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Menes, Pendergrass, Pitkin, Riley, Rosso, Sher, Shriver, Turner, Dypski,
and Marriott**

Introduced and read first time: February 9, 2000

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection - Mandatory Arbitration Clauses in Consumer**
3 **Contracts**

4 FOR the purpose of requiring a mandatory binding arbitration clause contained in or
5 accompanying certain consumer contracts to contain certain disclosures to the
6 consumer; requiring the mandatory arbitration clause to be in a certain form;
7 providing that both the merchant and the consumer sign the mandatory
8 arbitration clause in certain consumer contracts before the mandatory
9 arbitration clause is valid; requiring the merchant to explain certain disclosures
10 to the consumer; authorizing a consumer to pursue any remedy allowed by law
11 unless both the consumer and the merchant reaffirm in writing their
12 commitment to submit certain disputes to arbitration; providing for certain
13 procedures for certain arbitrations; providing that a merchant who violates this
14 Act has engaged in an unfair or deceptive trade practice under the Maryland
15 Consumer Protection Act and may not enforce the mandatory arbitration clause;
16 defining certain terms; providing for the application of this Act; and generally
17 relating to disclosure requirements for mandatory arbitration clauses in
18 consumer contracts.

19 BY repealing and reenacting, with amendments,
20 Article - Commercial Law
21 Section 13-104 and 13-301(14)
22 Annotated Code of Maryland
23 (1990 Replacement Volume and 1999 Supplement)

24 BY adding to
25 Article - Commercial Law
26 Section 14-2901 through 14-2905, inclusive, to be under the new subtitle
27 "Subtitle 29. Notice of Mandatory Arbitration Clauses in Consumer
28 Contracts"
29 Annotated Code of Maryland

1 (1990 Replacement Volume and 1999 Supplement)

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

4 **Article - Commercial Law**

5 13-104.

6 [This] EXCEPT FOR VIOLATIONS OF TITLE 14, SUBTITLE 29 OF THIS ARTICLE,
7 THIS title does not apply to:

8 (1) The professional services of a certified public accountant, architect,
9 clergyman, professional engineer, lawyer, veterinarian, insurance company
10 authorized to do business in the State, insurance agent or broker licensed by the
11 State, Christian Science practitioner, land surveyor, property line surveyor,
12 chiropractor, optometrist, physical therapist, podiatrist, real estate broker, associate
13 real estate broker, or real estate salesperson, or medical or dental practitioner;

14 (2) A public service company, to the extent that the company's services
15 and operations are regulated by the Public Service Commission; or

16 (3) A television or radio broadcasting station or a publisher or printer of
17 a newspaper, magazine, or other form of printed advertising who broadcasts,
18 publishes, or prints an advertisement which violates this title, unless the station,
19 publisher, or printer engages in an unfair or deceptive trade practice in the sale of its
20 own goods or services or has knowledge that the advertising is in violation of this
21 title.

22 13-301.

23 Unfair or deceptive trade practices include any:

24 (14) Violation of a provision of:

25 (i) This title;

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

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

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

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

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

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

- 1 (viii) Title 14, Subtitle 11 of this article, Maryland Layaway Sales
 2 Act;
- 3 (ix) Section 22-415 of the Transportation Article;
- 4 (x) Title 14, Subtitle 20 of this article;
- 5 (xi) Title 14, Subtitle 15 of this article, the Automotive Warranty
 6 Enforcement Act;
- 7 (xii) Title 14, Subtitle 21 of this article;
- 8 (xiii) Section 18-107 of the Transportation Article;
- 9 (xiv) Title 14, Subtitle 22 of this article, the Maryland Telephone
 10 Solicitations Act;
- 11 (xv) Title 14, Subtitle 23 of this article, the Automotive Crash Parts
 12 Act;
- 13 (xvi) Title 10, Subtitle 6 of the Real Property Article;
- 14 (xvii) Title 10, Subtitle 8 of the Real Property Article;
- 15 (xviii) Title 14, Subtitle 25 of this article, the Hearing Aid Sales Act;
 16 [or]
- 17 (xix) Title 14, Subtitle 26 of this article, the Maryland Door-to-Door
 18 Solicitations Act; or
- 19 (XX) TITLE 14, SUBTITLE 29 OF THIS ARTICLE; OR
- 20 SUBTITLE 29. NOTICE OF MANDATORY ARBITRATION CLAUSES IN CONSUMER
 21 CONTRACTS.

22 14-2901.

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

25 (B) "CONSUMER" MEANS AN ACTUAL OR PROSPECTIVE PURCHASER, LESSEE,
 26 RENTER, OR RECIPIENT OF CONSUMER GOODS, REALTY, OR SERVICES.

27 (C) "CONSUMER CONTRACT" MEANS A CONTRACT THAT PROVIDES FOR THE
 28 SALE, LEASE, RENTAL, OR RECEIPT OF CONSUMER GOODS, REALTY, OR SERVICES.

29 (D) (1) "CONSUMER GOODS, REALTY, OR SERVICES" MEANS GOODS, REALTY,
 30 OR SERVICES WHICH ARE PRIMARILY FOR PERSONAL, HOUSEHOLD, FAMILY, OR
 31 AGRICULTURAL PURPOSES.

1 (2) "CONSUMER GOODS, REALTY, OR SERVICES" INCLUDES FINANCIAL
2 AND CREDIT SERVICES AND THE SALE OF SECURITIES, WHICH ARE PRIMARILY FOR
3 PERSONAL, HOUSEHOLD, FAMILY, OR AGRICULTURAL PURPOSES.

4 (E) "DIVISION" MEANS THE DIVISION OF CONSUMER PROTECTION OF THE
5 OFFICE OF THE ATTORNEY GENERAL.

6 (F) "MANDATORY ARBITRATION CLAUSE" MEANS A PROVISION IN A
7 CONSUMER CONTRACT THAT REQUIRES A CONSUMER TO SUBMIT A DISPUTE
8 RELATING TO THE CONTRACT TO ARBITRATION EITHER BEFORE OR INSTEAD OF
9 PURSUING OTHER REMEDIES ALLOWED BY LAW, WHETHER OR NOT THE
10 ARBITRATION IS BINDING ON THE CONSUMER.

11 (G) "MERCHANT" MEANS A PERSON WHO, DIRECTLY OR INDIRECTLY, SELLS,
12 LEASES, RENTS, OR OFFERS OR MAKES AVAILABLE TO CONSUMERS ANY CONSUMER
13 GOODS, REALTY, OR SERVICES.

14 14-2902.

15 (A) IF A CONSUMER CONTRACT CONTAINS OR IS ACCOMPANIED BY A
16 MANDATORY ARBITRATION CLAUSE, THE MANDATORY ARBITRATION CLAUSE SHALL
17 BE IN AT LEAST 12 POINT BOLDFACE TYPE.

18 (B) THE MANDATORY ARBITRATION CLAUSE SHALL CONTAIN THE
19 FOLLOWING DISCLOSURES:

20 (1) THAT THE CONSUMER MAY REJECT THE MANDATORY ARBITRATION
21 CLAUSE AND THAT A REJECTION WILL HAVE NO EFFECT ON ANY OTHER PROVISION
22 OF THE CONSUMER CONTRACT;

23 (2) THAT BY SUBMITTING A DISPUTE TO MANDATORY ARBITRATION THE
24 CONSUMER MAY BE GIVING UP THE RIGHT TO A TRIAL;

25 (3) THE ARBITRATION COSTS TO THE CONSUMER IF THE CONSUMER OR
26 MERCHANT WERE TO REQUEST ARBITRATION;

27 (4) WHETHER THE ARBITRATION IS FINAL AND BINDING ON THE
28 CONSUMER OR THE MERCHANT;

29 (5) ANY LIMITATIONS UPON THE ARBITRATION CLAUSE, INCLUDING:

30 (I) WHETHER A CERTAIN AMOUNT MUST BE IN DISPUTE FOR
31 ARBITRATION TO OCCUR; AND

32 (II) ANY LIMITATIONS ON THE AMOUNT OR TYPE OF REMEDIES A
33 CONSUMER MAY BE AWARDED; AND

34 (6) THE REQUIREMENTS OF § 14-2904 OF THIS SUBTITLE.

1 (C) (1) THE MANDATORY ARBITRATION CLAUSE SHALL CONTAIN A CLEARLY
2 MARKED SPACE WHERE BOTH THE CONSUMER AND THE MERCHANT MUST SIGN IN
3 ORDER TO ACCEPT THE MANDATORY ARBITRATION CLAUSE.

4 (2) UNLESS BOTH THE MERCHANT AND THE CONSUMER SIGN IN THE
5 CLEARLY MARKED SPACE, THE MANDATORY ARBITRATION CLAUSE SHALL BE
6 DEEMED TO BE REJECTED.

7 (3) A MERCHANT MAY NOT REFUSE TO ENTER INTO A CONSUMER
8 CONTRACT BECAUSE OF A CONSUMER'S REJECTION OF A MANDATORY ARBITRATION
9 CLAUSE.

10 14-2903.

11 BEFORE A CONSUMER SIGNS A CONSUMER CONTRACT THAT CONTAINS OR IS
12 ACCOMPANIED BY A MANDATORY ARBITRATION CLAUSE, THE MERCHANT BOTH
13 ORALLY AND IN WRITING, SHALL CLEARLY EXPLAIN TO THE CONSUMER EACH OF
14 THE DISCLOSURES REQUIRED UNDER § 14-2902(B) OF THIS SUBTITLE.

15 14-2904.

16 (A) AT THE TIME A DISPUTE ARISES RELATING TO A CONTRACT THAT IS
17 SUBJECT TO A MANDATORY ARBITRATION CLAUSE, UNLESS BOTH THE CONSUMER
18 AND THE MERCHANT REAFFIRM IN WRITING THEIR COMMITMENT TO SUBMIT THE
19 DISPUTE TO ARBITRATION, THE CONSUMER MAY PURSUE ANY OTHER REMEDY
20 ALLOWED BY LAW.

21 (B) IF BOTH THE CONSUMER AND THE MERCHANT REAFFIRM THEIR
22 AGREEMENT TO SUBMIT THE DISPUTE TO ARBITRATION:

23 (1) ANY ARBITRATION HEARING SHALL BE CONDUCTED WITHIN 20
24 MILES OF THE CONSUMER'S HOME;

25 (2) THE COST OF ARBITRATION TO THE CONSUMER MAY NOT EXCEED
26 THE COST OF FILING AN ACTION IN SMALL CLAIMS COURT; AND

27 (3) THE CONSUMER MAY ELECT TO HAVE THE ARBITRATION
28 CONDUCTED THROUGH THE DIVISION'S ARBITRATION PROGRAM.

29 14-2905.

30 A MERCHANT WHO VIOLATES ANY PROVISION OF THIS SUBTITLE:

31 (1) HAS ENGAGED IN AN UNFAIR OR DECEPTIVE TRADE PRACTICE
32 WITHIN THE MEANING OF TITLE 13 OF THIS ARTICLE; AND

33 (2) MAY NOT ENFORCE THE MANDATORY ARBITRATION CLAUSE.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all
35 consumer contracts executed, renewed, or amended on or after October 1, 2000.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2000.