

ENROLLED BILL
-- Economic Matters/Finance --

Introduced by **Delegates Krysiak, Feldman, McHale, Moe, Pendergrass, and Quinter**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Consumer Protection - Enforcement Authority of Consumer Protection**
3 **Division**

4 FOR the purpose of altering the stipulations or conditions that the Division of
5 Consumer Protection in the Office of the Attorney General may include in a
6 written assurance of discontinuance, settlement agreement, or cease and desist
7 order provided for under certain provisions of the Consumer Protection Act;
8 requiring the Division to consider certain criteria in determining the amount of
9 security a certain person must post under certain circumstances; making certain
10 stylistic changes; and generally relating to the enforcement authority of the
11 Division of Consumer Protection in the Office of the Attorney General.

12 BY repealing and reenacting, with amendments,
13 Article - Commercial Law
14 Section 13-402(b) and 13-403(b)
15 Annotated Code of Maryland

1 (2000 Replacement Volume and 2004 Supplement)

2 BY repealing and reenacting, without amendments,

3 Article - Commercial Law

4 Section 13-403(a)

5 Annotated Code of Maryland

6 (2000 Replacement Volume and 2004 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 13-402.

11 (b) (1) A written assurance of ~~discontinuance~~, DISCONTINUANCE OR A
 12 settlement agreement, or any cease and desist order provided for by this subtitle may
 13 include a stipulation or condition for THE VIOLATOR OR ALLEGED VIOLATOR TO:

14 (i) [The payment by the violator or alleged violator of] PAY the
 15 costs of investigation by the Division; [and]

16 (ii) [The] MAKE restitution [by the violator or alleged violator] to
 17 the consumer of money, property, or any other thing received from the consumer in
 18 connection with a violation or alleged violation of this title;

19 (III) PAY ~~ACTUAL~~ ECONOMIC DAMAGES;

20 (IV) POST A PERFORMANCE BOND OR OTHER SECURITY; AND

21 (V) ~~TAKE ANY OTHER ACTION~~ PROVIDE INFORMATION TO THE
 22 DIVISION THAT IS APPROPRIATE TO ASSIST THE PUBLIC IN OBTAINING RELIEF OR TO
 23 PREVENT FUTURE VIOLATIONS.

24 (2) WHEN A VIOLATOR OR ALLEGED VIOLATOR AGREES OR IS ORDERED
 25 TO POST A PERFORMANCE BOND OR OTHER SECURITY, IN DETERMINING THE
 26 AMOUNT OF SECURITY TO BE POSTED, THE DIVISION SHALL CONSIDER:

27 (I) THE NATURE OF THE VIOLATION;

28 (II) THE AMOUNT OF MONEY, PROPERTY, OR ANY OTHER THING
 29 RECEIVED FROM THE CONSUMER IN CONNECTION WITH THE VIOLATION;

30 (III) WHETHER FULL RESTITUTION HAS BEEN PAID TO THE
 31 CONSUMER; AND

32 (IV) THE RISK OF FUTURE HARM TO CONSUMERS.

33 [(2)] (3) [These] IN ADDITION TO THE stipulations and conditions
 34 LISTED IN PARAGRAPH (1) OF THIS SUBSECTION, [do not preclude] the Division

1 [from using] MAY USE any other stipulation, condition, or remedy necessary to
2 correct a violation of this title.

3 (4) A CEASE AND DESIST ORDER ISSUED UNDER § 13-403 OF THIS
4 SUBTITLE MAY INCLUDE ANY STIPULATION OR CONDITION LISTED IN THIS
5 SUBSECTION.

6 13-403.

7 (a) (1) The Division may hold a public hearing to determine if a violation of
8 this title has occurred.

9 (2) The Division shall serve:

10 (i) A statement of charges on the alleged violator; and

11 (ii) A notice of the time and place of hearing on each party of record.

12 (3) The Division shall hold the hearing not less than ten days after
13 service of the statement of charges. Each party of record may appear before the
14 Division in person or, at his option, by his authorized representative and may have
15 the assistance of an attorney. The parties may present evidence and cross-examine
16 witnesses. All testimony shall be given under oath and may be required by the
17 issuance of a subpoena signed by the Division. Irrelevant, unduly repetitious, or
18 protracted evidence may not be admitted. Hearings may be limited by the Division if
19 the Division so notifies each party before the hearing.

20 (4) The Division shall keep a full record of the hearing. The record shall
21 be open to inspection by any person. On request of an interested party to the
22 proceeding, the Division shall furnish the party a copy of the hearing record at a cost
23 which the Division considers appropriate.

24 (b) (1) (I) If, at the conclusion of the hearing, the Division determines on
25 the preponderance of evidence that the alleged violator violated this title, the Division
26 shall state its findings and issue an order requiring the violator to cease and desist
27 from the violation and to take affirmative action, including the restitution of money
28 or property ~~AND~~.

29 (II) THE ORDER ~~MANY~~ MAY CONTAIN ANY STIPULATION OR
30 CONDITION LISTED IN § 13-402(B) OF THIS SUBTITLE.

31 ~~(H)-(III)~~ The order shall contain a notice which states that if the
32 Division determines that the violator has not corrected the violation and complied
33 with the order within 30 days following service of the order, the Division shall proceed
34 with enforcement pursuant to this subtitle.

35 (2) If, at the conclusion of the hearing, the Division determines on the
36 preponderance of evidence that the alleged violator did not violate this title, the
37 Division shall state its findings and issue an order dismissing the complaint.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2005.