

(PRE-FILED)

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By: Delegates Brown, Rosenberg, Taylor, Dewberry, Hurson, Arnick, Busch, Doory, Guns, Harrison, Hixson, Howard, Kopp, Menes, Montague, Owings, Vallario, and Wood Wood, W. Baker, Bobo, Bronrott, Cadden, Carlson, Clagett, Cole, D'Amato, DeCarlo, Dembrow, Donoghue, Dypski, Finifter, Frush, Giannetti, Goldwater, Hammen, Heller, Hubers, James, A. Jones, V. Jones, Kirk, Love, Mandel, McIntosh, Moe, Morhaim, Nathan-Pulliam, Patterson, Pendergrass, Petzold, Phillips, Riley, Rosso, Shriver, Swain, Turner, Weir, and Zirkin

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Assigned to: Economic Matters

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 17, 2001

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CHAPTER 440

1 AN ACT concerning

2 **Information Technology and Consumer Privacy Electronic Transactions**  
3 **Protection Act of 2001**

4 FOR the purpose of ~~prohibiting a merchant from collecting or maintaining records of~~  
5 ~~personal information of an individual unless the merchant provides the~~  
6 ~~individual with a certain notice and the individual affirmatively consents to the~~  
7 ~~collection or maintenance under certain circumstances; prohibiting a merchant~~  
8 ~~from selling or distributing records of personal information of an individual~~  
9 ~~unless the merchant gives the individual a certain notification, the individual~~  
10 ~~affirmatively consents to the sale or distribution, and the merchant provides the~~  
11 ~~individual with a certain method to revoke consent under certain circumstances;~~  
12 ~~establishing an On-line Consumer Advocacy Electronic Transaction Education,~~  
13 ~~Advocacy, and Mediation Unit in the Division of Consumer Protection in the~~  
14 ~~Office of the Attorney General; specifying the purpose and the duties of the Unit;~~  
15 ~~authorizing the Division Unit to adopt certain regulations at the direction of the~~  
16 ~~Attorney General; defining certain terms; providing that a violation of this Act is~~  
17 ~~an unfair or deceptive trade practice under the Maryland Consumer Protection~~  
18 ~~Act; defining certain terms; establishing a Task Force to Study Privacy Issues~~  
19 ~~Related to Information Technology; specifying the membership of the Task~~  
20 ~~Force; providing for the chairman and staff of the Task Force; requiring the Task~~

1 Force to complete a comprehensive study of State laws and policies concerning  
 2 the collection, distribution, and privacy of personal information by technological  
 3 means by units of State government and private entities, and to make certain  
 4 recommendations; requiring the Task Force to submit a certain report to the  
 5 Governor and the General Assembly on or before a certain date; providing for  
 6 the termination of a certain section of this Act; and generally relating to  
 7 information technology and consumer privacy electronic transactions protection.

8 ~~BY repealing and reenacting, with amendments,~~  
 9 ~~Article—Commercial Law~~  
 10 ~~Section 13-301~~  
 11 ~~Annotated Code of Maryland~~  
 12 ~~(2000 Replacement Volume and 2000 Supplement)~~

13 ~~BY adding to~~  
 14 ~~Article—Commercial Law~~  
 15 ~~Section 14-2901 through 14-2907, inclusive, to be under the new subtitle~~  
 16 ~~"Subtitle 29. Electronic Commerce Consumer Privacy Protection Act"~~  
 17 ~~Annotated Code of Maryland~~  
 18 ~~(2000 Replacement Volume and 2000 Supplement)~~

19 BY adding to  
 20 Article - State Government  
 21 Section 6-201 through 6-203, inclusive, to be under the new subtitle "Subtitle 2.  
 22 Electronic Transactions Protection Act"  
 23 Annotated Code of Maryland  
 24 (1999) Replacement Volume and 2000 Supplement)

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

27 **~~Article—Commercial Law~~**

28 ~~13-301.~~

29 ~~Unfair or deceptive trade practices include any:~~

30 ~~(1) False, falsely disparaging, or misleading oral or written statement,~~  
 31 ~~visual description, or other representation of any kind which has the capacity,~~  
 32 ~~tendency, or effect of deceiving or misleading consumers;~~

33 ~~(2) Representation that:~~

34 ~~(i) Consumer goods, consumer realty, or consumer services have a~~  
 35 ~~sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity~~  
 36 ~~which they do not have;~~

- 1                   (ii)     A merchant has a sponsorship, approval, status, affiliation, or  
2 connection which he does not have;
- 3                   (iii)    Deteriorated, altered, reconditioned, reclaimed, or secondhand  
4 consumer goods are original or new; or
- 5                   (iv)     Consumer goods, consumer realty, or consumer services are of a  
6 particular standard, quality, grade, style, or model which they are not;
- 7                 (3)     Failure to state a material fact if the failure deceives or tends to  
8 deceive;
- 9                 (4)     Disparagement of the goods, realty, services, or business of another  
10 by a false or misleading representation of a material fact;
- 11                (5)     Advertisement or offer of consumer goods, consumer realty, or  
12 consumer services:
- 13                   (i)     Without intent to sell, lease, or rent them as advertised or  
14 offered; or
- 15                   (ii)    With intent not to supply reasonably expected public demand,  
16 unless the advertisement or offer discloses a limitation of quantity or other qualifying  
17 condition;
- 18                (6)     False or misleading representation of fact which concerns:
- 19                   (i)     The reason for or the existence or amount of a price reduction;  
20 or
- 21                   (ii)    A price in comparison to a price of a competitor or to one's own  
22 price at a past or future time;
- 23                (7)     Knowingly false statement that a service, replacement, or repair is  
24 needed;
- 25                (8)     False statement which concerns the reason for offering or supplying  
26 consumer goods, consumer realty, or consumer services at sale or discount prices;
- 27                (9)     Deception, fraud, false pretense, false premise, misrepresentation, or  
28 knowing concealment, suppression, or omission of any material fact with the intent  
29 that a consumer rely on the same in connection with:
- 30                   (i)     The promotion or sale of any consumer goods, consumer realty,  
31 or consumer service; [ or ]
- 32                   (ii)    A contract or other agreement for the evaluation, perfection,  
33 marketing, brokering or promotion of an invention; or
- 34                   (iii)   The subsequent performance of a merchant with respect to an  
35 agreement of sale, lease, or rental;

- 1           (10)    Solicitations of sales or services over the telephone without first  
2 clearly, affirmatively, and expressly stating:
- 3                   (i)        The solicitor's name and the trade name of a person represented  
4 by the solicitor;
- 5                   (ii)       The purpose of telephone conversation; and
- 6                   (iii)      The kind of merchandise, real property, intangibles, or service  
7 solicited;
- 8           (11)    Use of any plan or scheme in soliciting sales or services over the  
9 telephone that misrepresents the solicitor's true status or mission;
- 10           (12)    Use of a contract related to a consumer transaction which contains a  
11 confessed judgment clause that waives the consumer's right to assert a legal defense  
12 to an action;
- 13           (13)    Use by a seller, who is in the business of selling consumer realty, of a  
14 contract related to the sale of single family residential consumer realty, including  
15 condominiums and town houses, that contains a clause limiting or precluding the  
16 buyer's right to obtain consequential damages as a result of the seller's breach or  
17 cancellation of the contract;
- 18           (14)    Violation of a provision of:
- 19                   (i)        This title;
- 20                   (ii)       An order of the Attorney General or agreement of a party  
21 relating to unit pricing under Title 14, Subtitle 1 of this article;
- 22                   (iii)      Title 14, Subtitle 2 of this article, the Maryland Consumer Debt  
23 Collection Act;
- 24                   (iv)       Title 14, Subtitle 3 of this article, the Maryland Door to Door  
25 Sales Act;
- 26                   (v)        Title 14, Subtitle 9 of this article, Kosher Products;
- 27                   (vi)       Title 14, Subtitle 10 of this article, Automotive Repair Facilities;
- 28                   (vii)     Section 14-1302 of this article;
- 29                   (viii)     Title 14, Subtitle 11 of this article, Maryland Layaway Sales  
30 Act;
- 31                   (ix)       Section 22-415 of the Transportation Article;
- 32                   (x)        Title 14, Subtitle 20 of this article;

- 1 (xi) Title 14, Subtitle 15 of this article, the Automotive Warranty  
 2 Enforcement Act;
- 3 (xii) Title 14, Subtitle 21 of this article;
- 4 (xiii) Section 18-107 of the Transportation Article;
- 5 (xiv) Title 14, Subtitle 22 of this article, the Maryland Telephone  
 6 Solicitations Act;
- 7 (xv) Title 14, Subtitle 23 of this article, the Automotive Crash Parts  
 8 Act;
- 9 (xvi) Title 10, Subtitle 6 of the Real Property Article;
- 10 (xvii) Title 10, Subtitle 8 of the Real Property Article;
- 11 (xviii) Title 14, Subtitle 25 of this article, the Hearing Aid Sales Act;  
 12 ~~or~~
- 13 (xix) Title 14, Subtitle 26 of this article, the Maryland Door-to-Door  
 14 Solicitations Act; or
- 15 (XX) TITLE 14, SUBTITLE 29, THE ELECTRONIC COMMERCE  
 16 CONSUMER PRIVACY PROTECTION ACT; OR

17 (15) Act or omission that relates to a residential building and that is  
 18 chargeable as a misdemeanor under or otherwise violates a provision of the Energy  
 19 Conservation Building Standards Act, Title 7, Subtitle 4 of the Public Utility  
 20 Companies Article.

21 ~~SUBTITLE 29. ELECTRONIC COMMERCE CONSUMER PRIVACY PROTECTION ACT.~~  
 22 ~~14-2901.~~

23 (A) ~~IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~  
 24 ~~INDICATED.~~

25 (B) ~~"CONSUMER" HAS THE MEANING STATED IN §§ 13-101 AND 22-102 OF THIS~~  
 26 ~~ARTICLE.~~

27 (C) ~~"CONSUMER GOODS OR SERVICES" HAS THE MEANING STATED IN §§ 13-101~~  
 28 ~~AND 13-101.1 OF THIS ARTICLE.~~

29 (D) ~~"DIVISION" MEANS THE DIVISION OF CONSUMER PROTECTION IN THE~~  
 30 ~~OFFICE OF THE ATTORNEY GENERAL.~~

31 (E) ~~"ELECTRONIC COMMERCE TRANSACTION" MEANS THE SALE, LEASE,~~  
 32 ~~RENTAL, LICENSE, OR TRANSFER OF CONSUMER GOODS OR SERVICES MADE~~  
 33 ~~THROUGH USE OF THE INTERNET, THE WORLD-WIDE WEB, OR A SIMILAR~~  
 34 ~~ELECTRONIC MEDIUM.~~

1 (F) "MERCHANT" HAS THE MEANING STATED IN §§ 13-101 AND 22-102 OF THIS  
2 ARTICLE.

3 (G) (1) "PERSONAL INFORMATION" MEANS INFORMATION ABOUT AN  
4 INDIVIDUAL INCLUDING AN INDIVIDUAL'S:

5 (I) FIRST OR LAST NAME;

6 (II) SOCIAL SECURITY NUMBER;

7 (III) HOME OR BUSINESS ADDRESS;

8 (IV) ELECTRONIC MAIL ADDRESS;

9 (V) TELEPHONE NUMBER;

10 (VI) CREDIT CARD NUMBER OR OTHER SIMILAR FINANCIAL  
11 ACCOUNT INFORMATION;

12 (VII) PATTERN OF PURCHASES OF CONSUMER GOODS OR SERVICES  
13 THROUGH ELECTRONIC COMMERCE TRANSACTIONS; OR

14 (VIII) INTERNET BROWSING PATTERNS.

15 (2) "PERSONAL INFORMATION" INCLUDES PERSONALLY IDENTIFIABLE  
16 INFORMATION THAT CAN BE USED TO CONTACT AN INDIVIDUAL PHYSICALLY OR  
17 ON LINE.

18 (H) "UNIT" MEANS THE ON-LINE CONSUMER ADVOCACY UNIT IN THE  
19 DIVISION.

20 14-2902.

21 THIS SUBTITLE APPLIES TO CONSUMER ELECTRONIC COMMERCE  
22 TRANSACTIONS.

23 14-2903.

24 (A) THIS SECTION DOES NOT APPLY TO PERSONAL INFORMATION COLLECTED  
25 OR DISTRIBUTED TO FULFILL THE SPECIFIC TERMS OF A SALE, LEASE, RENTAL,  
26 LICENSE, OR TRANSFER OF CONSUMER GOODS OR SERVICES.

27 (B) A MERCHANT MAY NOT COLLECT OR MAINTAIN RECORDS OF PERSONAL  
28 INFORMATION OF AN INDIVIDUAL UNLESS:

29 (1) THE MERCHANT PROVIDES THE INDIVIDUAL WITH A CONSPICUOUS  
30 NOTICE OF:

31 (I) THE TYPES OF INFORMATION THE MERCHANT INTENDS TO  
32 COLLECT OR MAINTAIN IN THE RECORDS;

1                   (II)     ~~HOW THE INFORMATION COLLECTED OR MAINTAINED WILL BE~~  
2 ~~USED; AND~~

3                   (III)    ~~WHO WILL HAVE ACCESS TO THE INFORMATION COLLECTED~~  
4 ~~OR MAINTAINED; AND~~

5                   (2)     ~~THE INDIVIDUAL AFFIRMATIVELY CONSENTS TO THE COLLECTION~~  
6 ~~OR MAINTENANCE OF THE RECORDS.~~

7           (C)     ~~A MERCHANT MAY NOT SELL OR DISTRIBUTE RECORDS OF PERSONAL~~  
8 ~~INFORMATION OF AN INDIVIDUAL UNLESS:~~

9                   (1)     ~~THE MERCHANT NOTIFIES THE INDIVIDUAL IN ADVANCE OF THE~~  
10 ~~MERCHANT'S INTENT TO SELL OR DISTRIBUTE THE RECORDS;~~

11                   (2)     ~~THE INDIVIDUAL AFFIRMATIVELY CONSENTS TO THE SALE OR~~  
12 ~~DISTRIBUTION OF THE RECORDS; AND~~

13                   (3)     ~~THE MERCHANT PROVIDES THE INDIVIDUAL WITH A SIMPLE~~  
14 ~~ON-LINE METHOD THAT MAY BE USED BY THE INDIVIDUAL TO REVOKE THE~~  
15 ~~INDIVIDUAL'S AFFIRMATIVE CONSENT TO ANY FURTHER DISTRIBUTION OF THE~~  
16 ~~INDIVIDUAL'S RECORDS AT ANY TIME.~~

17 44-2904.

18

#### Article - State Government

19

#### SUBTITLE 2. ELECTRONIC TRANSACTIONS PROTECTION ACT.

20 6-201.

21     IN THIS SUBTITLE, "ELECTRONIC TRANSACTIONS" MEANS THE USE OF, ACCESS  
22 TO, OR COMMUNICATION INVOLVING THE INTERNET, WORLD WIDE WEB, OR  
23 WIRELESS OR SIMILAR TECHNOLOGIES.

24 6-202.

25     (A)     ~~THERE IS AN ON-LINE CONSUMER ADVOCACY~~ ELECTRONIC TRANSACTION  
26 EDUCATION, ADVOCACY, AND MEDIATION UNIT IN THE DIVISION OFFICE OF THE  
27 ATTORNEY GENERAL.

28     (B)     ~~THE PURPOSE OF THE UNIT IS TO PROTECT THE PRIVACY OF~~  
29 ~~INDIVIDUALS' PERSONAL INFORMATION AND TO PROTECT THE PUBLIC FROM~~  
30 ~~UNFAIR OR DECEPTIVE~~ UNLAWFUL CONDUCT OR PRACTICES IN ELECTRONIC  
31 COMMERCE TRANSACTIONS.

32     (C)     THE UNIT SHALL:

33                   (1)     ~~RECEIVE COMPLAINTS FROM INDIVIDUALS~~ CONCERNING:

1 (I) ANY PERSONS OBTAINING, COMPILING, MAINTAINING, USING,  
2 DISCLOSING, OR DISPOSING OF PERSONAL INFORMATION IN A MANNER THAT MAY  
3 BE POTENTIALLY UNLAWFUL OR VIOLATE A STATED PRIVACY POLICY RELATING TO  
4 THAT INDIVIDUAL; AND

5 (II) ~~UNFAIR OR DECEPTIVE TRADE~~ UNLAWFUL CONDUCT OR  
6 PRACTICES IN ELECTRONIC ~~COMMERCE~~ TRANSACTIONS;

7 (2) PROVIDE INFORMATION AND ADVICE TO ~~CONSUMERS~~ THE PUBLIC  
8 ON EFFECTIVE WAYS OF HANDLING COMPLAINTS THAT INVOLVE VIOLATIONS OF:

9 (I) PRIVACY RELATED LAWS, INCLUDING IDENTITY THEFT AND  
10 IDENTITY FRAUD; OR

11 (II) ~~UNFAIR OR DECEPTIVE TRADE~~ UNLAWFUL CONDUCT OR  
12 PRACTICES IN ELECTRONIC ~~COMMERCE~~ TRANSACTIONS;

13 (3) REFER COMPLAINTS WHERE APPROPRIATE TO LOCAL, STATE, OR  
14 FEDERAL AGENCIES THAT ARE AVAILABLE TO ASSIST ~~CONSUMERS~~ THE PUBLIC  
15 WITH PRIVACY AND ELECTRONIC ~~COMMERCE~~ TRANSACTION RELATED COMPLAINTS;

16 (4) DEVELOP INFORMATION AND EDUCATIONAL PROGRAMS AND  
17 MATERIALS TO FOSTER PUBLIC UNDERSTANDING AND RECOGNITION OF THE ISSUES  
18 RELATED TO PRIVACY IN ELECTRONIC COMMERCE AND ~~UNFAIR OR DECEPTIVE~~  
19 ~~TRADE UNLAWFUL CONDUCT OR~~ PRACTICES IN ELECTRONIC ~~COMMERCE~~  
20 TRANSACTIONS;

21 (5) IDENTIFY CONSUMER PROBLEMS IN, AND FACILITATE THE  
22 DEVELOPMENT AND USE OF BEST PRACTICES BY PERSONS ENGAGED IN  
23 ELECTRONIC COMMERCE FOR THE PROTECTION OF THE PRIVACY OF PERSONAL  
24 INFORMATION IN ELECTRONIC ~~COMMERCE~~ TRANSACTIONS;

25 (6) PROMOTE VOLUNTARY AND MUTUALLY AGREED UPON NONBINDING  
26 ARBITRATION AND MEDIATION OF PRIVACY RELATED OR ELECTRONIC ~~COMMERCE~~  
27 TRANSACTION DISPUTES WHERE APPROPRIATE;

28 (7) INVESTIGATE AND ASSIST IN THE PROSECUTION OF:

29 (I) IDENTITY THEFT AND OTHER PRIVACY RELATED CRIMES, AND,  
30 AS NECESSARY, COORDINATE WITH LOCAL, STATE, AND FEDERAL LAW  
31 ENFORCEMENT AGENCIES IN THE INVESTIGATION OF SIMILAR CRIMES; AND

32 (II) ~~UNFAIR OR DECEPTIVE TRADE~~ UNLAWFUL CONDUCT OR  
33 PRACTICES IN ELECTRONIC ~~COMMERCE~~ TRANSACTIONS; AND

34 (8) ASSIST AND COORDINATE IN THE TRAINING OF LOCAL, STATE, AND  
35 FEDERAL LAW ENFORCEMENT AGENCIES REGARDING IDENTITY THEFT, OTHER  
36 PRIVACY RELATED CRIMES, AND ~~UNFAIR OR DECEPTIVE TRADE~~ UNLAWFUL  
37 CONDUCT OR PRACTICES IN ELECTRONIC ~~COMMERCE~~ TRANSACTIONS AS  
38 APPROPRIATE.

1 ~~44-2905 6-203.~~

2 AT THE DIRECTION OF THE ATTORNEY GENERAL, THE ~~DIVISION, IN~~  
3 ~~ACCORDANCE WITH § 13-205 OF THIS ARTICLE, UNIT MAY ADOPT REGULATIONS TO~~  
4 ~~IMPLEMENT THIS SUBTITLE.~~

5 ~~44-2906.~~

6 ~~A VIOLATION OF THIS SUBTITLE IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE~~  
7 ~~WITHIN THE MEANING OF TITLE 13 OF THIS ARTICLE.~~

8 ~~44-2907.~~

9 ~~THIS SUBTITLE MAY BE CITED AS THE "ELECTRONIC COMMERCE CONSUMER~~  
10 ~~PRIVACY PROTECTION ACT".~~

11 ~~SECTION 2. AND BE IT FURTHER ENACTED, That:~~

12 ~~(a) There is a Task Force to Study Privacy Issues Related to Information~~  
13 ~~Technology.~~

14 ~~(b) The Task Force shall consist of the following 19 members:~~

15 ~~(1) Two members of the House of Delegates, appointed by the Speaker of~~  
16 ~~the House;~~

17 ~~(2) Two members of the Senate of Maryland, appointed by the President~~  
18 ~~of the Senate;~~

19 ~~(3) One representative from each of the following units:~~

20 ~~(i) The Department of Budget and Management, appointed by the~~  
21 ~~Secretary of Budget and Management;~~

22 ~~(ii) The Department of General Services, appointed by the~~  
23 ~~Secretary of General Services;~~

24 ~~(iii) The Comptroller of the Treasury, appointed by the Comptroller;~~

25 ~~(iv) The Maryland Higher Education Commission, appointed by the~~  
26 ~~Secretary of Higher Education;~~

27 ~~(v) The Department of Transportation, appointed by the Secretary~~  
28 ~~of Transportation; and~~

29 ~~(vi) The Department of State Police, appointed by the Secretary of~~  
30 ~~the State Police;~~

31 ~~(4) One representative of the Judicial Branch, appointed by the Chief~~  
32 ~~Judge of the Court of Appeals;~~

1           (5)     Four members of the general public with significant information  
2 technology or electronic commerce experience, appointed by the Governor; and

3           (6)     Four representatives from companies or associations with expertise  
4 in information technology or electronic commerce, appointed by the Governor.

5       (e)     The Governor shall designate the chairman of the Task Force.

6       (d)     The Task Force shall be staffed by personnel from the Department of  
7 Budget and Management.

8       (e)     The Task Force shall complete a comprehensive study of all existing State  
9 laws and policies concerning the collection, distribution, and privacy of personal  
10 information by technological means by units of State government and private entities,  
11 including disclosures in consumer electronic commerce transactions. The Task Force  
12 shall make recommendations for enhancing and developing State laws and policies  
13 concerning the protection of the privacy of personal information by technological  
14 means, including legislative proposals if appropriate.

15       (f)     In carrying out its duties, the Task Force shall identify and study:

16           (1)     State statutes, regulations, policies, and executive orders concerning  
17 the collection, distribution, and privacy of personal information by technological  
18 means;

19           (2)     Policies and practices in the private sector concerning the collection,  
20 distribution, and privacy of personal information by technological means, including  
21 disclosures in consumer electronic commerce transactions;

22           (3)     Comparable laws and policies in other states and the federal  
23 government; and

24           (4)     Proposals to impose or strengthen these types of laws.

25       (g)     The Task Force shall report its findings and recommendations to the  
26 Governor and, in accordance with § 2-1246 of the State Government Article, to the  
27 General Assembly on or before September 30, 2002.

28       SECTION 3. 2. AND BE IT FURTHER ENACTED, That this Act shall take  
29 effect October 1, 2001. Section 2 of this Act shall remain effective for a period of 1 year  
30 and, at the end of September 30, 2002, with no further action required by the General  
31 Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.

