I3   6lr1627
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By: **Senators Teitelbaum, Astle, Currie, Della, Dyson, Giannetti, Gladden,**
      Greenip, Hafer, Hogan, and Munson
Introduced and read first time: February 1, 2006
Assigned to: Finance

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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 software that modifies
4   certain Internet settings, collects certain personally identifying information,
5   prevents an authorized user from blocking the installation of certain software,
6   or prevents an authorized user from disabling certain software to be copied onto
7   a consumer's computer under certain circumstances; prohibiting certain persons
8   from misleading authorized users as to the effect certain actions will have with
9   respect to software; prohibiting the removal or disabling of or rendering
10   inoperative certain security software installed on certain computers; prohibiting
11   certain persons from causing software to be copied onto the computer of a
12   consumer and using the software to take control of the consumer's computer,
13   modify certain security settings, or prevent authorized users from performing
14   certain actions under certain circumstances; prohibiting certain persons from
15   inducing authorized users to install certain software components under certain
16   circumstances; providing certain exceptions to the application of this Act;
17   providing that a violation of this Act is an unfair or deceptive trade practice
18   within the meaning of 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; providing
22   that each violation of any provision of this Act is a separate violation for certain
23   purposes; establishing a certain short title; making a technical correction;
24   defining certain terms; and generally relating to the Maryland Computer User
25   Protection Act.

26 BY repealing and reenacting, with amendments,
27   Article - Commercial Law
28   Section 13-301(14)
29   Annotated Code of Maryland
30   (2005 Replacement Volume)

31 BY adding to
32   Article - Commercial Law

1   Section 14-3501 through 14-3506, inclusive, to be under the new subtitle
2   "Subtitle 35. Maryland Computer User Protection 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 Door-to-Door
6   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] 34 of this article, the Social Security
12   Number 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   COMPUTER USER PROTECTION ACT; OR

16   SUBTITLE 35. MARYLAND COMPUTER USER PROTECTION 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 PRODUCT OR SERVICE.

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

24   (C)   "AUTHORIZED USER" MEANS:

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

26   (2)   AN INDIVIDUAL WHO:

27   (I)   RESIDES IN THE STATE;

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

29   (III)   USES THE COMPUTER PRIMARILY FOR PERSONAL,
30   HOUSEHOLD, OR FAMILY USE.

1   (D)   "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   (E)   "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   (F)   "DAMAGE" MEANS ANY SIGNIFICANT IMPAIRMENT TO THE INTEGRITY OR
13 AVAILABILITY OF A COMPUTER SYSTEM, DATA, SOFTWARE, OR INFORMATION.

14   (G)   "PERSON" MEANS AN INDIVIDUAL, CORPORATION, PARTNERSHIP,
15 BUSINESS TRUST, LIMITED LIABILITY COMPANY, OR OTHER ORGANIZATION.

16   (H)   "PERSONALLY IDENTIFIABLE INFORMATION" MEANS:

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

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

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

23   (4)   A SOCIAL SECURITY NUMBER; OR

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

26   (I)   AN ACCOUNT BALANCE;

27   (II)   AN OVERDRAFT HISTORY;

28   (III)   A PAYMENT HISTORY;

29   (IV)   A HISTORY OF WEBSITES VISITED;

30   (V)   A HOME ADDRESS;

31   (VI)   A WORK ADDRESS;

1   (VII)   A TELEPHONE NUMBER; OR

2   (VIII)   A PURCHASE RECORD.

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

5 14-3502.

6   (A)   (1)   SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THIS SUBTITLE
7 DOES NOT APPLY TO THE MONITORING OF, OR INTERACTION WITH, AN AUTHORIZED
8 USER'S INTERNET OR OTHER NETWORK CONNECTION OR SERVICE, OR A COMPUTER
9 BY THE AUTHORIZED USER'S:

10   (I)   INTERNET SERVICE PROVIDER;

11   (II)   NETWORK CONNECTION SERVICE;

12   (III)   TELECOMMUNICATIONS CARRIER;

13   (IV)   CABLE OPERATOR;

14   (V)   COMPUTER HARDWARE OR SOFTWARE PROVIDER;

15   (VI)   PROVIDER OF INFORMATION SERVICE; OR

16   (VII)   PROVIDER OF INTERACTIVE COMPUTER SERVICE.

17   (2)   THE EXEMPTION UNDER PARAGRAPH (1) OF THIS SUBSECTION
18 APPLIES ONLY TO THE EXTENT THAT THE MONITORING OR INTERACTION IS
19 UNDERTAKEN FOR:

20   (I)   NETWORK OR COMPUTER SECURITY PURPOSES;

21   (II)   DIAGNOSTICS;

22   (III)   TECHNICAL SUPPORT;

23   (IV)   REPAIR;

24   (V)   MAINTENANCE;

25   (VI)   NETWORK MANAGEMENT;

26   (VII)   AUTHORIZED UPDATES OF SOFTWARE OR SYSTEM FIRMWARE;

27   (VIII)   AUTHORIZED REMOTE SYSTEM MANAGEMENT; OR

28   (IX)   DETECTION OR PREVENTION OF:

29   1.   UNAUTHORIZED USE;

1   2.   FRAUDULENT ACTIVITIES; OR

2   3.   OTHER ILLEGAL ACTIVITIES IN CONNECTION WITH A
3 NETWORK, A SERVICE, OR SOFTWARE.

4   (B)   (1)   THIS SUBTITLE DOES NOT APPLY TO A SOFTWARE PROVIDER OR AN
5 INTERACTIVE COMPUTER SERVICE PROVIDER THAT IS IDENTIFYING, NAMING,
6 REMOVING, DISABLING, OR OTHERWISE AFFECTING SOFTWARE IF THE PROVIDER:

7   (I)   INTENDS TO:

8   1.   IDENTIFY ACCURATELY ANOTHER SOFTWARE
9 COMPONENT ON A COMPUTER OF A CUSTOMER OF THE PROVIDER;

10   2.   PREVENT THE INSTALLATION OR EXECUTION OF
11 ANOTHER SOFTWARE COMPONENT ON A COMPUTER OF A CUSTOMER OF THE
12 PROVIDER;

13   3.   REMOVE ANOTHER SOFTWARE COMPONENT ON A
14 COMPUTER OF A CUSTOMER OF THE PROVIDER; OR

15   4.   DISABLE ANOTHER SOFTWARE COMPONENT ON A
16 COMPUTER OF A CUSTOMER OF THE PROVIDER;

17   (II)   REASONABLY BELIEVES THAT THE SOFTWARE COMPONENT
18 EXHIBITS BEHAVIOR THAT VIOLATES THIS SUBTITLE; AND

19   (III)   BEFORE TAKING THE ACTION:

20   1.   NOTIFIES THE AUTHORIZED USER; AND

21   2.   OBTAINS CLEAR AND CONSPICUOUS CONSENT.

22   (2)   THE EXEMPTION UNDER PARAGRAPH (1) OF THIS SUBSECTION ONLY
23 IF THE SOFTWARE PROVIDER OR INTERACTIVE COMPUTER SERVICE PROVIDER HAS
24 ESTABLISHED:

25   (I)   INTERNAL PRACTICES AND PROCEDURES REASONABLY
26 DESIGNED TO EVALUATE WHETHER SOFTWARE EXHIBITS BEHAVIOR THAT
27 VIOLATES THIS SUBTITLE; AND

28   (II)   A PROCESS FOR MANAGING DISPUTES AND INQUIRIES
29 REGARDING MISCLASSIFICATION OR FALSE POSITIVE IDENTIFICATION OF
30 SOFTWARE.

31   (3)   THIS SUBSECTION DOES NOT LIMIT THE ABILITY OF THE ATTORNEY
32 GENERAL OR A STATE'S ATTORNEY TO BRING AN ACTION AGAINST A SOFTWARE
33 PROVIDER OR INTERACTIVE COMPUTER SERVICE PROVIDER.

1 14-3503.

2   (A)   A PERSON WHO IS NOT AN AUTHORIZED USER MAY NOT KNOWINGLY OR
3 THROUGH CONSCIOUS AVOIDANCE OF ACTUAL KNOWLEDGE CAUSE TO BE COPIED
4 ONTO A CONSUMER'S COMPUTER, SOFTWARE THAT:

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

7   (I)   THE PAGE THAT APPEARS WHEN AN AUTHORIZED USER
8 LAUNCHES AN INTERNET BROWSER OR SIMILAR PROGRAM USED TO ACCESS AND
9 NAVIGATE THE INTERNET;

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

12   (III)   AN AUTHORIZED USER'S LIST OF BOOKMARKS USED TO ACCESS
13 WEB PAGES;

14   (2)   COLLECTS, THROUGH DECEPTIVE MEANS:

15   (I)   AN AUTHORIZED USER'S PERSONALLY IDENTIFIABLE
16 INFORMATION THROUGH THE USE OF A FUNCTION THAT RECORDS KEYSTROKES
17 MADE ON THE COMPUTER;

18   (II)   DATA THAT INCLUDE ALL OR SUBSTANTIALLY ALL OF THE
19 WEBSITES VISITED BY AN AUTHORIZED USER, IF THE SOFTWARE WAS INSTALLED IN
20 A MANNER DESIGNED TO CONCEAL FROM THE AUTHORIZED USER THE FACT THAT
21 THE SOFTWARE IS BEING INSTALLED; OR

22   (III)   DATA EXTRACTED FROM THE CONSUMER'S COMPUTER HARD
23 DRIVE, MEMORY, OR OTHER STORAGE DEVICE IF THE DATA CONTAIN AN
24 AUTHORIZED USER'S:

25   1.   CREDIT CARD NUMBER, DEBIT CARD NUMBER, OR OTHER
26 FINANCIAL ACCOUNT NUMBER;

27   2.   PASSWORD OR PERSONAL IDENTIFICATION NUMBER
28 REQUIRED TO ACCESS AN IDENTIFIED FINANCIAL ACCOUNT;

29   3.   SOCIAL SECURITY NUMBER;

30   4.   ACCOUNT BALANCES IN A FORM THAT PERSONALLY
31 IDENTIFIES AN AUTHORIZED USER; OR

32   5.   OVERDRAFT HISTORY IN A FORM THAT PERSONALLY
33 IDENTIFIES AN AUTHORIZED USER;

34   (3)   PREVENTS, THROUGH DECEPTIVE MEANS, AN AUTHORIZED USER'S
35 REASONABLE EFFORTS TO BLOCK THE INSTALLATION OF SOFTWARE THAT THE
36 AUTHORIZED USER HAS PROPERLY REMOVED, BY CAUSING THE SOFTWARE TO

1 AUTOMATICALLY REINSTALL OR REACTIVATE ON THE COMPUTER WITHOUT THE
2 CONSENT OF THE AUTHORIZED USER; OR

3   (4)   PREVENTS, THROUGH DECEPTIVE MEANS, AN AUTHORIZED USER'S
4 REASONABLE EFFORTS TO DISABLE SOFTWARE THAT THE AUTHORIZED USER HAS
5 PROPERLY DISABLED, BY CAUSING THE SOFTWARE TO AUTOMATICALLY REINSTALL
6 OR REACTIVATE ON THE COMPUTER WITHOUT THE CONSENT OF THE AUTHORIZED
7 USER.

8   (B)   A PERSON MAY NOT MISREPRESENT THAT SOFTWARE WILL BE
9 UNINSTALLED OR DISABLED BY AN AUTHORIZED USER'S ACTION WITH KNOWLEDGE
10 THAT THE SOFTWARE WILL NOT BE UNINSTALLED OR DISABLED.

11   (C)   A PERSON MAY NOT, THROUGH DECEPTIVE MEANS, REMOVE, DISABLE, OR
12 RENDER INOPERATIVE SECURITY, ANTISPYWARE, OR ANTIVIRUS SOFTWARE THAT IS
13 INSTALLED ON A COMPUTER.

14   (D)   NOTWITHSTANDING SUBSECTION (A)(2)(II) OF THIS SECTION, A SOFTWARE
15 PROVIDER MAY COLLECT AN AUTHORIZED USER'S BROWSING HISTORY OF THE
16 SOFTWARE PROVIDER'S WEBSITES.

17 14-3504.

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

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

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

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

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

28   2.   AN AUTHORIZED USER OR A THIRD PARTY TO INCUR
29 FINANCIAL CHARGES FOR A SERVICE THAT IS NOT AUTHORIZED BY AN AUTHORIZED
30 USER;

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

35   (IV)   OPENING MULTIPLE, SEQUENTIAL, STAND-ALONE
36 ADVERTISEMENTS IN THE CONSUMER'S INTERNET BROWSER WITHOUT THE
37 CONSENT OF AN AUTHORIZED USER AND WITH KNOWLEDGE THAT A REASONABLE

1 COMPUTER USER CANNOT CLOSE THE ADVERTISEMENTS WITHOUT TURNING OFF
2 THE COMPUTER OR CLOSING THE INTERNET BROWSER;

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

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

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

10   (I)   BLOCK THE INSTALLATION OF SOFTWARE BY PRESENTING THE
11 AUTHORIZED USER WITH AN OPTION TO DECLINE THE INSTALLATION OF THE
12 SOFTWARE WITH KNOWLEDGE THAT, WHEN THE OPTION IS SELECTED BY THE
13 AUTHORIZED USER, THE INSTALLATION NEVERTHELESS PROCEEDS; OR

14   (II)   DISABLE SOFTWARE BY FALSELY REPRESENTING THAT THE
15 SOFTWARE HAS BEEN DISABLED.

16   (B)   A PERSON MAY NOT:

17   (1)   INDUCE AN AUTHORIZED USER TO INSTALL A SOFTWARE
18 COMPONENT ONTO A CONSUMER'S COMPUTER BY MISREPRESENTING THAT
19 INSTALLING THE SOFTWARE IS NECESSARY:

20   (I)   FOR SECURITY OR PRIVACY REASONS; OR

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

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

25 14-3505.

26   (A)   A VIOLATION OF THIS SUBTITLE IS:

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

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

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

35   (1)   REASONABLE ATTORNEY'S FEES; AND

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

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

3   (II)   ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE
4 VIOLATION.

5   (C)   FOR PURPOSES OF THIS SECTION, EACH VIOLATION OF ANY PROVISION OF
6 THIS SUBTITLE IS A SEPARATE VIOLATION.

7 14-3506.

8   THIS SUBTITLE MAY BE CITED AS THE MARYLAND COMPUTER USER
9 PROTECTION ACT.

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