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Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection - Unauthorized Computer Software Prevention Act**

3 FOR the purpose of prohibiting certain persons from causing, with actual knowledge,
4 with conscious avoidance of actual knowledge, or willfully, computer software
5 that modifies certain Internet settings, collects certain personally identifying
6 information, prevents an authorized user from blocking the installation of
7 certain software, or prevents an authorized user from disabling certain software
8 to be copied onto a consumer's computer under certain circumstances;
9 prohibiting certain persons from misleading authorized users as to the effect
10 certain actions will have with respect to computer software; prohibiting the
11 removal or disabling of or rendering inoperative certain security software
12 installed on certain computers; prohibiting certain persons from causing, with
13 actual knowledge, with conscious avoidance of actual knowledge, or willfully,
14 computer software to be copied onto the computer of a consumer and using the
15 computer software to take control of the consumer's computer, modify certain
16 security settings, or prevent authorized users from performing certain actions
17 under certain circumstances; prohibiting certain persons from inducing
18 authorized users to install certain computer software components under certain
19 circumstances; providing that a violation of this Act is an unfair or deceptive
20 trade practice under the Maryland Consumer Protection Act and is subject to
21 certain enforcement actions and penalties; authorizing an authorized user who
22 is injured by a violation of this Act to bring an action against certain persons to
23 recover reasonable attorney's fees and damages in a certain amount;
24 establishing that each instance of certain prohibited acts may be considered a
25 separate violation of this Act; establishing a certain short title; defining certain
26 terms; and generally relating to the Unauthorized Computer Software
27 Prevention Act.

28 BY repealing and reenacting, with amendments,
29 Article - Commercial Law

1 Section 13-301(14)
2 Annotated Code of Maryland
3 (2000 Replacement Volume and 2004 Supplement)

4 BY adding to
5 Article - Commercial Law
6 Section 14-3301 through 14-3305, inclusive, to be under the new subtitle
7 "Subtitle 33. Unauthorized Computer Software Prevention Act"
8 Annotated Code of Maryland
9 (2000 Replacement Volume and 2004 Supplement)

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

12 **Article - Commercial Law**

13 13-301.

14 Unfair or deceptive trade practices include any:

15 (14) Violation of a provision of:

16 (i) This title;

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

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

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

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

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

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

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

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

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

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

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- 1 (xii) Title 14, Subtitle 21 of this article;
- 2 (xiii) Section 18-107 of the Transportation Article;
- 3 (xiv) Title 14, Subtitle 22 of this article, the Maryland Telephone
4 Solicitations Act;
- 5 (xv) Title 14, Subtitle 23 of this article, the Automotive Crash Parts
6 Act;
- 7 (xvi) Title 10, Subtitle 6 of the Real Property Article;
- 8 (xvii) Title 10, Subtitle 8 of the Real Property Article;
- 9 (xviii) Title 14, Subtitle 25 of this article, the Hearing Aid Sales Act;
- 10 (xix) Title 14, Subtitle 26 of this article, the Maryland Door-to-Door
11 Solicitations Act;
- 12 (xx) Title 14, Subtitle 31 of this article, the Maryland Household
13 Goods Movers Act; [or]
- 14 (xxi) Title 14, Subtitle 32 of this article, the Maryland Telephone
15 Consumer Protection Act; or

16 (XXII) TITLE 14, SUBTITLE 33 OF THIS ARTICLE, THE UNAUTHORIZED
17 COMPUTER SOFTWARE PREVENTION ACT; OR

18 SUBTITLE 33. UNAUTHORIZED COMPUTER SOFTWARE PREVENTION ACT.

19 14-3301.

20 (A) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
21 INDICATED.

22 (B) (1) "ADVERTISEMENT" MEANS A COMMUNICATION, THE PRIMARY
23 PURPOSE OF WHICH IS THE COMMERCIAL PROMOTION OF A PRODUCT OR SERVICE.

24 (2) "ADVERTISEMENT" INCLUDES CONTENT ON A WORLD WIDE WEB
25 SITE OPERATED FOR A COMMERCIAL PURPOSE.

26 (C) "AUTHORIZED USER" MEANS:

27 (1) A CONSUMER WHO OWNS A COMPUTER; OR

28 (2) AN INDIVIDUAL WHO:

29 (I) RESIDES IN THE STATE;

30 (II) IS AUTHORIZED TO USE A CONSUMER'S COMPUTER; AND

1 (III) USES THE COMPUTER PRIMARILY FOR PERSONAL,
2 HOUSEHOLD, OR FAMILY USE.

3 (3) "AUTHORIZED USER" DOES NOT INCLUDE A PERSON OR ENTITY THAT
4 HAS OBTAINED AUTHORIZATION TO USE THE COMPUTER SOLELY THROUGH USE OF
5 AN END USER AGREEMENT.

6 (D) "COMPUTER SOFTWARE" MEANS A SEQUENCE OF INSTRUCTIONS
7 WRITTEN IN ANY PROGRAMMING LANGUAGE THAT IS EXECUTED ON A COMPUTER.

8 (E) "COMPUTER VIRUS" MEANS A COMPUTER PROGRAM OR OTHER SET OF
9 INSTRUCTIONS DESIGNED TO:

10 (1) DEGRADE THE PERFORMANCE OF OR DISABLE A COMPUTER OR
11 COMPUTER NETWORK; OR

12 (2) REPLICATE ITSELF ON ANOTHER COMPUTER OR COMPUTER
13 NETWORK WITHOUT THE AUTHORIZATION OF THE OWNER OF THE COMPUTER OR
14 COMPUTER NETWORK.

15 (F) "CONSUMER" MEANS AN INDIVIDUAL WHO:

16 (1) RESIDES IN THE STATE; AND

17 (2) USES A COMPUTER PRIMARILY FOR PERSONAL, HOUSEHOLD, OR
18 FAMILY USE.

19 (G) "DAMAGE" MEANS ANY SIGNIFICANT IMPAIRMENT TO THE INTEGRITY OF
20 OR AVAILABILITY OF A COMPUTER SYSTEM, DATA, COMPUTER SOFTWARE, OR
21 INFORMATION.

22 (H) "EXECUTE" MEANS THE PERFORMANCE OF THE FUNCTIONS OR THE
23 CARRYING OUT OF THE INSTRUCTIONS OF COMPUTER SOFTWARE.

24 (I) "INTENTIONALLY DECEPTIVE" MEANS THE USE OF:

25 (1) AN INTENTIONALLY AND MATERIALLY FALSE OR FRAUDULENT
26 STATEMENT;

27 (2) A STATEMENT OR DESCRIPTION THAT INTENTIONALLY OMITTS OR
28 MISREPRESENTS MATERIAL INFORMATION IN ORDER TO DECEIVE AN AUTHORIZED
29 USER; OR

30 (3) AN INTENTIONAL AND MATERIAL FAILURE TO PROVIDE ANY NOTICE
31 TO AN AUTHORIZED USER REGARDING THE DOWNLOAD OR INSTALLATION OF
32 COMPUTER SOFTWARE IN ORDER TO DECEIVE AN AUTHORIZED USER.

33 (J) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, PARTNERSHIP,
34 BUSINESS TRUST, LIMITED LIABILITY COMPANY, OR OTHER ORGANIZATION.

35 (K) "PERSONALLY IDENTIFIABLE INFORMATION" MEANS:

1 (1) A FIRST NAME OR FIRST INITIAL IN COMBINATION WITH A LAST
2 NAME;

3 (2) A CREDIT CARD NUMBER, DEBIT CARD NUMBER, OR OTHER
4 FINANCIAL ACCOUNT NUMBER;

5 (3) A PASSWORD OR PERSONAL IDENTIFICATION NUMBER REQUIRED TO
6 ACCESS AN IDENTIFIED FINANCIAL ACCOUNT;

7 (4) A PASSWORD OR IDENTIFICATION NUMBER REQUIRED TO ACCESS A
8 COMPUTER, A COMPUTER PROGRAM, OR A WORLD WIDE WEB SITE;

9 (5) A SOCIAL SECURITY NUMBER;

10 (6) A BIRTH CERTIFICATE NUMBER; OR

11 (7) ANY OF THE FOLLOWING IN A FORM THAT IDENTIFIES AN
12 AUTHORIZED USER:

13 (I) AN ACCOUNT BALANCE;

14 (II) AN OVERDRAFT HISTORY;

15 (III) A PAYMENT HISTORY;

16 (IV) A HISTORY OF WORLD WIDE WEB SITES VISITED;

17 (V) AN INSURANCE POLICY NUMBER;

18 (VI) A HOME ADDRESS;

19 (VII) A WORK ADDRESS;

20 (VIII) A TELEPHONE NUMBER; OR

21 (IX) A PURCHASE RECORD.

22 14-3302.

23 (A) A PERSON WHO IS NOT AN AUTHORIZED USER MAY NOT, WITH ACTUAL
24 KNOWLEDGE, WITH CONSCIOUS AVOIDANCE OF ACTUAL KNOWLEDGE, OR
25 WILLFULLY, CAUSE TO BE COPIED ONTO THE COMPUTER OF A CONSUMER
26 COMPUTER SOFTWARE THAT:

27 (1) MODIFIES, THROUGH INTENTIONALLY DECEPTIVE MEANS, THE
28 COMPUTER'S ACCESS TO, OR USE OF, THE INTERNET INCLUDING:

29 (I) THE PAGE THAT APPEARS WHEN AN AUTHORIZED USER
30 LAUNCHES AN INTERNET BROWSER OR SIMILAR PROGRAM USED TO ACCESS AND
31 NAVIGATE THE INTERNET;

1 (II) THE DEFAULT PROVIDER OR WORLD WIDE WEB PROXY AN
2 AUTHORIZED USER USES TO ACCESS OR SEARCH THE INTERNET; OR

3 (III) AN AUTHORIZED USER'S LIST OF BOOKMARKS USED TO ACCESS
4 WORLD WIDE WEB PAGES;

5 (2) COLLECTS, THROUGH INTENTIONALLY DECEPTIVE MEANS,
6 PERSONALLY IDENTIFIABLE INFORMATION THAT:

7 (I) IS COLLECTED THROUGH THE USE OF A FUNCTION THAT
8 RECORDS ALL OR SUBSTANTIALLY ALL KEYSTROKES;

9 (II) INCLUDES ALL OR SUBSTANTIALLY ALL OF THE WORLD WIDE
10 WEB SITES VISITED BY AN AUTHORIZED USER, IF THE COMPUTER SOFTWARE WAS
11 INSTALLED IN A MANNER DESIGNED TO CONCEAL FROM THE AUTHORIZED USER
12 THE FACT THAT THE COMPUTER SOFTWARE IS BEING INSTALLED; OR

13 (III) IS EXTRACTED FROM THE CONSUMER'S COMPUTER HARD
14 DRIVE FOR A PURPOSE WHOLLY UNRELATED TO ANY OF THE PURPOSES OF THE
15 COMPUTER SOFTWARE OR SERVICE DESCRIBED TO AN AUTHORIZED USER THAT
16 CONTAINS AN AUTHORIZED USER'S:

17 1. CREDIT CARD NUMBER, DEBIT CARD NUMBER, OR OTHER
18 FINANCIAL ACCOUNT NUMBER;

19 2. PASSWORD OR PERSONAL IDENTIFICATION NUMBER
20 REQUIRED TO ACCESS AN IDENTIFIED FINANCIAL ACCOUNT;

21 3. SOCIAL SECURITY NUMBER;

22 4. ACCOUNT BALANCES IN A FORM THAT PERSONALLY
23 IDENTIFIES AN AUTHORIZED USER; OR

24 5. OVERDRAFT HISTORY IN A FORM THAT PERSONALLY
25 IDENTIFIES AN AUTHORIZED USER;

26 (3) PREVENTS, THROUGH INTENTIONALLY DECEPTIVE MEANS, AN
27 AUTHORIZED USER'S REASONABLE EFFORTS TO BLOCK THE INSTALLATION OF
28 COMPUTER SOFTWARE THE AUTHORIZED USER HAS PROPERLY REMOVED, BY
29 CAUSING THE COMPUTER SOFTWARE TO AUTOMATICALLY REINSTALL OR
30 REACTIVATE ON THE COMPUTER WITHOUT THE CONSENT OF THE AUTHORIZED
31 USER; OR

32 (4) PREVENTS, THROUGH INTENTIONALLY DECEPTIVE MEANS, AN
33 AUTHORIZED USER'S REASONABLE EFFORTS TO DISABLE COMPUTER SOFTWARE
34 THE AUTHORIZED USER HAS PROPERLY DISABLED, BY CAUSING THE COMPUTER
35 SOFTWARE TO AUTOMATICALLY REINSTALL OR REACTIVATE ON THE COMPUTER
36 WITHOUT THE CONSENT OF THE AUTHORIZED USER.

1 (B) A PERSON MAY NOT INTENTIONALLY MISREPRESENT THAT COMPUTER
2 SOFTWARE WILL BE UNINSTALLED OR DISABLED BY AN AUTHORIZED USER'S ACTION
3 WITH KNOWLEDGE THAT THE COMPUTER SOFTWARE WILL NOT BE UNINSTALLED OR
4 DISABLED.

5 (C) A PERSON MAY NOT, THROUGH INTENTIONALLY DECEPTIVE MEANS,
6 REMOVE, DISABLE, OR RENDER INOPERATIVE SECURITY, ANTI-SPYWARE, OR
7 ANTI-VIRUS SOFTWARE INSTALLED ON A COMPUTER.

8 (D) NOTWITHSTANDING SUBSECTION (A)(2)(II) OF THIS SECTION, A COMPUTER
9 SOFTWARE PROVIDER MAY COLLECT AN AUTHORIZED USER'S BROWSING HISTORY
10 OF THE COMPUTER SOFTWARE PROVIDER'S WORLD WIDE WEB SITES.

11 14-3303.

12 (A) A PERSON WHO IS NOT AN AUTHORIZED USER MAY NOT, WITH ACTUAL
13 KNOWLEDGE, WITH CONSCIOUS AVOIDANCE OF ACTUAL KNOWLEDGE, OR
14 WILLFULLY, CAUSE COMPUTER SOFTWARE TO BE COPIED ONTO A CONSUMER'S
15 COMPUTER AND USE THE COMPUTER SOFTWARE TO:

16 (1) TAKE CONTROL OF THE CONSUMER'S COMPUTER BY:

17 (I) TRANSMITTING OR RELAYING COMMERCIAL ELECTRONIC MAIL
18 OR A COMPUTER VIRUS FROM THE CONSUMER'S COMPUTER, WHERE THE
19 TRANSMISSION OR RELAY IS INITIATED BY A PERSON OTHER THAN AN AUTHORIZED
20 USER AND WITHOUT THE CONSENT OF AN AUTHORIZED USER;

21 (II) ACCESSING OR USING THE CONSUMER'S MODEM OR INTERNET
22 SERVICE FOR THE PURPOSE OF:

23 1. CAUSING DAMAGE TO THE CONSUMER'S COMPUTER; OR

24 2. CAUSING AN AUTHORIZED USER TO INCUR FINANCIAL
25 CHARGES FOR A SERVICE THAT IS NOT AUTHORIZED BY THE AUTHORIZED USER;

26 (III) USING THE CONSUMER'S COMPUTER AS PART OF AN ACTIVITY
27 PERFORMED BY A GROUP OF COMPUTERS FOR THE PURPOSE OF CAUSING DAMAGE
28 TO ANOTHER COMPUTER, INCLUDING LAUNCHING A DENIAL OF SERVICE ATTACK;
29 OR

30 (IV) OPENING MULTIPLE, SEQUENTIAL, STAND-ALONE
31 ADVERTISEMENTS IN THE CONSUMER'S INTERNET BROWSER WITHOUT THE
32 CONSENT OF AN AUTHORIZED USER AND WITH KNOWLEDGE THAT A REASONABLE
33 COMPUTER USER CANNOT CLOSE THE ADVERTISEMENTS WITHOUT TURNING OFF
34 THE COMPUTER OR CLOSING THE INTERNET BROWSER;

35 (2) MODIFY AN AUTHORIZED USER'S SECURITY OR OTHER SETTINGS
36 THAT PROTECT INFORMATION ABOUT THE AUTHORIZED USER FOR THE PURPOSE OF
37 STEALING THE AUTHORIZED USER'S PERSONAL INFORMATION;

1 (3) MODIFY THE SECURITY SETTINGS OF THE COMPUTER FOR THE
2 PURPOSE OF CAUSING DAMAGE TO ONE OR MORE COMPUTERS; OR

3 (4) PREVENT, WITHOUT THE CONSENT OF AN AUTHORIZED USER, AN
4 AUTHORIZED USER'S REASONABLE EFFORTS TO:

5 (I) BLOCK THE INSTALLATION OF COMPUTER SOFTWARE BY
6 PRESENTING THE AUTHORIZED USER WITH AN OPTION TO DECLINE THE
7 INSTALLATION OF THE COMPUTER SOFTWARE WITH KNOWLEDGE THAT, WHEN THE
8 OPTION IS SELECTED BY THE AUTHORIZED USER, THE INSTALLATION
9 NEVERTHELESS PROCEEDS; OR

10 (II) DISABLE COMPUTER SOFTWARE BY FALSELY REPRESENTING
11 THAT THE COMPUTER SOFTWARE HAS BEEN DISABLED.

12 (B) A PERSON MAY NOT:

13 (1) INDUCE AN AUTHORIZED USER TO INSTALL A COMPUTER SOFTWARE
14 COMPONENT ONTO A CONSUMER'S COMPUTER BY INTENTIONALLY
15 MISREPRESENTING THAT INSTALLING THE COMPUTER SOFTWARE IS NECESSARY:

16 (I) FOR SECURITY OR PRIVACY REASONS; OR

17 (II) TO OPEN, VIEW, OR PLAY A PARTICULAR TYPE OF CONTENT; OR

18 (2) DECEPTIVELY CAUSE THE COPYING AND EXECUTION ON THE
19 COMPUTER OF A COMPUTER SOFTWARE COMPONENT IN A WAY THAT CAUSES AN
20 AUTHORIZED USER TO VIOLATE THIS SECTION.

21 (C) THIS SECTION DOES NOT APPLY TO:

22 (1) THE MONITORING OF OR INTERACTION WITH A CONSUMER'S
23 COMPUTER OR SCANNING AND REMOVAL OF COMPUTER SOFTWARE IN A MANNER
24 PROHIBITED BY THIS SUBTITLE BY THE CONSUMER'S INTERNET SERVICE PROVIDER,
25 NETWORK CONNECTION SERVICE, COMPUTER HARDWARE OR SOFTWARE PROVIDER,
26 PROVIDER OF INFORMATION SERVICE, OR PROVIDER OF INTERACTIVE COMPUTER
27 SERVICE REGARDING:

28 (I) NETWORK SECURITY OR COMPUTER SECURITY ISSUES;

29 (II) DIAGNOSTICS;

30 (III) TECHNICAL SUPPORT;

31 (IV) REPAIR;

32 (V) AUTHORIZED UPDATES OF COMPUTER SOFTWARE OR SYSTEM
33 FIRMWARE;

34 (VI) AUTHORIZED REMOTE SYSTEM MANAGEMENT; OR

1 (VII) DETECTION OR PREVENTION OF UNAUTHORIZED USE,
2 FRAUDULENT ACTIVITIES, OR OTHER ILLEGAL ACTIVITIES IN CONNECTION WITH A
3 NETWORK, SERVICE, OR COMPUTER SOFTWARE; OR

4 (2) THE INTERACTIVE COMPUTER SERVICE PROVIDER'S TRANSMISSION
5 OR ROUTING OF, OR INTERMEDIATE TEMPORARY STORING OR CACHING OF, THIRD
6 PARTY SOFTWARE THAT IS OTHERWISE SUBJECT TO THIS SECTION.

7 14-3304.

8 (A) A VIOLATION OF THIS SUBTITLE IS:

9 (1) AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING
10 OF TITLE 13 OF THIS ARTICLE; AND

11 (2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS
12 CONTAINED IN TITLE 13 OF THIS ARTICLE.

13 (B) IN ADDITION TO THE REMEDIES PROVIDED IN § 13-408 OF THIS ARTICLE,
14 AN AUTHORIZED USER WHO IS INJURED BY A VIOLATION OF THIS SUBTITLE MAY
15 BRING AN ACTION AGAINST THE PERSON THAT COMMITTED THE VIOLATION TO
16 RECOVER:

17 (1) REASONABLE ATTORNEY'S FEES; AND

18 (2) DAMAGES IN THE AMOUNT OF THE GREATER OF:

19 (I) \$500 FOR EACH VIOLATION; OR

20 (II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE
21 VIOLATION.

22 (C) FOR PURPOSES OF THIS SECTION, EACH INSTANCE OF ONE OF THE
23 FOLLOWING IS A SEPARATE VIOLATION:

24 (1) PROHIBITED COPYING OF COMPUTER SOFTWARE;

25 (2) INTENTIONAL MISREPRESENTATION OF THE OUTCOME OF AN
26 AUTHORIZED USER'S ACTION;

27 (3) REMOVING, DISABLING, OR RENDERING INOPERATIVE ANY
28 SECURITY, ANTI-SPYWARE, OR ANTI-VIRUS SOFTWARE;

29 (4) INDUCEMENT TO INSTALL A COMPUTER SOFTWARE COMPONENT
30 THROUGH INTENTIONAL MISREPRESENTATION; AND

31 (5) DECEPTIVE COPYING AND EXECUTION OF A COMPUTER SOFTWARE
32 COMPONENT.

1 14-3305.

2 THIS SUBTITLE MAY BE CITED AS THE "UNAUTHORIZED COMPUTER SOFTWARE
3 PREVENTION ACT".

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