

# HOUSE BILL 1048

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9lr2171

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By: **Delegates Frick, Barkley, Braveboy, Bronrott, Feldman, Hecht, Kirk, Krysiak, Lee, Manno, Mathias, McDonough, Miller, Mizeur, Ross, Stifler, and Taylor**

Introduced and read first time: February 13, 2009

Assigned to: Economic Matters

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Committee Report: Favorable

House action: Adopted

Read second time: March 12, 2009

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Commercial Law – Consumer Contracts – Prohibited Provisions**

3 FOR the purpose of prohibiting a person from including certain provisions in certain  
4 consumer contracts; prohibiting a consumer contract from waiving certain  
5 rights or protections; providing that a provision included in a consumer contract  
6 in violation of this Act is void and unenforceable; providing that a violation of  
7 this Act is an unfair or deceptive trade practice within the meaning of the  
8 Maryland Consumer Protection Act and is subject to certain enforcement and  
9 penalty provisions; defining certain terms; and generally relating to consumer  
10 contracts.

11 BY adding to

12 Article – Commercial Law

13 Section 14–1322

14 Annotated Code of Maryland

15 (2005 Replacement Volume and 2008 Supplement)

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

18 **Article – Commercial Law**

19 **14–1322.**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1           (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
2 MEANINGS INDICATED.

3                   (2) “CONSUMER” MEANS A PURCHASER, LESSEE, OR RECIPIENT  
4 OF CONSUMER GOODS, CONSUMER SERVICES, OR CONSUMER CREDIT.

5                   (3) “CONSUMER CONTRACT” MEANS A WRITTEN AGREEMENT FOR  
6 THE SALE, LEASE, OR PROVISION OF CONSUMER GOODS, CONSUMER SERVICES,  
7 OR CONSUMER CREDIT BETWEEN A PERSON AND A CONSUMER WHO RESIDES IN  
8 THE STATE.

9                   (4) “CONSUMER CREDIT”, “CONSUMER GOODS”, AND “CONSUMER  
10 SERVICES” MEAN, RESPECTIVELY, CREDIT, GOODS, AND SERVICES WHICH ARE  
11 PRIMARILY FOR PERSONAL, HOUSEHOLD, OR FAMILY PURPOSES.

12           (B) THIS SECTION DOES NOT APPLY TO A CONSUMER CONTRACT THAT  
13 IS FREELY NEGOTIATED BY PARTIES WITH EQUAL BARGAINING POWER.

14           (C) A PERSON MAY NOT INCLUDE IN A CONSUMER CONTRACT A  
15 PROVISION THAT:

16                   (1) RESERVES THE RIGHT TO CHANGE A MATERIAL TERM OF THE  
17 CONSUMER CONTRACT TO THE DETRIMENT OF THE CONSUMER IF THE CHANGE  
18 AFFECTS EXISTING OBLIGATIONS; OR

19                   (2) TRIGGERS A DEFAULT OR SIMILAR PENALTY BASED ON A  
20 DEFAULT ON ANOTHER OBLIGATION OF THE CONSUMER OR ANY OTHER EVENT  
21 THAT IS NOT DIRECTLY RELATED TO THE CONSUMER’S PERFORMANCE UNDER  
22 THE CONSUMER CONTRACT.

23           (D) A CONSUMER CONTRACT MAY NOT WAIVE ANY RIGHT OR  
24 PROTECTION PROVIDED UNDER THIS SECTION BY CHOICE OF LAW,  
25 ARBITRATION, OR OTHERWISE.

26           (E) A PROVISION INCLUDED IN A CONSUMER CONTRACT IN VIOLATION  
27 OF THIS SECTION IS VOID AND UNENFORCEABLE.

28           (F) A VIOLATION OF THIS SECTION IS:

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

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

3                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 October 1, 2009.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.