
By: **Senator Teitelbaum (Chair, Joint Technology Oversight Committee)**
and Senators Dyson, Giannetti, Gladden, Hafer, Hogan, Munson, and Pinsky

Introduced and read first time: February 9, 2005

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection - Maryland Computer User Protection Act**

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

25 BY repealing and reenacting, with amendments,
26 Article - Commercial Law
27 Section 13-301(14)
28 Annotated Code of Maryland
29 (2000 Replacement Volume and 2004 Supplement)

30 BY adding to
31 Article - Commercial Law

1 Section 14-3301 through 14-3305, inclusive, to be under the new subtitle
2 "Subtitle 33. Maryland Computer User Protection Act"
3 Annotated Code of Maryland
4 (2000 Replacement Volume and 2004 Supplement)

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

7 **Article - Commercial Law**

8 13-301.

9 Unfair or deceptive trade practices include any:

10 (14) Violation of a provision of:

11 (i) This title;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (xix) Title 14, Subtitle 26 of this article, the Maryland Door-to-Door
7 Solicitations Act;

8 (xx) Title 14, Subtitle 31 of this article, the Maryland Household
9 Goods Movers Act; [or]

10 (xxi) Title 14, Subtitle 32 of this article, the Maryland Telephone
11 Consumer Protection Act; or

12 (XXII) TITLE 14, SUBTITLE 33 OF THIS ARTICLE, THE MARYLAND
13 COMPUTER USER PROTECTION ACT; OR

14 SUBTITLE 33. MARYLAND COMPUTER USER PROTECTION ACT.

15 14-3301.

16 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
17 INDICATED.

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

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

22 (C) "AUTHORIZED USER" MEANS:

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

24 (2) AN INDIVIDUAL WHO:

25 (I) RESIDES IN THE STATE;

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

27 (III) USES THE COMPUTER PRIMARILY FOR PERSONAL,
28 HOUSEHOLD, OR FAMILY USE.

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

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

3 (1) DEGRADE THE PERFORMANCE OF OR DISABLE A COMPUTER OR
4 COMPUTER NETWORK; OR

5 (2) REPLICATE ITSELF ON ANOTHER COMPUTER OR COMPUTER
6 NETWORK WITHOUT THE AUTHORIZATION OF THE OWNER OF THE COMPUTER OR
7 COMPUTER NETWORK.

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

9 (1) RESIDES IN THE STATE; AND

10 (2) USES A COMPUTER PRIMARILY FOR PERSONAL, HOUSEHOLD, OR
11 FAMILY USE.

12 (G) "DAMAGE" MEANS ANY SIGNIFICANT IMPAIRMENT TO THE INTEGRITY OR
13 AVAILABILITY OF A COMPUTER SYSTEM, DATA, COMPUTER SOFTWARE, OR
14 INFORMATION.

15 (H) "EXECUTE" MEANS TO PERFORM THE FUNCTIONS OF OR CARRY OUT THE
16 INSTRUCTIONS OF COMPUTER SOFTWARE.

17 (I) "INTENTIONALLY DECEPTIVE" MEANS THROUGH:

18 (1) INTENTIONALLY AND MATERIALLY FALSE OR FRAUDULENT, WITH
19 RESPECT TO A STATEMENT;

20 (2) INTENTIONALLY OMITTING OR MISREPRESENTING MATERIAL
21 INFORMATION IN ORDER TO DECEIVE AN AUTHORIZED USER, WITH RESPECT TO A
22 STATEMENT OR DESCRIPTION; OR

23 (3) INTENTIONALLY AND MATERIALLY FAILING TO PROVIDE ANY
24 NOTICE TO AN AUTHORIZED USER REGARDING THE DOWNLOAD OR INSTALLATION
25 OF COMPUTER SOFTWARE IN ORDER TO DECEIVE AN AUTHORIZED USER.

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

28 (K) "PERSONALLY IDENTIFIABLE INFORMATION" MEANS:

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

31 (2) A CREDIT CARD NUMBER, DEBIT CARD NUMBER, OR OTHER
32 FINANCIAL ACCOUNT NUMBER;

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

1 (4) A SOCIAL SECURITY NUMBER; OR

2 (5) ANY OF THE FOLLOWING IN A FORM THAT IDENTIFIES AN
3 AUTHORIZED USER:

4 (I) AN ACCOUNT BALANCE;

5 (II) AN OVERDRAFT HISTORY;

6 (III) A PAYMENT HISTORY;

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

8 (V) A HOME ADDRESS;

9 (VI) A WORK ADDRESS;

10 (VII) A TELEPHONE NUMBER; OR

11 (VIII) A PURCHASE RECORD.

12 14-3302.

13 (A) A PERSON MAY NOT CAUSE TO BE COPIED ONTO THE COMPUTER OF A
14 CONSUMER'S COMPUTER SOFTWARE THAT:

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

17 (I) THE PAGE THAT APPEARS WHEN AN AUTHORIZED USER
18 LAUNCHES AN INTERNET BROWSER OR SIMILAR PROGRAM USED TO ACCESS AND
19 NAVIGATE THE INTERNET;

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

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

24 (2) COLLECTS, THROUGH INTENTIONALLY DECEPTIVE MEANS:

25 (I) AN AUTHORIZED USER'S PERSONALLY IDENTIFIABLE
26 INFORMATION THROUGH THE USE OF A FUNCTION THAT RECORDS KEYSTROKES;

27 (II) DATA THAT INCLUDE ALL OR SUBSTANTIALLY ALL OF THE
28 WORLD WIDE WEB SITES VISITED BY AN AUTHORIZED USER, IF THE COMPUTER
29 SOFTWARE WAS INSTALLED IN A MANNER DESIGNED TO CONCEAL FROM THE
30 AUTHORIZED USER THE FACT THAT THE COMPUTER SOFTWARE IS BEING
31 INSTALLED; OR

1 (III) DATA EXTRACTED FROM THE CONSUMER'S COMPUTER HARD
2 DRIVE OR OTHER STORAGE DEVICE FOR A PURPOSE WHOLLY UNRELATED TO ANY OF
3 THE PURPOSES OF THE COMPUTER SOFTWARE OR SERVICE DESCRIBED TO AN
4 AUTHORIZED USER THAT CONTAINS AN AUTHORIZED USER'S:

5 1. CREDIT CARD NUMBER, DEBIT CARD NUMBER, OR OTHER
6 FINANCIAL ACCOUNT NUMBER;

7 2. PASSWORD OR PERSONAL IDENTIFICATION NUMBER
8 REQUIRED TO ACCESS AN IDENTIFIED FINANCIAL ACCOUNT;

9 3. SOCIAL SECURITY NUMBER;

10 4. ACCOUNT BALANCES IN A FORM THAT PERSONALLY
11 IDENTIFIES AN AUTHORIZED USER; OR

12 5. OVERDRAFT HISTORY IN A FORM THAT PERSONALLY
13 IDENTIFIES AN AUTHORIZED USER;

14 (3) PREVENTS, THROUGH INTENTIONALLY DECEPTIVE MEANS, AN
15 AUTHORIZED USER'S REASONABLE EFFORTS TO BLOCK THE INSTALLATION OF
16 COMPUTER SOFTWARE THAT THE AUTHORIZED USER HAS PROPERLY REMOVED, BY
17 CAUSING THE COMPUTER SOFTWARE TO AUTOMATICALLY REINSTALL OR
18 REACTIVATE ON THE COMPUTER WITHOUT THE CONSENT OF THE AUTHORIZED
19 USER; OR

20 (4) PREVENTS, THROUGH INTENTIONALLY DECEPTIVE MEANS, AN
21 AUTHORIZED USER'S REASONABLE EFFORTS TO DISABLE COMPUTER SOFTWARE
22 THAT THE AUTHORIZED USER HAS PROPERLY DISABLED, BY CAUSING THE
23 COMPUTER SOFTWARE TO AUTOMATICALLY REINSTALL OR REACTIVATE ON THE
24 COMPUTER WITHOUT THE CONSENT OF THE AUTHORIZED USER.

25 (B) A PERSON MAY NOT INTENTIONALLY MISREPRESENT THAT COMPUTER
26 SOFTWARE WILL BE UNINSTALLED OR DISABLED BY AN AUTHORIZED USER'S ACTION
27 WITH KNOWLEDGE THAT THE COMPUTER SOFTWARE WILL NOT BE UNINSTALLED OR
28 DISABLED.

29 (C) A PERSON MAY NOT, THROUGH INTENTIONALLY DECEPTIVE MEANS,
30 REMOVE, DISABLE, OR RENDER INOPERATIVE SECURITY, ANTISPYWARE, OR
31 ANTIVIRUS SOFTWARE THAT IS INSTALLED ON A COMPUTER.

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

35 14-3303.

36 (A) A PERSON MAY NOT CAUSE COMPUTER SOFTWARE TO BE COPIED ONTO A
37 CONSUMER'S COMPUTER AND USE THE COMPUTER SOFTWARE TO:

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

2 (I) TRANSMITTING OR RELAYING COMMERCIAL ELECTRONIC MAIL
3 OR A COMPUTER VIRUS FROM THE CONSUMER'S COMPUTER, IF THE TRANSMISSION
4 OR RELAY IS INITIATED BY A PERSON OTHER THAN AN AUTHORIZED USER AND
5 WITHOUT THE CONSENT OF AN AUTHORIZED USER;

6 (II) ACCESSING OR USING THE CONSUMER'S MODEM OR INTERNET
7 SERVICE FOR THE PURPOSE OF CAUSING:

8 1. DAMAGE TO THE CONSUMER'S COMPUTER; OR

9 2. AN AUTHORIZED USER TO INCUR FINANCIAL CHARGES
10 FOR A SERVICE THAT IS NOT AUTHORIZED BY THE AUTHORIZED USER;

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

15 (IV) OPENING MULTIPLE, SEQUENTIAL, STAND-ALONE
16 ADVERTISEMENTS IN THE CONSUMER'S INTERNET BROWSER WITHOUT THE
17 CONSENT OF AN AUTHORIZED USER AND WITH KNOWLEDGE THAT A REASONABLE
18 COMPUTER USER CANNOT CLOSE THE ADVERTISEMENTS WITHOUT TURNING OFF
19 THE COMPUTER OR CLOSING THE INTERNET BROWSER;

20 (2) MODIFY AN AUTHORIZED USER'S SECURITY OR OTHER SETTINGS
21 THAT PROTECT INFORMATION ABOUT THE AUTHORIZED USER FOR THE PURPOSE OF
22 OBTAINING THE AUTHORIZED USER'S PERSONAL INFORMATION;

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

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

27 (I) BLOCK THE INSTALLATION OF COMPUTER SOFTWARE BY
28 PRESENTING THE AUTHORIZED USER WITH AN OPTION TO DECLINE THE
29 INSTALLATION OF THE COMPUTER SOFTWARE WITH KNOWLEDGE THAT, WHEN THE
30 OPTION IS SELECTED BY THE AUTHORIZED USER, THE INSTALLATION
31 NEVERTHELESS PROCEEDS; OR

32 (II) DISABLE COMPUTER SOFTWARE BY FALSELY REPRESENTING
33 THAT THE COMPUTER SOFTWARE HAS BEEN DISABLED.

34 (B) A PERSON MAY NOT:

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

- 1 (I) FOR SECURITY OR PRIVACY REASONS; OR
- 2 (II) TO OPEN, VIEW, OR PLAY A PARTICULAR TYPE OF CONTENT; OR
- 3 (2) DECEPTIVELY CAUSE THE COPYING AND EXECUTION ON THE
- 4 COMPUTER OF A COMPUTER SOFTWARE COMPONENT IN A WAY THAT VIOLATES ITEM
- 5 (1) OF THIS SUBSECTION.

6 14-3304.

7 (A) A VIOLATION OF THIS SUBTITLE IS:

8 (1) AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING

9 OF TITLE 13 OF THIS ARTICLE; AND

10 (2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS

11 CONTAINED IN TITLE 13 OF THIS ARTICLE.

12 (B) IN ADDITION TO THE REMEDIES PROVIDED IN § 13-408 OF THIS ARTICLE,

13 AN AUTHORIZED USER WHO IS INJURED BY A VIOLATION OF THIS SUBTITLE MAY

14 BRING AN ACTION AGAINST THE PERSON THAT COMMITTED THE VIOLATION TO

15 RECOVER:

16 (1) REASONABLE ATTORNEY'S FEES; AND

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

18 (I) \$1,000 FOR EACH VIOLATION; OR

19 (II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE

20 VIOLATION.

21 (C) FOR PURPOSES OF THIS SECTION, EACH INSTANCE OF ONE OF THE

22 FOLLOWING IS A SEPARATE VIOLATION:

23 (1) PROHIBITED COPYING AND EXECUTION OF COMPUTER SOFTWARE;

24 (2) INTENTIONAL MISREPRESENTATION OF THE OUTCOME OF AN

25 AUTHORIZED USER'S ACTION;

26 (3) REMOVING, DISABLING, OR RENDERING INOPERATIVE ANY

27 SECURITY, ANTISPYWARE, OR ANTIVIRUS SOFTWARE;

28 (4) INDUCEMENT TO INSTALL A COMPUTER SOFTWARE COMPONENT

29 THROUGH INTENTIONAL MISREPRESENTATION; AND

30 (5) DECEPTIVE COPYING AND EXECUTION OF A COMPUTER SOFTWARE

31 COMPONENT.

1 14-3305.

2 THIS SUBTITLE MAY BE CITED AS THE "MARYLAND COMPUTER USER
3 PROTECTION ACT".

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