

(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**

Requested: November 15, 2000

Introduced and read first time: January 10, 2001

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Information Technology and Consumer Privacy Protection Act of 2001**

3 FOR the purpose of prohibiting a merchant from collecting or maintaining records of  
4 personal information of an individual unless the merchant provides the  
5 individual with a certain notice and the individual affirmatively consents to the  
6 collection or maintenance under certain circumstances; prohibiting a merchant  
7 from selling or distributing records of personal information of an individual  
8 unless the merchant gives the individual a certain notification, the individual  
9 affirmatively consents to the sale or distribution, and the merchant provides the  
10 individual with a certain method to revoke consent under certain circumstances;  
11 establishing an On-line Consumer Advocacy Unit in the Division of Consumer  
12 Protection in the Office of the Attorney General; specifying the purpose and the  
13 duties of the Unit; authorizing the Division to adopt certain regulations;  
14 providing that a violation of this Act is an unfair or deceptive trade practice  
15 under the Maryland Consumer Protection Act; defining certain terms;  
16 establishing a Task Force to Study Privacy Issues Related to Information  
17 Technology; specifying the membership of the Task Force; providing for the  
18 chairman and staff of the Task Force; requiring the Task Force to complete a  
19 comprehensive study of State laws and policies concerning the collection,  
20 distribution, and privacy of personal information by technological means by  
21 units of State government and private entities, and to make certain  
22 recommendations; requiring the Task Force to submit a certain report to the  
23 Governor and the General Assembly on or before a certain date; providing for  
24 the termination of a certain section of this Act; and generally relating to  
25 information technology and consumer privacy protection.

26 BY repealing and reenacting, with amendments,  
27 Article - Commercial Law  
28 Section 13-301  
29 Annotated Code of Maryland  
30 (2000 Replacement Volume and 2000 Supplement)

1 BY adding to  
2 Article - Commercial Law  
3 Section 14-2901 through 14-2907, inclusive, to be under the new subtitle  
4 "Subtitle 29. Electronic Commerce Consumer Privacy Protection Act"  
5 Annotated Code of Maryland  
6 (2000 Replacement Volume and 2000 Supplement)

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

9 **Article - Commercial Law**

10 13-301.

11 Unfair or deceptive trade practices include any:

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

15 (2) Representation that:

16 (i) Consumer goods, consumer realty, or consumer services have a  
17 sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity  
18 which they do not have;

19 (ii) A merchant has a sponsorship, approval, status, affiliation, or  
20 connection which he does not have;

21 (iii) Deteriorated, altered, reconditioned, reclaimed, or secondhand  
22 consumer goods are original or new; or

23 (iv) Consumer goods, consumer realty, or consumer services are of a  
24 particular standard, quality, grade, style, or model which they are not;

25 (3) Failure to state a material fact if the failure deceives or tends to  
26 deceive;

27 (4) Disparagement of the goods, realty, services, or business of another  
28 by a false or misleading representation of a material fact;

29 (5) Advertisement or offer of consumer goods, consumer realty, or  
30 consumer services:

31 (i) Without intent to sell, lease, or rent them as advertised or  
32 offered; or

- 1                   (ii)     With intent not to supply reasonably expected public demand,  
2 unless the advertisement or offer discloses a limitation of quantity or other qualifying  
3 condition;
- 4                   (6)     False or misleading representation of fact which concerns:
- 5                   (i)     The reason for or the existence or amount of a price reduction;  
6 or
- 7                   (ii)    A price in comparison to a price of a competitor or to one's own  
8 price at a past or future time;
- 9                   (7)     Knowingly false statement that a service, replacement, or repair is  
10 needed;
- 11                  (8)     False statement which concerns the reason for offering or supplying  
12 consumer goods, consumer realty, or consumer services at sale or discount prices;
- 13                  (9)     Deception, fraud, false pretense, false premise, misrepresentation, or  
14 knowing concealment, suppression, or omission of any material fact with the intent  
15 that a consumer rely on the same in connection with:
- 16                  (i)     The promotion or sale of any consumer goods, consumer realty,  
17 or consumer service; [ or]
- 18                  (ii)    A contract or other agreement for the evaluation, perfection,  
19 marketing, brokering or promotion of an invention; or
- 20                  (iii)   The subsequent performance of a merchant with respect to an  
21 agreement of sale, lease, or rental;
- 22                  (10)    Solicitations of sales or services over the telephone without first  
23 clearly, affirmatively, and expressly stating:
- 24                  (i)     The solicitor's name and the trade name of a person represented  
25 by the solicitor;
- 26                  (ii)    The purpose of telephone conversation; and
- 27                  (iii)   The kind of merchandise, real property, intangibles, or service  
28 solicited;
- 29                  (11)    Use of any plan or scheme in soliciting sales or services over the  
30 telephone that misrepresents the solicitor's true status or mission;
- 31                  (12)    Use of a contract related to a consumer transaction which contains a  
32 confessed judgment clause that waives the consumer's right to assert a legal defense  
33 to an action;
- 34                  (13)    Use by a seller, who is in the business of selling consumer realty, of a  
35 contract related to the sale of single family residential consumer realty, including

1 condominiums and town houses, that contains a clause limiting or precluding the  
2 buyer's right to obtain consequential damages as a result of the seller's breach or  
3 cancellation of the contract;

4 (14) Violation of a provision of:

5 (i) This title;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (xvii) Title 10, Subtitle 8 of the Real Property Article;

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

30 [or]

1 (xix) Title 14, Subtitle 26 of this article, the Maryland Door-to-Door  
2 Solicitations Act; or

3 (XX) TITLE 14, SUBTITLE 29, THE ELECTRONIC COMMERCE  
4 CONSUMER PRIVACY PROTECTION ACT; OR

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

9 SUBTITLE 29. ELECTRONIC COMMERCE CONSUMER PRIVACY PROTECTION ACT.  
10 14-2901.

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
12 INDICATED.

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

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

17 (D) "DIVISION" MEANS THE DIVISION OF CONSUMER PROTECTION IN THE  
18 OFFICE OF THE ATTORNEY GENERAL.

19 (E) "ELECTRONIC COMMERCE TRANSACTION" MEANS THE SALE, LEASE,  
20 RENTAL, LICENSE, OR TRANSFER OF CONSUMER GOODS OR SERVICES MADE  
21 THROUGH USE OF THE INTERNET, THE WORLD WIDE WEB, OR A SIMILAR  
22 ELECTRONIC MEDIUM.

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

25 (G) (1) "PERSONAL INFORMATION" MEANS INFORMATION ABOUT AN  
26 INDIVIDUAL INCLUDING AN INDIVIDUAL'S:

27 (I) FIRST OR LAST NAME;

28 (II) SOCIAL SECURITY NUMBER;

29 (III) HOME OR BUSINESS ADDRESS;

30 (IV) ELECTRONIC MAIL ADDRESS;

31 (V) TELEPHONE NUMBER;

32 (VI) CREDIT CARD NUMBER OR OTHER SIMILAR FINANCIAL  
33 ACCOUNT INFORMATION;

1 (VII) PATTERN OF PURCHASES OF CONSUMER GOODS OR SERVICES  
2 THROUGH ELECTRONIC COMMERCE TRANSACTIONS; OR

3 (VIII) INTERNET BROWSING PATTERNS.

4 (2) "PERSONAL INFORMATION" INCLUDES PERSONALLY IDENTIFIABLE  
5 INFORMATION THAT CAN BE USED TO CONTACT AN INDIVIDUAL PHYSICALLY OR  
6 ON-LINE.

7 (H) "UNIT" MEANS THE ON-LINE CONSUMER ADVOCACY UNIT IN THE  
8 DIVISION.

9 14-2902.

10 THIS SUBTITLE APPLIES TO CONSUMER ELECTRONIC COMMERCE  
11 TRANSACTIONS.

12 14-2903.

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

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

18 (1) THE MERCHANT PROVIDES THE INDIVIDUAL WITH A CONSPICUOUS  
19 NOTICE OF:

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

22 (II) HOW THE INFORMATION COLLECTED OR MAINTAINED WILL BE  
23 USED; AND

24 (III) WHO WILL HAVE ACCESS TO THE INFORMATION COLLECTED  
25 OR MAINTAINED; AND

26 (2) THE INDIVIDUAL AFFIRMATIVELY CONSENTS TO THE COLLECTION  
27 OR MAINTENANCE OF THE RECORDS.

28 (C) A MERCHANT MAY NOT SELL OR DISTRIBUTE RECORDS OF PERSONAL  
29 INFORMATION OF AN INDIVIDUAL UNLESS:

30 (1) THE MERCHANT NOTIFIES THE INDIVIDUAL IN ADVANCE OF THE  
31 MERCHANT'S INTENT TO SELL OR DISTRIBUTE THE RECORDS;

32 (2) THE INDIVIDUAL AFFIRMATIVELY CONSENTS TO THE SALE OR  
33 DISTRIBUTION OF THE RECORDS; AND

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

5 14-2904.

6 (A) THERE IS AN ON-LINE CONSUMER ADVOCACY UNIT IN THE DIVISION.

7 (B) THE PURPOSE OF THE UNIT IS TO PROTECT THE PRIVACY OF  
8 INDIVIDUALS' PERSONAL INFORMATION AND TO PROTECT THE PUBLIC FROM  
9 UNFAIR OR DECEPTIVE PRACTICES IN ELECTRONIC COMMERCE TRANSACTIONS.

10 (C) THE UNIT SHALL:

11 (1) RECEIVE COMPLAINTS FROM INDIVIDUALS CONCERNING:

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

16 (II) UNFAIR OR DECEPTIVE TRADE PRACTICES IN ELECTRONIC  
17 COMMERCE TRANSACTIONS;

18 (2) PROVIDE INFORMATION AND ADVICE TO CONSUMERS ON EFFECTIVE  
19 WAYS OF HANDLING COMPLAINTS THAT INVOLVE VIOLATIONS OF:

20 (I) PRIVACY RELATED LAWS, INCLUDING IDENTITY THEFT AND  
21 IDENTITY FRAUD; OR

22 (II) UNFAIR OR DECEPTIVE TRADE PRACTICES IN ELECTRONIC  
23 COMMERCE TRANSACTIONS;

24 (3) REFER COMPLAINTS WHERE APPROPRIATE TO LOCAL, STATE, OR  
25 FEDERAL AGENCIES THAT ARE AVAILABLE TO ASSIST CONSUMERS WITH PRIVACY  
26 AND ELECTRONIC COMMERCE TRANSACTION RELATED COMPLAINTS;

27 (4) DEVELOP INFORMATION AND EDUCATIONAL PROGRAMS AND  
28 MATERIALS TO FOSTER PUBLIC UNDERSTANDING AND RECOGNITION OF THE ISSUES  
29 RELATED TO PRIVACY IN ELECTRONIC COMMERCE AND UNFAIR OR DECEPTIVE  
30 TRADE PRACTICES IN ELECTRONIC COMMERCE TRANSACTIONS;

31 (5) IDENTIFY CONSUMER PROBLEMS IN AND FACILITATE THE  
32 DEVELOPMENT AND USE OF BEST PRACTICES BY PERSONS ENGAGED IN  
33 ELECTRONIC COMMERCE FOR THE PROTECTION OF THE PRIVACY OF PERSONAL  
34 INFORMATION IN ELECTRONIC COMMERCE TRANSACTIONS;

1 (6) PROMOTE VOLUNTARY AND MUTUALLY AGREED UPON NONBINDING  
2 ARBITRATION AND MEDIATION OF PRIVACY RELATED OR ELECTRONIC COMMERCE  
3 TRANSACTION DISPUTES WHERE APPROPRIATE;

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

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

8 (II) UNFAIR OR DECEPTIVE TRADE PRACTICES IN ELECTRONIC  
9 COMMERCE TRANSACTIONS; AND

10 (8) ASSIST AND COORDINATE IN THE TRAINING OF LOCAL, STATE, AND  
11 FEDERAL LAW ENFORCEMENT AGENCIES REGARDING IDENTITY THEFT, OTHER  
12 PRIVACY RELATED CRIMES, AND UNFAIR OR DECEPTIVE TRADE PRACTICES IN  
13 ELECTRONIC COMMERCE TRANSACTIONS AS APPROPRIATE.

14 14-2905.

15 AT THE DIRECTION OF THE ATTORNEY GENERAL, THE DIVISION, IN  
16 ACCORDANCE WITH § 13-205 OF THIS ARTICLE, MAY ADOPT REGULATIONS TO  
17 IMPLEMENT THIS SUBTITLE.

18 14-2906.

19 A VIOLATION OF THIS SUBTITLE IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE  
20 WITHIN THE MEANING OF TITLE 13 OF THIS ARTICLE.

21 14-2907.

22 THIS SUBTITLE MAY BE CITED AS THE "ELECTRONIC COMMERCE CONSUMER  
23 PRIVACY PROTECTION ACT".

24 SECTION 2. AND BE IT FURTHER ENACTED, That:

25 (a) There is a Task Force to Study Privacy Issues Related to Information  
26 Technology.

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

28 (1) Two members of the House of Delegates, appointed by the Speaker of  
29 the House;

30 (2) Two members of the Senate of Maryland, appointed by the President  
31 of the Senate;

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

33 (i) The Department of Budget and Management, appointed by the  
34 Secretary of Budget and Management;



- 1 (ii) The Department of General Services, appointed by the  
2 Secretary of General Services;
- 3 (iii) The Comptroller of the Treasury, appointed by the Comptroller;
- 4 (iv) The Maryland Higher Education Commission, appointed by the  
5 Secretary of Higher Education;
- 6 (v) The Department of Transportation, appointed by the Secretary  
7 of Transportation; and
- 8 (vi) The Department of State Police, appointed by the Secretary of  
9 the State Police;
- 10 (4) One representative of the Judicial Branch, appointed by the Chief  
11 Judge of the Court of Appeals;
- 12 (5) Four members of the general public with significant information  
13 technology or electronic commerce experience, appointed by the Governor; and
- 14 (6) Four representatives from companies or associations with expertise  
15 in information technology or electronic commerce, appointed by the Governor.
- 16 (c) The Governor shall designate the chairman of the Task Force.
- 17 (d) The Task Force shall be staffed by personnel from the Department of  
18 Budget and Management.
- 19 (e) The Task Force shall complete a comprehensive study of all existing State  
20 laws and policies concerning the collection, distribution, and privacy of personal  
21 information by technological means by units of State government and private entities,  
22 including disclosures in consumer electronic commerce transactions. The Task Force  
23 shall make recommendations for enhancing and developing State laws and policies  
24 concerning the protection of the privacy of personal information by technological  
25 means, including legislative proposals if appropriate.
- 26 (f) In carrying out its duties, the Task Force shall identify and study:
- 27 (1) State statutes, regulations, policies, and executive orders concerning  
28 the collection, distribution, and privacy of personal information by technological  
29 means;
- 30 (2) Policies and practices in the private sector concerning the collection,  
31 distribution, and privacy of personal information by technological means, including  
32 disclosures in consumer electronic commerce transactions;
- 33 (3) Comparable laws and policies in other states and the federal  
34 government; and
- 35 (4) Proposals to impose or strengthen these types of laws.

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

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