

HOUSE BILL 208

I3, S1

(5lr1358)

ENROLLED BILL

— Economic Matters/Finance —

Introduced by ~~Delegate Fraser-Hidalgo~~ Delegate Pruski

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Consumer Protection – False Advertising – Digital Goods**

3 FOR the purpose of prohibiting a certain person from advertising or offering for sale a
4 digital good using certain terminology ~~or alongside an option for a time limited~~
5 ~~rental unless a certain acknowledgments are~~ acknowledgment is received from the
6 purchaser ~~and or a certain statements are~~ statement is provided by the seller;
7 establishing that a ~~person is guilty of a misdemeanor and subject to a certain~~
8 ~~penalties penalty for a~~ violation of this Act is an unfair, abusive, or deceptive trade
9 practice; and generally relating to the advertising and offering of digital goods for
10 sale.

11 BY repealing and reenacting, with amendments,

12 Article – Commercial Law

13 Section 13-301(14)(xlii) and 14-2901

14 Annotated Code of Maryland

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.

Italics indicate opposite chamber/conference committee amendments.



(2013 Replacement Volume and 2024 Supplement)

*BY repealing and reenacting, without amendments,
Article – Commercial Law
Section 13–301(14)(xliii)
Annotated Code of Maryland
(2013 Replacement Volume and 2024 Supplement)*

BY adding to
Article – Commercial Law
Section *13–301(14)(xliv)* and 14–2904
Annotated Code of Maryland
(2013 Replacement Volume and 2024 Supplement)

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

Article – Commercial Law

13–301.

Unfair, abusive, or deceptive trade practices include any:

(14) Violation of a provision of:

(xlii) Section 12–6C–09.1 of the Health Occupations Article; [or]

(xliii) Title 14, Subtitle 48 of this article; or

(XLIV) SECTION 14–2904 OF THIS ARTICLE; OR

14–2901.

(a) In this subtitle the following words have the meanings indicated.

(b) “Advertise” means:

(1) To publish, circulate, disseminate, or place before the public in any way
or through any medium for the purpose of selling merchandise; and

(2) Advertising by:

(i) Exterior or interior signs, including neon or other electrical signs;

(ii) Radio, telephone, or television; and

(iii) Newspaper, magazine, book, notice, or any other method or material.

(C) “CLEAR AND CONSPICUOUS” MEANS IN A MANNER THAT CLEARLY CALLS ATTENTION TO THE LANGUAGE, INCLUDING TEXT THAT IS:

(1) IN LARGER TYPE THAN THE SURROUNDING TEXT;

(2) IN A CONTRASTING TYPE, FONT, OR COLOR TO THE SURROUNDING TEXT; OR

(3) SET OFF FROM THE SURROUNDING TEXT BY SYMBOLS OR OTHER MARKS.

(D) “DIGITAL APPLICATION OR GAME” MEANS ANY APPLICATION OR GAME THAT A PERSON ACCESSES AND MANIPULATES USING A SPECIALIZED ELECTRONIC GAMING DEVICE, COMPUTER, MOBILE DEVICE, TABLET, OR OTHER DEVICE WITH A DISPLAY SCREEN, INCLUDING ANY ADD-ONS OR ADDITIONAL CONTENT FOR THE APPLICATION OR GAME.

(E) “DIGITAL AUDIO WORK” MEANS A WORK THAT RESULTS FROM THE FIXATION OF A SERIES OF MUSICAL, SPOKEN, OR OTHER SOUNDS THAT ARE TRANSFERRED ELECTRONICALLY, INCLUDING:

(1) PRERECORDED OR LIVE SONGS;

(2) MUSIC;

(3) READINGS OF BOOKS OR OTHER WRITTEN MATERIALS;

(4) SPEECHES;

(5) RINGTONES; OR

(6) OTHER SOUND RECORDINGS.

(F) (1) “DIGITAL AUDIOVISUAL WORK” MEANS A SERIES OF RELATED IMAGES THAT, WHEN SHOWN IN SUCCESSION, IMPART AN IMPRESSION OF MOTION, TOGETHER WITH ACCOMPANYING SOUNDS.

(2) “DIGITAL AUDIOVISUAL WORK” INCLUDES MOTION PICTURES, MUSICALS, VIDEOS, NEWS AND ENTERTAINMENT PROGRAMS, AND LIVE EVENTS.

(G) “DIGITAL BOOK” MEANS A WORK THAT IS GENERALLY RECOGNIZED AS A BOOK AND IS TRANSFERRED ELECTRONICALLY, INCLUDING A WORK OF FICTION OR NONFICTION.

(H) (1) “DIGITAL CODE” MEANS A CODE THAT GRANTS THE PERSON HOLDING THE CODE A RIGHT TO OBTAIN AN ADDITIONAL DIGITAL GOOD ~~THAT MAY BE OBTAINED BY ANY MEANS, INCLUDING TANGIBLE FORMS AND ELECTRONIC MAIL,~~ REGARDLESS OF WHETHER THE CODE IS DESIGNATED AS A SONG CODE, VIDEO CODE, OR BOOK CODE.

(2) “DIGITAL CODE” INCLUDES:

~~(I) A CODE USED TO ACCESS OR OBTAIN ANY SPECIFIED DIGITAL GOODS, OR ANY ADDITIONAL DIGITAL GOODS THAT HAVE BEEN PREVIOUSLY PURCHASED; AND~~

~~(II) PROMOTION CARDS OR CODES THAT ARE PURCHASED BY A RETAILER OR OTHER BUSINESS ENTITY FOR USE BY THE RETAILER’S OR ENTITY’S CUSTOMERS.~~

(I) (1) “DIGITAL GOOD” MEANS A DIGITAL APPLICATION OR GAME, DIGITAL AUDIO WORK, DIGITAL AUDIOVISUAL WORK, DIGITAL BOOK, OR DIGITAL CODE, WHETHER ELECTRONICALLY OR DIGITALLY DELIVERED OR ACCESSED.

(2) “DIGITAL GOOD” DOES NOT INCLUDE A CABLE TELEVISION SERVICE, SATELLITE RELAY TELEVISION SERVICE, OR ANY OTHER DISTRIBUTION OF TELEVISION, VIDEO, OR RADIO SERVICE.

[(c)] (J) “Person” includes an association, firm, partnership, corporation, or an agent or employee of any of these entities.

[(d)] (K) “Property”, as used in § 14–2902(a) through (c) of this subtitle, includes:

(1) Merchandise;

(2) Real estate;

(3) Securities;

(4) Employment;

(5) A loan made at interest;

(6) Any contract relating to real estate, securities, service, employment, or the making of loans at interest; or

(7) Anything else of value.

14-2904.

(A) A PERSON THAT IS A SELLER MAY NOT ADVERTISE OR OFFER FOR SALE A DIGITAL GOOD USING TERMINOLOGY THAT A REASONABLE PERSON WOULD UNDERSTAND TO CONFER AN UNRESTRICTED OWNERSHIP INTEREST IN THE DIGITAL GOOD, UNLESS, ~~AT THE TIME OF~~ BEFORE EXECUTING THE SALE:

(1) THE SELLER RECEIVES AN AFFIRMATIVE ACKNOWLEDGMENT FROM THE PURCHASER OF THE FOLLOWING:

(I) THAT THE PURCHASER IS RECEIVING A LICENSE TO ACCESS A DIGITAL GOOD;

(II) A COMPLETE LIST OF RESTRICTIONS AND CONDITIONS OF THE LICENSE; AND

(III) THAT ACCESS TO THE DIGITAL GOOD MAY BE UNILATERALLY REVOKED BY THE SELLER IF THE PURCHASER NO LONGER HOLDS A RIGHT TO THE DIGITAL GOOD; ~~AND OR~~

(2) THE SELLER PROVIDES TO THE PURCHASER A CLEAR AND CONSPICUOUS STATEMENT THAT:

(I) STATES IN PLAIN LANGUAGE THAT THE PURCHASER IS BUYING A LICENSE FOR THE DIGITAL GOOD; AND

(II) INCLUDES A DIGITAL METHOD TO ACCESS THE LICENSE DETAILS, TERMS, AND CONDITIONS.

~~(B) A PERSON MAY NOT ADVERTISE OR OFFER FOR SALE A DIGITAL GOOD ALONGSIDE AN OPTION FOR A TIME LIMITED RENTAL, UNLESS, AT THE TIME OF SALE:~~

~~(1) THE SELLER RECEIVES AN AFFIRMATIVE ACKNOWLEDGMENT FROM THE PURCHASER OF THE FOLLOWING:~~

~~(I) THAT THE PURCHASER IS RECEIVING A LICENSE TO ACCESS A DIGITAL GOOD;~~

~~(II) A COMPLETE LIST OF RESTRICTIONS AND CONDITIONS OF THE LICENSE; AND~~

~~(HH) THAT ACCESS TO THE DIGITAL GOOD MAY BE UNILATERALLY REVOKED BY THE SELLER IF THE PURCHASER NO LONGER HOLDS A RIGHT TO THE DIGITAL GOOD; AND~~

~~(2) THE SELLER PROVIDES TO THE PURCHASER A CLEAR AND CONSPICUOUS STATEMENT THAT:~~

~~(I) STATES IN PLAIN LANGUAGE THAT THE PURCHASER IS BUYING A LICENSE FOR THE DIGITAL GOOD; AND~~

~~(H) INCLUDES A DIGITAL METHOD TO ACCESS THE LICENSE DETAILS, TERMS, AND CONDITIONS.~~

~~(C) (B)~~ THE AFFIRMATIVE ~~ACKNOWLEDGMENTS~~ ACKNOWLEDGMENT REQUIRED UNDER ~~SUBSECTIONS~~ SUBSECTION (A)(1) AND (B)(1) OF THIS SECTION SHALL BE DISTINCT AND SEPARATE FROM ANY OTHER STATEMENT THAT THE PURCHASER ACKNOWLEDGES.

~~(D) (C)~~ THE CLEAR AND CONSPICUOUS ~~STATEMENTS~~ STATEMENT REQUIRED UNDER ~~SUBSECTIONS~~ SUBSECTION (A)(2) AND (B)(2) OF THIS SECTION SHALL BE DISTINCT AND SEPARATE FROM ANY OTHER STATEMENTS, DETAILS, TERMS, OR CONDITIONS.

~~(E) (D)~~ THIS SECTION DOES NOT:

(1) REQUIRE A PERSON TO DOWNLOAD A DIGITAL GOOD; OR

(2) PROHIBIT A PERSON FROM STORING A DIGITAL GOOD ON A SERVER THAT CAN BE ACCESSED THROUGH THE INTERNET.

~~(F) (E)~~ THIS SECTION DOES NOT APPLY TO A PERSON WHO ADVERTISES OR OFFERS FOR SALE:

(1) A SUBSCRIPTION-BASED SERVICE THAT PROVIDES ACCESS TO A DIGITAL GOOD ONLY FOR THE DURATION OF THE SUBSCRIPTION;

(2) ACCESS TO A DIGITAL GOOD WITHOUT THE REQUIREMENT FOR MONETARY CONSIDERATION; OR

(3) A DIGITAL GOOD FOR WHICH THE SELLER IS UNABLE TO REVOKE ACCESS AFTER COMPLETION OF THE SALE, INCLUDING A DIGITAL GOOD THAT IS, AT THE TIME OF PURCHASE, AVAILABLE FOR PERMANENT OFFLINE DOWNLOAD TO AN

1 EXTERNAL STORAGE SOURCE TO BE USED WITHOUT A CONNECTION TO THE
2 INTERNET.

3 ~~(G) (F) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A~~
4 ~~MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000~~
5 VIOLATION OF THIS SECTION IS:

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

8 (2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS
9 CONTAINED IN TITLE 13 OF THIS ARTICLE, EXCEPT §§ 13-408 AND 13-411 OF THIS
10 ARTICLE OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2025.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.