
By: **Delegates Krysiak, Feldman, McHale, Moe, Pendergrass, and Quinter**

Introduced and read first time: February 3, 2005

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 1, 2005

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
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:

1

Article - Commercial Law

2 13-402.

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

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

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

11 (III) PAY ACTUAL DAMAGES;

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

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

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

18 (I) THE NATURE OF THE VIOLATION;

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

21 (III) WHETHER FULL RESTITUTION HAS BEEN PAID TO THE
 22 CONSUMER; AND

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

24 [(2)] (3) [These] IN ADDITION TO THE stipulations and conditions
 25 LISTED IN PARAGRAPH (1) OF THIS SUBSECTION, [do not preclude] the Division
 26 [from using] MAY USE any other stipulation, condition, or remedy necessary to
 27 correct a violation of this title.

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

31 13-403.

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

34 (2) The Division shall serve:

- 1 (i) A statement of charges on the alleged violator; and
2 (ii) A notice of the time and place of hearing on each party of record.

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

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

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

20 (II) THE ORDER MANY CONTAIN ANY STIPULATION OR CONDITION
21 LISTED IN § 13-402(B) OF THIS SUBTITLE.

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

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

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