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By: **Delegates Krysiak, Feldman, McHale, Moe, Pendergrass, and Quinter**  
Introduced and read first time: February 3, 2005  
Assigned to: Economic Matters

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A BILL ENTITLED

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  
16 (2000 Replacement Volume and 2004 Supplement)

17 BY repealing and reenacting, without amendments,  
18 Article - Commercial Law  
19 Section 13-403(a)  
20 Annotated Code of Maryland  
21 (2000 Replacement Volume and 2004 Supplement)

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

24 **Article - Commercial Law**

25 13-402.

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

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

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

6 (III) PAY ACTUAL DAMAGES;

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

8 (V) TAKE ANY OTHER ACTION THAT IS APPROPRIATE TO ASSIST  
9 THE PUBLIC IN OBTAINING RELIEF OR TO PREVENT FUTURE VIOLATIONS.

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

13 (I) THE NATURE OF THE VIOLATION;

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

16 (III) WHETHER FULL RESTITUTION HAS BEEN PAID TO THE  
17 CONSUMER; AND

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

19 [(2)] (3) [These] IN ADDITION TO THE stipulations and conditions  
20 LISTED IN PARAGRAPH (1) OF THIS SUBSECTION, [do not preclude] the Division  
21 [from using] MAY USE any other stipulation, condition, or remedy necessary to  
22 correct a violation of this title.

23 13-403.

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

26 (2) The Division shall serve:

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

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

29 (3) The Division shall hold the hearing not less than ten days after  
30 service of the statement of charges. Each party of record may appear before the  
31 Division in person or, at his option, by his authorized representative and may have  
32 the assistance of an attorney. The parties may present evidence and cross-examine  
33 witnesses. All testimony shall be given under oath and may be required by the  
34 issuance of a subpoena signed by the Division. Irrelevant, unduly repetitious, or

1 protracted evidence may not be admitted. Hearings may be limited by the Division if  
2 the Division so notifies each party before the hearing.

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

7       (b)       (1)       (I)       If, at the conclusion of the hearing, the Division determines on  
8 the preponderance of evidence that the alleged violator violated this title, the Division  
9 shall state its findings and issue an order requiring the violator to cease and desist  
10 from the violation and to take affirmative action, including the restitution of money  
11 or property AND ANY STIPULATION OR CONDITION LISTED IN § 13-402(B) OF THIS  
12 SUBTITLE.

13                   (II)       The order shall contain a notice which states that if the Division  
14 determines that the violator has not corrected the violation and complied with the  
15 order within 30 days following service of the order, the Division shall proceed with  
16 enforcement pursuant to this subtitle.

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

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