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SB 492/05 - FIN

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By: **Senators Greenip, Della, Hafer, Harris, and Munson**
Introduced and read first time: January 20, 2006
Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of prohibiting certain persons from causing computer software to be
4   copied onto the computer of a consumer that modifies certain Internet settings,
5   collects certain personally identifying information, prevents an authorized user
6   from blocking the installation of certain software, or prevents an authorized
7   user from disabling certain software under certain circumstances; prohibiting
8   certain persons from misleading authorized users as to the effect certain actions
9   will have with respect to computer software; prohibiting the removal or
10   disabling of or rendering inoperative certain security software installed on
11   certain computers; prohibiting certain persons from causing computer software
12   to be copied onto the computer of a consumer and using the computer software
13   to take control of the consumer's computer, modify certain security settings, or
14   prevent authorized users from performing certain actions under certain
15   circumstances; prohibiting certain persons from inducing authorized users to
16   install certain computer software components under certain circumstances;
17   providing that a violation of this Act is an unfair or deceptive trade practice
18   under the Maryland Consumer Protection Act and is subject to certain
19   enforcement actions and penalties; authorizing an authorized user who is
20   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 Unauthorized Computer Software Act.

25 BY repealing and reenacting, with amendments,
26   Article - Commercial Law
27   Section 13-301(14)
28   Annotated Code of Maryland
29   (2005 Replacement Volume)
30   (As enacted by Chapter 456 of the Acts of the General Assembly of 2005)

31 BY adding to
32   Article - Commercial Law

1   Section 14-3501 through 14-3505, inclusive, to be under the new subtitle
2   "Subtitle 35. Maryland Unauthorized Computer Software Act"
3   Annotated Code of Maryland
4   (2005 Replacement Volume)

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 14, Subtitle 25 of this article, the Hearing Aid Sales Act;

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

7   (xix)   Title 14, Subtitle 31 of this article, the Maryland Household
8 Goods Movers Act;

9   (xx)   Title 14, Subtitle 32 of this article, the Maryland Telephone
10 Consumer Protection Act;

11   (xxi)   Title 14, Subtitle 33 of this article, the Social Security Number
12 Privacy Act; [or]

13   (xxii)   Section 14-1319 or § 14-1320 of this article; or

14   (XXIII)   TITLE 14, SUBTITLE 35 OF THIS ARTICLE, THE MARYLAND
15 UNAUTHORIZED COMPUTER SOFTWARE ACT; OR

16   SUBTITLE 35. MARYLAND UNAUTHORIZED COMPUTER SOFTWARE ACT.

17 14-3501.

18   (A)   IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
19 INDICATED.

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

23   (2)   "ADVERTISEMENT" INCLUDES CONTENT ON A WORLD WIDE WEBSITE
24 OPERATED FOR A COMMERCIAL PURPOSE.

25   (C)   (1)   "AUTHORIZED USER" MEANS:

26   (I)   A CONSUMER WHO OWNS A COMPUTER; OR

27   (II)   AN INDIVIDUAL WHO:

28   1.   RESIDES IN THE STATE;

29   2.   IS AUTHORIZED TO USE A CONSUMER'S COMPUTER; AND

30   3.   USES THE COMPUTER PRIMARILY FOR PERSONAL,
31 HOUSEHOLD, OR FAMILY USE.

1   (2)   "AUTHORIZED USER" DOES NOT INCLUDE AN INDIVIDUAL WHO HAS
2 OBTAINED AUTHORIZATION TO USE A COMPUTER SOLELY THROUGH THE USE OF AN
3 END-USER LICENSE AGREEMENT.

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

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

8   (1)   DEGRADE THE PERFORMANCE OF OR DISABLE A COMPUTER OR
9 COMPUTER NETWORK; OR

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

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

14   (1)   RESIDES IN THE STATE; AND

15   (2)   USES A COMPUTER PRIMARILY FOR PERSONAL, HOUSEHOLD, OR
16 FAMILY USE.

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

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

22   (I)   "INTENTIONALLY DECEPTIVE" MEANS:

23   (1)   AN INTENTIONALLY AND MATERIALLY FALSE OR FRAUDULENT
24 STATEMENT;

25   (2)   A STATEMENT OR DESCRIPTION THAT INTENTIONALLY OMITS OR
26 MISREPRESENTS MATERIAL INFORMATION IN ORDER TO DECEIVE AN AUTHORIZED
27 USER; OR

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

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

33   (K)   "PERSONALLY IDENTIFIABLE INFORMATION" MEANS:

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

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

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

5   (4)   A SOCIAL SECURITY NUMBER; OR

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

8   (I)   AN ACCOUNT BALANCE;

9   (II)   AN OVERDRAFT HISTORY;

10   (III)   A PAYMENT HISTORY;

11   (IV)   A HISTORY OF WORLD WIDE WEBSITE VISITED;

12   (V)   A HOME ADDRESS;

13   (VI)   A WORK ADDRESS; OR

14   (VII)   A PURCHASE RECORD.

15 14-3502.

16   (A)   A PERSON MAY NOT CAUSE TO BE COPIED ONTO A CONSUMER'S
17 COMPUTER COMPUTER SOFTWARE THAT:

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

20   (I)   THE PAGE THAT APPEARS WHEN AN AUTHORIZED USER
21 LAUNCHES AN INTERNET BROWSER OR SIMILAR PROGRAM USED TO ACCESS AND
22 NAVIGATE THE INTERNET;

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

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

27   (2)   COLLECTS, THROUGH INTENTIONALLY DECEPTIVE MEANS:

28   (I)   AN AUTHORIZED USER'S PERSONALLY IDENTIFIABLE
29 INFORMATION THROUGH THE USE OF A KEYSTROKE-LOGGING FUNCTION THAT
30 RECORDS KEYSTROKES MADE BY THE AUTHORIZED USER;

31   (II)   DATA THAT INCLUDES ALL OR SUBSTANTIALLY ALL OF THE
32 WORLD WIDE WEBSITES VISITED BY AN AUTHORIZED USER, IF THE COMPUTER

1 SOFTWARE WAS INSTALLED IN A MANNER DESIGNED TO CONCEAL FROM THE
2 AUTHORIZED USER THE FACT THAT THE COMPUTER SOFTWARE IS BEING
3 INSTALLED; OR

4   (III)   DATA EXTRACTED FROM THE CONSUMER'S COMPUTER HARD
5 DRIVE FOR A PURPOSE WHOLLY UNRELATED TO ANY OF THE PURPOSES OF THE
6 COMPUTER SOFTWARE OR SERVICE DESCRIBED TO AN AUTHORIZED USER THAT
7 CONTAINS AN AUTHORIZED USER'S:

8   1.   CREDIT CARD NUMBER, DEBIT CARD NUMBER, OR OTHER
9 FINANCIAL ACCOUNT NUMBER;

10   2.   PASSWORD OR PERSONAL IDENTIFICATION NUMBER
11 REQUIRED TO ACCESS AN IDENTIFIED FINANCIAL ACCOUNT;

12   3.   SOCIAL SECURITY NUMBER;

13   4.   ACCOUNT BALANCES IN A FORM THAT PERSONALLY
14 IDENTIFIES AN AUTHORIZED USER; OR

15   5.   OVERDRAFT HISTORY IN A FORM THAT PERSONALLY
16 IDENTIFIES AN AUTHORIZED USER;

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

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

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

32   (C)   A PERSON MAY NOT, THROUGH INTENTIONALLY DECEPTIVE MEANS,
33 REMOVE, DISABLE, OR RENDER INOPERATIVE SECURITY, ANTISPYWARE, OR
34 ANTIVIRUS SOFTWARE INSTALLED ON A CONSUMER'S COMPUTER.

35   (D)   NOTWITHSTANDING SUBSECTION (A)(2)(II) OF THIS SECTION, A COMPUTER
36 SOFTWARE PROVIDER MAY COLLECT AN AUTHORIZED USER'S BROWSING HISTORY
37 OF THE COMPUTER SOFTWARE PROVIDER'S WORLD WIDE WEBSITES.

1 14-3503.

2   (A)   THIS SECTION DOES NOT APPLY TO THE MONITORING OF OR
3 INTERACTION WITH A CONSUMER'S COMPUTER OR SCANNING AND REMOVAL OF
4 COMPUTER SOFTWARE IN A MANNER PROSCRIBED BY THIS SUBTITLE BY THE
5 CONSUMER'S:

6   (1)   INTERNET SERVICE PROVIDER;

7   (2)   NETWORK CONNECTION SERVICE;

8   (3)   TELECOMMUNICATIONS CARRIER;

9   (4)   CABLE OPERATOR;

10   (5)   COMPUTER HARDWARE OR SOFTWARE PROVIDER;

11   (6)   PROVIDER OF INFORMATION SERVICE; OR

12   (7)   PROVIDER OF INTERACTIVE COMPUTER SERVICE REGARDING:

13   (I)   NETWORK SECURITY OR COMPUTER SECURITY ISSUES;

14   (II)   DIAGNOSTICS;

15   (III)   TECHNICAL SUPPORT;

16   (IV)   REPAIR;

17   (V)   AUTHORIZED UPDATES OF COMPUTER SOFTWARE OR SYSTEM
18 FIRMWARE;

19   (VI)   AUTHORIZED REMOTE SYSTEM MANAGEMENT; OR

20   (VII)   DETECTION OR PREVENTION OF:

21   1.   UNAUTHORIZED USE;

22   2.   FRAUDULENT ACTIVITIES; OR

23   3.   OTHER ILLEGAL ACTIVITIES IN CONNECTION WITH A
24 NETWORK, SERVICE, OR COMPUTER SOFTWARE.

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

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

28   (I)   TRANSMITTING OR RELAYING COMMERCIAL ELECTRONIC MAIL
29 OR A COMPUTER VIRUS FROM THE CONSUMER'S COMPUTER, WHERE THE

1 TRANSMISSION OR RELAY IS INITIATED BY A PERSON OTHER THAN AN AUTHORIZED
2 USER AND WITHOUT THE AUTHORIZATION OF AN AUTHORIZED USER;

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

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

6   2.   CAUSING AN AUTHORIZED USER TO INCUR FINANCIAL
7 CHARGES FOR A SERVICE THAT IS NOT AUTHORIZED BY AN AUTHORIZED USER;

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

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

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

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

22   (4)   PREVENT, WITHOUT THE AUTHORIZATION OF AN AUTHORIZED USER,
23 AN AUTHORIZED USER'S REASONABLE EFFORTS TO:

24   (I)   BLOCK THE INSTALLATION OF SPYWARE BY PRESENTING THE
25 AUTHORIZED USER WITH AN OPTION TO DECLINE INSTALLATION OF COMPUTER
26 SOFTWARE WITH KNOWLEDGE THAT, WHEN THE OPTION IS SELECTED BY THE
27 AUTHORIZED USER, THE INSTALLATION NEVERTHELESS PROCEEDS; OR

28   (II)   DISABLE COMPUTER SOFTWARE BY FALSELY REPRESENTING
29 THAT THE COMPUTER SOFTWARE HAS BEEN DISABLED.

30   (C)   A PERSON MAY NOT:

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

34   (I)   FOR SECURITY OR PRIVACY REASONS; OR

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

1   (2)   DECEPTIVELY CAUSE THE COPYING AND EXECUTION ON THE
2 COMPUTER OF A COMPUTER SOFTWARE COMPONENT IN A WAY THAT VIOLATES ITEM
3 (1) OF THIS SUBSECTION.

4 14-3504.

5   (A)   A VIOLATION OF THIS SUBTITLE IS:

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

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

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

14   (1)   REASONABLE ATTORNEY'S FEES; AND

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

16   (I) $500 FOR EACH VIOLATION; OR

17   (II)   ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE
18 VIOLATION.

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

21   (1)   PROHIBITED COPYING AND USE OF COMPUTER SOFTWARE;

22   (2)   INTENTIONAL MISREPRESENTATION OF THE OUTCOME OF AN
23 AUTHORIZED USER'S ACTION;

24   (3)   REMOVING, DISABLING, OR RENDERING INOPERATIVE, THROUGH
25 INTENTIONALLY DECEPTIVE MEANS, SECURITY, ANTISPYWARE, OR ANTIVIRUS
26 SOFTWARE;

27   (4)   INDUCEMENT TO INSTALL A COMPUTER SOFTWARE COMPONENT
28 THROUGH INTENTIONAL MISREPRESENTATION; AND

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

31 14-3505.

32   THIS SUBTITLE MAY BE CITED AS THE "MARYLAND UNAUTHORIZED COMPUTER
33 SOFTWARE ACT".

1   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2006.