)” and substitute “(1), (2), OR (3)”.

AMENDMENT NO. 5

On page 13, in line 15, strike “UNITES” and substitute “UNITED”.

On page 14, after line 25, insert:

“(2) SUBJECT TO SUBSECTION (D)(3)(A) OF THIS SECTION, IF A TRANSACTION INCLUDES AN AGREEMENT FOR CREATING OR FOR OBTAINING RIGHTS TO CREATE COMPUTER INFORMATION AND A MOTION PICTURE, THIS TITLE DOES NOT APPLY TO THE AGREEMENT IF THE DOMINANT CHARACTER OF THE AGREEMENT IS FOR CREATING OR OBTAINING RIGHTS TO CREATE A MOTION PICTURE. IN ALL OTHER SUCH AGREEMENTS, THIS TITLE DOES NOT APPLY TO THE PART OF THE AGREEMENT THAT INVOLVES A MOTION PICTURE EXCLUDED UNDER SUBSECTION (D)(3) OF THIS SECTION, BUT DOES APPLY TO THE COMPUTER INFORMATION.”;

in line 26, strike “(2)” and substitute “(3)”; in the same line, after “ALL” insert “OTHER”; in the same line, strike “NOT INVOLVING GOODS”; in the same line, after “APPLIES” insert “TO THE ENTIRE TRANSACTION IF THE COMPUTER INFORMATION AND INFORMATIONAL RIGHTS, OR ACCESS TO THEM, IS THE PRIMARY SUBJECT MATTER, BUT OTHERWISE APPLIES”; and strike beginning with the second comma in line 28 down through “TRANSACTION” in line 31.

On page 15, in line 2, strike “A CONTRACT” and substitute “AN AGREEMENT”; strike in their entirety lines 5 through 8, inclusive, and substitute:

“(A) A MOTION PICTURE OR AUDIO OR VISUAL PROGRAMMING, OTHER THAN IN (I) A MASS-MARKET TRANSACTION OR (II) A SUBMISSION OF AN IDEA OR INFORMATION OR RELEASE OF INFORMATIONAL RIGHTS THAT MAY RESULT IN MAKING A MOTION PICTURE OR A SIMILAR INFORMATION PRODUCT; OR”;

in line 9, strike “MOTION PICTURE,”; in line 15, after “INFORMATION” insert “, UNLESS SUCH INDEPENDENT CONTRACTOR IS A FREELANCER IN THE NEWS REPORTING INDUSTRY AS THAT TERM IS COMMONLY UNDERSTOOD IN THAT INDUSTRY”; and after line 30, insert:

“(F) AS USED IN THIS SECTION, “MOTION PICTURE” MEANS “MOTION PICTURE” AS DEFINED IN TITLE 17 OF THE UNITED STATES CODE AS OF JULY 1, 1999, OR A SEPARATELY IDENTIFIABLE PRODUCT OR SERVICE THE DOMINANT CHARACTER OF WHICH CONSISTS OF A LINEAR MOTION PICTURE, BUT WHICH INCLUDES (I) STATEMENTS OR INSTRUCTIONS WHOSE PURPOSE IS TO ALLOW OR CONTROL THE PERCEPTION, REPRODUCTION, OR COMMUNICATION OF THE MOTION PICTURE OR (II) OTHER INFORMATION SO LONG AS THE MOTION PICTURE CONSTITUTES THE DOMINANT CHARACTER OF THE PRODUCT OR SERVICE DESPITE THE INCLUSION OF THE OTHER INFORMATION.

“(G) AS USED IN THIS SECTION, “AUDIO OR VISUAL PROGRAMMING” MEANS AUDIO OR VISUAL PROGRAMMING THAT IS PROVIDED BY BROADCAST, SATELLITE, OR CABLE AS DEFINED IN THE FEDERAL COMMUNICATIONS ACT OF 1934 AND RELATED REGULATIONS AS THEY EXISTED ON JULY 1, 1999, OR BY SIMILAR

METHODS OF DELIVERY.

On page 17, strike beginning with "THIS" in line 30 down through "REQUIRES" in line 31 and substitute "REQUIRED BY APPLICABLE LAW".

On page 31, after line 25, insert:

"21-216. IDEA OR INFORMATION SUBMISSION.

(A) THE FOLLOWING RULES APPLY TO A SUBMISSION OF AN IDEA OR INFORMATION FOR THE CREATION, DEVELOPMENT, OR ENHANCEMENT OF COMPUTER INFORMATION WHICH IS NOT MADE PURSUANT TO AN EXISTING AGREEMENT REQUIRING THE SUBMISSION:

(1) A CONTRACT IS NOT FORMED AND IS NOT IMPLIED FROM THE MERE RECEIPT OF AN UNSOLICITED SUBMISSION;

(2) ENGAGING IN A BUSINESS, TRADE, OR INDUSTRY THAT BY CUSTOM OR PRACTICE REGULARLY ACQUIRES IDEAS IS NOT IN ITSELF AN EXPRESS OR IMPLIED SOLICITATION OF THE INFORMATION; AND

(3) IF THE RECIPIENT SEASONABLY NOTIFIES THE PERSON MAKING THE SUBMISSION THAT THE RECIPIENT MAINTAINS A PROCEDURE TO RECEIVE AND REVIEW SUBMISSIONS, A CONTRACT IS FORMED ONLY IF:

(A) THE SUBMISSION IS MADE AND ACCEPTED PURSUANT TO THAT PROCEDURE; OR

(B) THE RECIPIENT EXPRESSLY AGREES TO TERMS CONCERNING THE SUBMISSION.

(B) AN AGREEMENT TO DISCLOSE AN IDEA CREATES A CONTRACT ENFORCEABLE AGAINST THE RECEIVING PARTY ONLY IF THE IDEA AS DISCLOSED IS CONFIDENTIAL, CONCRETE, AND NOVEL TO THE BUSINESS, TRADE, OR INDUSTRY.

(Over)

OR THE PARTY RECEIVING THE DISCLOSURE OTHERWISE EXPRESSLY AGREED.”.

AMENDMENT NO. 6

On page 9, in lines 15 and 16, strike “AND IN A QUANTITY”.

AMENDMENT NO. 7

On page 16, in line 25, after “(A)” insert “(1)”; and after line 26, insert:

“(2) A CONTRACT TERM IS UNENFORCEABLE TO THE EXTENT THAT IT WOULD VARY A STATUTE, RULE, REGULATION, OR PROCEDURE THAT MAY NOT BE VARIED BY AGREEMENT UNDER THE FEDERAL COPYRIGHT LAW, INCLUDING PROVISIONS OF THE FEDERAL COPYRIGHT LAW RELATED TO FAIR USE.”.

AMENDMENT NO. 8

On page 16, in line 2, after “ANY” insert “STATUTE,”; and in line 4, after “THE” insert “STATUTE,”.

On page 17, in line 19, strike “AND”; and in line 21, after “IT” insert “; AND”

“(5) PERMIT THE CONTINUED EXPANSION OF COMMERCIAL PRACTICES IN THE EXCLUDED TRANSACTIONS THROUGH CUSTOM, USAGE, AND AGREEMENT OF THE PARTIES”.

On page 23, in line 32, strike “10 DAYS” and substitute “A REASONABLE TIME”.

On page 24, in line 28, after “TERM” insert “ONLY”; strike beginning with “AND” in line 29 down through “PARTY” in line 30 and substitute “, BUT THE CONTRACTUAL USE TERM DOES NOT APPLY TO INFORMATION OR COPIES PROPERLY RECEIVED OR OBTAINED FROM ANOTHER SOURCE”.

On page 29, in lines 8 and 9, strike “THE SUPPLEMENTARY PROVISIONS OF THIS TITLE,”; and in line 9, after “CIRCUMSTANCES.” insert “IF A COURT CANNOT DETERMINE THE TERMS OF THE CONTRACT FROM THE FOREGOING FACTORS, THE SUPPLEMENTARY PRINCIPLES OF THIS TITLE APPLY.”.

On page 34, in line 26, after “(D)” insert “UNLESS OTHERWISE AGREED,”; and in line 32, after “(E)” insert “UNLESS OTHERWISE AGREED,”.

On page 36, in line 31, after “WITH” insert “EITHER”; in the same line, after “THE” insert “REQUIRED”; and in the same line, after “OR” insert “THE”.

On page 38, in line 32, strike “THE LICENSOR’S”.

On page 40, in line 21, after “PROVIDERS” insert “IF THE SELECTION IS MADE BY AN INDIVIDUAL ACTING AS OR ON BEHALF OF THE LICENSOR”.

On page 49, in line 35, after “TERMS” insert “, BUT THE CONTRACTUAL USE TERMS DO NOT APPLY TO INFORMATION OR COPIES PROPERLY RECEIVED OR OBTAINED FROM ANOTHER SOURCE”.

On page 63, in line 26, after “REMEDIES.” insert “WHETHER A BREACH OF A CONTRACTUAL USE TERM IS AN INFRINGEMENT OR A MISAPPROPRIATION IS DETERMINED BY APPLICABLE INFORMATIONAL PROPERTY RIGHTS LAW.”.

On page 70, strike beginning with “WHICH” in line 19 down through “PARTY” in line 20 and substitute “, BUT THE CONTRACTUAL USE TERMS DO NOT APPLY TO INFORMATION OR COPIES PROPERLY RECEIVED OR OBTAINED FROM ANOTHER SOURCE”.

On page 78, in line 22, after “TERMS” insert “, BUT THE CONTRACTUAL USE TERMS DO NOT APPLY TO INFORMATION OR COPIES PROPERLY RECEIVED OR OBTAINED FROM ANOTHER SOURCE”.

AMENDMENT NO. 9

On page 18, strike beginning with the first “THE” in line 22 down through “AGREEMENT” in line 25 and substitute “A CONSUMER CONTRACT SHALL BE GOVERNED BY THE LAW OF THE JURISDICTION THAT IS THE PRINCIPAL RESIDENCE OF THE CONSUMER”.

On page 19, in line 13, after “(A)” insert “(1) EXCEPT FOR A CONSUMER CONTRACT,”; and after line 14, insert:

“(2) IN A CONSUMER CONTRACT, THE JUDICIAL FORUM SHALL BE THE JURISDICTION OF THE PRINCIPAL RESIDENCE OF THE CONSUMER, EXCEPT THAT A CONSUMER MAY FILE AN ACTION IN ANY JUDICIAL FORUM HAVING JURISDICTION.”.

AMENDMENT NO. 10

On page 19, after line 16, insert:

“(C) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION OR A CONTRARY TERM IN AN AGREEMENT, A PARTY TO A COMPUTER INFORMATION TRANSACTION THAT IS FOR THE CREATION OF COMPUTER INFORMATION MAY CHOOSE AN ALTERNATIVE DISPUTE RESOLUTION MECHANISM, INCLUDING MEDIATION, ARBITRATION, OR OTHER NON-JUDICIAL DISPUTE RESOLUTION PROCESS, AS THE MEANS FOR RESOLVING A DISPUTE UNDER THE AGREEMENT.”.

AMENDMENT NO. 11

On page 28, in line 10, strike “OR” and substitute “;

(2) THE TERM”;

in the same line, after “UNENFORCEABLE” insert “, AFTER WEIGHING FUNDAMENTAL PUBLIC POLICIES, INCLUDING FUNDAMENTAL PUBLIC POLICIES CONCERNING COMPETITION OR INNOVATION,”; in line 11, strike the second “OR”; in line 12, strike “(2)” and substitute “(3)”; and in line 13, after “AGREED” insert “; OR

(4) THE TERM IS NOT AVAILABLE FOR VIEWING BEFORE AND AFTER ASSENT IN A PRINTED LICENSE OR IN ELECTRONIC FORM THAT CAN BE PRINTED OR STORED FOR ARCHIVAL AND REVIEW PURPOSES BY THE LICENSEE”;

and after line 38, insert:

“(D) A TERM IN A MASS-MARKET LICENSE THAT LIMITS THE DURATION OF

THE LICENSE SHALL BE CONSPICUOUS.

On page 52, in line 15, after "A" insert "CONSPICUOUS".

AMENDMENT NO. 12

On page 42, after line 9, insert:

"(H) THE PROVISIONS OF SUBSECTIONS (A) THROUGH (G) OF THIS SECTION DO NOT APPLY TO A CONSUMER CONTRACT.

(I) (1) ANY ORAL OR WRITTEN LANGUAGE USED IN A CONSUMER CONTRACT, WHICH ATTEMPTS TO EXCLUDE OR MODIFY ANY IMPLIED WARRANTIES OF MERCHANTABILITY OF A COMPUTER PROGRAM CREATED UNDER § 21-403 OF THIS SUBTITLE, OR IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE UNDER § 21-405 OF THIS SUBTITLE, OR EXCLUDE OR MODIFY THE CONSUMER'S REMEDIES FOR A BREACH OF THOSE WARRANTIES, IS UNENFORCEABLE.

(2) A MERCHANT MAY RECOVER FROM A MANUFACTURER OR A LICENSOR THAT CAUSED THE BREACH ANY DAMAGES RESULTING FROM THE BREACH OF IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE THAT COULD NOT BE DISCLAIMED OR MODIFIED UNDER THIS SECTION.

(J) ANY ORAL OR WRITTEN LANGUAGE USED IN A CONSUMER CONTRACT WHICH ATTEMPTS TO LIMIT OR MODIFY A CONSUMER'S REMEDIES FOR BREACH OF A MERCHANT'S, LICENSOR'S, OR MANUFACTURER'S EXPRESS WARRANTIES IS UNENFORCEABLE UNLESS THE MERCHANT, LICENSOR, OR MANUFACTURER PROVIDES REASONABLE AND EXPEDITIOUS MEANS OF PERFORMING THE WARRANTY OBLIGATIONS.

(K) THE PROVISIONS OF §§ 21-403 AND 21-405 OF THIS SUBTITLE DO NOT APPLY TO:

(Over)

(1) AN INFORMATION/COMPUTER PROGRAM PROVIDED FOR NO FEE, UNLESS THE INFORMATION/COMPUTER PROGRAM IS PROVIDED IN CONJUNCTION WITH THE SALE OR LEASE OF GOODS, SERVICES, OR ANOTHER INFORMATION/COMPUTER PROGRAM; OR

(2) AN INFORMATION/COMPUTER PROGRAM PROVIDED AS A BETA TEST OR SIMILAR EXPERIMENTAL VERSION OF THE INFORMATION/COMPUTER PROGRAM.”.

AMENDMENT NO. 13

On page 73, in line 31, strike “CONSUMER CONTRACT” and substitute “MASS-MARKET TRANSACTION”.

AMENDMENT NO. 14

On page 79, in line 2, strike “ON” and substitute “(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, ON”; and after line 5, insert:

“(B) IN AN ACCESS CONTRACT THAT REQUIRES PERIODIC PAYMENTS OVER TIME, BEFORE OR AT THE TIME OF DISCONTINUATION OF ALL CONTRACTUAL RIGHTS OF ACCESS, A PARTY SHALL NOTIFY THE PARTY IN BREACH IN A RECORD OF:

(1) THE DISCONTINUATION OF ALL CONTRACTUAL RIGHTS OF ACCESS IN THE ACCESS CONTRACT;

(2) THE NATURE OF THE CLAIMED BREACH THAT ENTITLES THE PARTY TO DISCONTINUE ALL CONTRACTUAL RIGHTS OF ACCESS IN THE ACCESS CONTRACT;

(3) THE OPPORTUNITY TO CURE AS PROVIDED UNDER § 21-703 OF THIS TITLE; AND

(4) INFORMATION TO ALLOW FOR COMMUNICATION CONCERNING THE CLAIMED BREACH, INCLUDING THE PARTY’S:

- (I) ADDRESS AND TELEPHONE NUMBER; AND
- (II) 1. FACSIMILE NUMBER; OR
2. E-MAIL ADDRESS.”.

AMENDMENT NO. 15

On page 80, after line 4, insert:

“(B) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, ELECTRONIC SELF-HELP IS PROHIBITED IN MASS-MARKET TRANSACTIONS.

“(C) PRIOR TO CANCELLATION OF A LICENSE IN WHICH THE PARTIES HAVE AGREED TO PERMIT THE USE OF ELECTRONIC SELF-HELP, THE LICENSOR SHALL PROVIDE A LICENSEE WITH THE OPPORTUNITY TO CURE THE CLAIMED BREACH GIVING RISE TO THE CANCELLATION AS PROVIDED IN § 21-703 OF THIS TITLE.”;

in line 5, strike “(B)” and substitute “(D)”; in line 7, strike “(C)” and substitute “(E) IF THE PARTIES AGREE TO PERMIT ELECTRONIC SELF-HELP,”; in lines 10, 17, and 28, strike “(D)”, “(D)”, and “(E)”, respectively, and substitute “(F)”, “(F)”, and “(G)”, respectively; and in line 33, strike “(D)(1)” and substitute “(F)(1)”; in line 21, strike “15” and substitute “30”.

On page 81, in lines 2 and 5, strike “(F)” and “(D)”, respectively, and substitute “(H)” and “(F)”, respectively; in line 6, strike “(F)”, “(C)”, and “(D)”, respectively, and substitute “(H)”, “(E)”, and “(F)”, respectively; in lines 11, 17, 30, 32, and 34, strike “(G)”, “(F)”, “(H)”, “(C)”, and “(I)”, respectively, and substitute “(I)”, “(H)”, “(J)”, “(E)”, and “(K)”, respectively; in line 31, strike “BUT” and substitute “EXCEPT THAT THE PARTIES MAY PROHIBIT USE OF ELECTRONIC SELF-HELP AND”; and after line 36, insert:

“(L) THIRD PERSONS HARMED BY THE WRONGFUL USE OF ELECTRONIC SELF-HELP UNDER THIS SECTION MAY RECOVER DAMAGES FROM THE LICENSOR TO THE SAME EXTENT AS RECOVERABLE BY THE LICENSEE.”.

On page 16, in line 11, after “§ 21-214” insert “OF THIS TITLE”; in the same line, after “OR” insert “THE LIMITATIONS OF”; and in line 12, after “TITLE” insert “IF THE PARTIES HAVE AGREED TO PERMIT THE USE OF ELECTRONIC SELF-HELP”.

On page 4, in line 26, before “RESULTING” insert “:

(A);

in line 32, after “WARRANTY” strike the period and substitute “:

(B) RESULTING FROM WRONGFUL USE OF ELECTRONIC SELF-HELP AS DEFINED IN § 21-816 OF THIS TITLE INCLUDES ANY LOSS RESULTING FROM GENERAL OR PARTICULAR REQUIREMENTS AND NEEDS OF WHICH THE PARTY EXERCISING ELECTRONIC SELF-HELP AT THE TIME OF THE EXERCISE HAD REASON TO KNOW AND WHICH COULD NOT REASONABLY BE PREVENTED; AND

(C);

and in the same line, strike “THE TERM”.

AMENDMENT NO. 16

On page 82, after line 12, insert:

“SECTION 6. AND BE IT FURTHER ENACTED, That:

(a) There is a Joint Technology Oversight Committee.

(b) The Committee consists of the following ten members:

(1) five members of the Senate of Maryland, appointed by the President of the Senate; and

(2) five members of the House of Delegates, appointed by the Speaker.

(c) The members of the Committee serve at the pleasure of the presiding officer who

appointed them.

(d) The President and the Speaker shall jointly appoint a Senator and a Delegate to serve as co-chairmen who shall alternate in serving as the presiding chairman of the Committee each year.

(e) (1) The Committee shall:

(i) review the implementation of the Maryland Uniform Computer Information Transactions Act in this State; and

(ii) recommend to the Governor and the General Assembly any appropriate changes in State law based on the findings of the Committee.

(2) The Committee may examine and evaluate additional technology related issues as designated by the co-chairmen of the Committee.

(f) The Committee shall report its findings and recommendations to the Governor, the Legislative Policy Committee, the Senate Finance Committee, and the House Economic Matters Committee on or before December 1 of each year.

SECTION 7. AND BE IT FURTHER ENACTED, That Section 6 of this Act shall take effect July 1, 2000. It shall remain effective for a period of 5 years and, at the end of June 30, 2005, with no further action required by the General Assembly, Section 6 of this Act shall be abrogated and of no further force and effect.”;

and in line 13, strike “6.” and substitute “8.”.