

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL NO. 19

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike the first comma and substitute "and Barve and Delegates"; in the sponsor line, strike "and Wood" and substitute "Wood, W. Baker, Brown, Conway, D'Amato, DeCarlo, Doory, Finifter, Franchot, Frush, Giannetti, Goldwater, Griffith, Hecht, Hubers, James, V. Jones, Klausmeier, Love, Mandel, V. Mitchell, Moe, Pendergrass, Petzold, Rosso, Sophocleus, Stern, Stocksdale, Turner, Valderrama, and Weir".

AMENDMENT NO. 2

On page 2, after line 21 insert:

"BY repealing and reenacting, with amendments,

Article - Commercial Law

Section 13-101 (c)

Annotated Code of Maryland

(1990 Replacement Volume and 1999 Supplement)";

in line 24, after "Section" insert "13-310.1;"; and in line 26, strike "21-215" and substitute "21-216".

AMENDMENT NO. 3

On page 3, after line 1, insert:

"13-101.

(c) (1) "Consumer" means an actual or prospective purchaser, lessee, or recipient of consumer goods, consumer services, consumer realty, or consumer credit.

(Over)

(2) "Consumer" includes:

(I) a co-obligor or surety for a consumer[.] ; OR

(II) A LICENSEE OR RECIPIENT OF COMPUTER INFORMATION OR COMPUTER PROGRAMS UNDER A CONSUMER CONTRACT AS DEFINED IN § 21-102 OF THIS ARTICLE.

13-101.1.

THE PROVISIONS OF THIS TITLE APPLY TO THE SUBJECT MATTER OF A CONSUMER CONTRACT AS DEFINED IN § 21-102 OF THIS ARTICLE IN THE SAME MANNER THEY APPLY TO CONSUMER GOODS AND CONSUMER SERVICES."

On page 16, in line 36, after "REGULATION," insert "INCLUDING TITLE 13 OF THIS ARTICLE,".

AMENDMENT NO. 4

On page 8, after line 20, insert:

"(39) "INSURANCE SERVICES TRANSACTION" MEANS AN AGREEMENT THAT PROVIDES FOR, OR A TRANSACTION THAT IS, OR ENTAILS ACCESS TO, USE, TRANSFER, CLEARANCE, SETTLEMENT, OR PROCESSING OF:

(A) AN INSURANCE POLICY, CONTRACT, OR CERTIFICATE; OR

(B) A RIGHT TO PAYMENT UNDER AN INSURANCE POLICY, CONTRACT, OR CERTIFICATE."

in lines 21, 23, 32, 37, strike "(39)", "(40)", "(41)", and "(42)", respectively, and substitute "(40)", "(41)", "(42)", and "(43)", respectively.

On page 9, in lines 5, 7, and 27, strike "(43)", "(44)", and "(45)", respectively, and substitute "(44)", "(45)", and "(46)", respectively.

On page 10, in lines 3, 7, 9, 12, 14, 18, and 27, strike "(46)", "(47)", "(48)", "(49)", "(50)", "(51)", and "(52)", respectively, and substitute "(47)", "(48)", "(49)", "(50)", "(51)", "(52)", and "(53)",

respectively.

On page 11, in lines 10, 11, 14, and 20, strike “(53)”, “(54)”, “(55)”, and “(56)”, respectively, and substitute “(54)”, “(55)”, “(56)”, and “(57)”, respectively.

On page 12, in lines 23, 30, and 32, strike “(57)”, “(58)”, and “(59)”, respectively, and substitute “(58)”, “(59)”, and “(60)”, respectively.

On page 13, in lines 8, 14, 17, 19, 22, 31, strike “(60)”, “(61)”, “(62)”, “(63)”, “(64)”, and “(65)”, respectively, and substitute “(61)”, “(62)”, “(63)”, “(64)”, “(65)”, and “(66)”, respectively.

On page 15, after line 1, insert:

“(2) AN INSURANCE SERVICES TRANSACTION;”;

in lines 2, 12, 13, 16, and 21, strike “(2)”, “(3)”, “(4)”, “(5)”, and “(6)”, respectively, and substitute “(3)”, “(4)”, “(5)”, “(6)”, and “(7)”, respectively; in line 23, strike “(D)(2)(B)” and substitute “(D)(3)(B)”; and in line 39, strike “(1) OR (2)” and substitute “(2) OR (3)”.

AMENDMENT NO. 5

On page 14, in lines 12 and 13 strike “SUBSECTION (D) OF THIS SECTION AND”; in line 14, after “INFORMATION” insert “OR SUBJECT MATTER EXCLUDED UNDER SUBSECTION (D) OF THIS SECTION”; after line 25, insert:

“(2) SUBJECT TO SUBSECTION (D)(2)(A) OF THIS SECTION, IF A TRANSACTION INCLUDES AN AGREEMENT FOR CREATING OR FOR OBTAINING RIGHTS TO CREATE COMPUTER INFORMATION AND A MOTION PICTURE, THIS TITLE DOES NOT APPLY TO THE AGREEMENT IF THE DOMINANT CHARACTER OF THE AGREEMENT IS FOR CREATING OR OBTAINING RIGHTS TO CREATE A MOTION PICTURE. IN ALL OTHER SUCH AGREEMENTS, THIS TITLE DOES NOT APPLY TO THE PART OF THE AGREEMENT THAT INVOLVES A MOTION PICTURE EXCLUDED UNDER SUBSECTION (D)(2) OF THIS SECTION, BUT DOES APPLY TO THE COMPUTER INFORMATION.”;

(Over)

in line 26, strike “(2)” and substitute “(3)”; in the same line, after “ALL” insert “OTHER”; in the same line, strike “NOT INVOLVING GOODS”; in the same line, after “APPLIES” insert “TO THE ENTIRE TRANSACTION IF THE COMPUTER INFORMATION AND INFORMATIONAL RIGHTS, OR ACCESS TO THEM, IS THE PRIMARY SUBJECT MATTER, BUT OTHERWISE APPLIES”; and strike beginning with the second comma in line 28 down through “TRANSACTION” in line 31.

On page 15, in line 2, strike “A CONTRACT” and substitute “AN AGREEMENT”; strike in their entirety lines 5 through 8, inclusive, and substitute:

“(A) A MOTION PICTURE OR AUDIO OR VISUAL PROGRAMMING, OTHER THAN IN (I) A MASS-MARKET TRANSACTION OR (II) A SUBMISSION OF AN IDEA OR INFORMATION OR RELEASE OF INFORMATIONAL RIGHTS THAT MAY RESULT IN MAKING A MOTION PICTURE OR A SIMILAR INFORMATION PRODUCT; OR”;

in line 9, strike “MOTION PICTURE,”; in line 15, after “INFORMATION” insert “, UNLESS SUCH INDEPENDENT CONTRACTOR IS A FREELANCER IN THE NEWS REPORTING INDUSTRY AS THAT TERM IS COMMONLY UNDERSTOOD IN THAT INDUSTRY”; and after line 30, insert:

“(F) AS USED IN THIS SECTION, “MOTION PICTURE” MEANS “MOTION PICTURE” AS DEFINED IN TITLE 17 OF THE UNITED STATES CODE AS OF JULY 1, 1999, OR A SEPARATELY IDENTIFIABLE PRODUCT OR SERVICE THE DOMINANT CHARACTER OF WHICH CONSISTS OF A LINEAR MOTION PICTURE, BUT WHICH INCLUDES (I) STATEMENTS OR INSTRUCTIONS WHOSE PURPOSE IS TO ALLOW OR CONTROL THE PERCEPTION, REPRODUCTION, OR COMMUNICATION OF THE MOTION PICTURE OR (II) OTHER INFORMATION SO LONG AS THE MOTION PICTURE CONSTITUTES THE DOMINANT CHARACTER OF THE PRODUCT OR SERVICE DESPITE THE INCLUSION OF THE OTHER INFORMATION.

“(G) AS USED IN THIS SECTION, “AUDIO OR VISUAL PROGRAMMING” MEANS AUDIO OR VISUAL PROGRAMMING THAT IS PROVIDED BY BROADCAST, SATELLITE, OR CABLE AS DEFINED IN THE FEDERAL COMMUNICATIONS ACT OF 1934 AND

RELATED REGULATIONS AS THEY EXISTED ON JULY 1, 1999, OR BY SIMILAR METHODS OF DELIVERY.”.

On page 31, after line 25, insert:

“21-216. IDEA OR INFORMATION SUBMISSION.

(A) THE FOLLOWING RULES APPLY TO A SUBMISSION OF AN IDEA OR INFORMATION FOR THE CREATION, DEVELOPMENT, OR ENHANCEMENT OF COMPUTER INFORMATION WHICH IS NOT MADE PURSUANT TO AN EXISTING AGREEMENT REQUIRING THE SUBMISSION:

(1) A CONTRACT IS NOT FORMED AND IS NOT IMPLIED FROM THE MERE RECEIPT OF AN UNSOLICITED SUBMISSION;

(2) ENGAGING IN A BUSINESS, TRADE, OR INDUSTRY THAT BY CUSTOM OR PRACTICE REGULARLY ACQUIRES IDEAS IS NOT IN ITSELF AN EXPRESS OR IMPLIED SOLICITATION OF THE INFORMATION; AND

(3) IF THE RECIPIENT SEASONABLY NOTIFIES THE PERSON MAKING THE SUBMISSION THAT THE RECIPIENT MAINTAINS A PROCEDURE TO RECEIVE AND REVIEW SUBMISSIONS, A CONTRACT IS FORMED ONLY IF:

(A) THE SUBMISSION IS MADE AND ACCEPTED PURSUANT TO THAT PROCEDURE; OR

(B) THE RECIPIENT EXPRESSLY AGREES TO TERMS CONCERNING THE SUBMISSION.

(B) AN AGREEMENT TO DISCLOSE AN IDEA CREATES A CONTRACT ENFORCEABLE AGAINST THE RECEIVING PARTY ONLY IF THE IDEA AS DISCLOSED IS CONFIDENTIAL, CONCRETE, AND NOVEL TO THE BUSINESS, TRADE, OR INDUSTRY, OR THE PARTY RECEIVING THE DISCLOSURE OTHERWISE EXPRESSLY AGREED.”.

(Over)

AMENDMENT NO. 6

On page 9, in lines 15 and 16, strike “AND IN A QUANTITY”.

AMENDMENT NO. 7

On page 16, in line 25, after “(A)”, insert “(1)”; and after line 26, insert:

“(2) A CONTRACT TERM IS UNENFORCEABLE TO THE EXTENT THAT IT WOULD VARY A STATUTE, RULE, REGULATION, OR PROCEDURE THAT MAY NOT BE VARIED BY AGREEMENT UNDER THE FEDERAL COPYRIGHT LAW.”

AMENDMENT NO. 8

On page 16, in line 2, after “ANY” insert “STATUTE,”; and in line 4, after “THE” insert “STATUTE,”.

On page 17, in line 19, strike “AND”; and in line 21, after “IT” insert “; AND”

(5) PERMIT THE CONTINUED EXPANSION OF COMMERCIAL PRACTICES IN THE EXCLUDED TRANSACTIONS THROUGH CUSTOM, USAGE, AND AGREEMENT OF THE PARTIES”.

On page 23, in line 32, strike “10 DAYS” and substitute “A REASONABLE TIME”.

On page 24, in line 28, after “TERM” insert “ONLY”; strike beginning with “AND” in line 29 down through “PARTY” in line 30 and substitute “, BUT THE CONTRACTUAL USE TERM DOES NOT APPLY TO INFORMATION OR COPIES PROPERLY RECEIVED OR OBTAINED FROM ANOTHER SOURCE”.

On page 29, in lines 8 and 9, strike “THE SUPPLEMENTARY PROVISIONS OF THIS TITLE,”; and in line 9, after “CIRCUMSTANCES.” insert “IF A COURT CANNOT DETERMINE THE TERMS OF THE CONTRACT FROM THE FOREGOING FACTORS, THE SUPPLEMENTARY PRINCIPLES OF THIS TITLE APPLY.”.

On page 34, in line 26, after “(D)” insert “UNLESS OTHERWISE AGREED,”; and in

line 32, after “(E)” insert “UNLESS OTHERWISE AGREED.”.

On page 36, in line 31, after “WITH” insert “EITHER”; in the same line, after “THE” insert “REQUIRED”; and in the same line, after “OR” insert “THE”.

On page 38, in line 32, strike “THE LICENSOR’S”.

On page 40, in line 21, after “PROVIDERS” insert “IF THE SELECTION IS MADE BY AN INDIVIDUAL ACTING AS OR ON BEHALF OF THE LICENSOR”.

On page 49, in line 35, after “TERMS” insert “, BUT THE CONTRACTUAL USE TERMS DO NOT APPLY TO INFORMATION OR COPIES PROPERLY RECEIVED OR OBTAINED FROM ANOTHER SOURCE”.

On page 63, in line 26, after “REMEDIES.” insert “WHETHER A BREACH OF A CONTRACTUAL USE TERM IS AN INFRINGEMENT OR A MISAPPROPRIATION IS DETERMINED BY APPLICABLE INFORMATIONAL PROPERTY RIGHTS LAW.”.

On page 70, strike beginning with “WHICH” in line 19 down through “PARTY” in line 20 and substitute “, BUT THE CONTRACTUAL USE TERMS DO NOT APPLY TO INFORMATION OR COPIES PROPERLY RECEIVED OR OBTAINED FROM ANOTHER SOURCE”.

On page 78, in line 22, after “TERMS” insert “, BUT THE CONTRACTUAL USE TERMS DO NOT APPLY TO INFORMATION OR COPIES PROPERLY RECEIVED OR OBTAINED FROM ANOTHER SOURCE”.

AMENDMENT NO. 9

On page 28, after line 38, insert:

“(D) A TERM IN A MASS MARKET LICENSE THAT LIMITS THE DURATION OF THE LICENSE SHALL BE CONSPICUOUS.”.

On page 52, in line 15, after “A” insert “CONSPICUOUS”.

(Over)

AMENDMENT NO. 10

On page 42, after line 9, insert:

“(H) THE PROVISIONS OF SUBSECTIONS (A) THROUGH (G) OF THIS SECTION DO NOT APPLY TO A CONSUMER CONTRACT FOR A COMPUTER PROGRAM.

(I)(1) ANY ORAL OR WRITTEN LANGUAGE USED IN A CONSUMER CONTRACT FOR A COMPUTER PROGRAM, WHICH ATTEMPTS TO EXCLUDE OR MODIFY ANY IMPLIED WARRANTIES OF MERCHANTABILITY OF A COMPUTER PROGRAM CREATED UNDER § 21-403 OF THIS SUBTITLE, OR IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE UNDER § 21-405 OF THIS SUBTITLE, OR EXCLUDE OR MODIFY THE CONSUMER’S REMEDIES FOR A BREACH OF THOSE WARRANTIES, IS UNENFORCEABLE.

(2) A MERCHANT MAY RECOVER FROM A MANUFACTURER OR A LICENSOR THAT CAUSED THE BREACH ANY DAMAGES RESULTING FROM THE BREACH OF IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE THAT COULD NOT BE DISCLAIMED OR MODIFIED UNDER THIS SECTION.

(J) ANY ORAL OR WRITTEN LANGUAGE USED IN A CONSUMER CONTRACT FOR A COMPUTER PROGRAM WHICH ATTEMPTS TO LIMIT OR MODIFY A CONSUMER’S REMEDIES FOR BREACH OF A MANUFACTURER’S EXPRESS WARRANTIES IS UNENFORCEABLE UNLESS THE MANUFACTURER PROVIDES REASONABLE AND EXPEDITIOUS MEANS OF PERFORMING THE WARRANTY OBLIGATIONS.

(K) THE PROVISIONS OF §§ 21-403 AND 21-405 OF THIS SUBTITLE DO NOT APPLY TO:

- OR
- (1) AN INFORMATION/COMPUTER PROGRAM PROVIDED FOR NO FEE;
  - (2) AN INFORMATION/COMPUTER PROGRAM PROVIDED AS A BETA

TEST OR SIMILAR EXPERIMENTAL VERSION OF THE INFORMATION/COMPUTER PROGRAM.”.

AMENDMENT NO. 11

On page 79, in line 2, before “ON” insert “(A) SUBJECT TO THE PROVISIONS OF SUBSECTION (B) OF THIS SECTION,”; and after line 5, insert:

“(B) EXCEPT FOR DISCONTINUATION TO MEET A STATUTORY OR LEGAL REQUIREMENT, BEFORE DISCONTINUING ALL CONTRACTUAL RIGHTS OF ACCESS IN AN ACCESS CONTRACT, A PARTY SHALL GIVE NOTICE IN A RECORD TO THE PERSON DESIGNATED BY THE AGREEMENT OR LICENSE STATING:

(1) THAT THE PARTY INTENDS TO DISCONTINUE ALL CONTRACTUAL RIGHTS OF ACCESS IN THE ACCESS CONTRACT ON OR AFTER 3 DAYS FOLLOWING RECEIPT BY THE OTHER PARTY OF THE NOTICE;

(2) THE NATURE OF THE CLAIMED BREACH THAT ENTITLES THE PARTY TO DISCONTINUE ALL CONTRACTUAL RIGHTS OF ACCESS IN THE ACCESS CONTRACT;

(3) THE NAME, TITLE, ADDRESS, INCLUDING DIRECT TELEPHONE NUMBER, FACSIMILE NUMBER, OR E-MAIL ADDRESS, TO WHICH THE PARTY MAY COMMUNICATE CONCERNING THE CLAIMED BREACH; AND

(4) THAT THE PARTY IN BREACH HAS AN OPPORTUNITY TO CURE AS PROVIDED IN § 21-703 OF THIS TITLE.

(C) THE AGREEMENT SHALL CONTAIN A TERM PROVIDING FOR THE NOTICE IN SUBSECTION (B) OF THIS SECTION THAT:

(1) STATES THE NAME OF THE PERSON DESIGNATED TO RECEIVE THE NOTICE AND THE MANNER IN WHICH THE NOTICE SHALL BE GIVEN AND THE PLACE TO WHICH NOTICE MUST BE SENT TO THAT PERSON; AND

(2) PROVIDES A SIMPLE PROCEDURE FOR THE LICENSEE TO CHANGE THE DESIGNATED PERSON OR PLACE.”.

AMENDMENT NO. 12

On page 80, after line 4, insert:

“(B) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, ELECTRONIC SELF-HELP IS PROHIBITED IN MASS-MARKET TRANSACTIONS.

“(C) PRIOR TO CANCELLATION OF A LICENSE IN WHICH THE PARTIES HAVE AGREED TO PERMIT THE USE OF ELECTRONIC SELF-HELP, THE LICENSOR SHALL PROVIDE A LICENSEE WITH THE OPPORTUNITY TO CURE THE CLAIMED BREACH GIVING RISE TO THE CANCELLATION AS PROVIDED IN § 21-703 OF THIS TITLE.”;

in line 5, strike “(B)” and substitute “(D)”; in line 7, strike “(C)” and substitute “(E) IF THE PARTIES AGREE TO PERMIT ELECTRONIC SELF-HELP,”; in lines 10, 17 and 28, strike “(D)”, “(D)”, and “(E)”, respectively, and substitute “(F)”, “(F)”, and “(G)”, respectively; and in line 33, strike “(D)(1)” and substitute “(F)(1)”; in line 21, strike “15” and substitute “30”.

On page 81, in lines 2 and 5, strike “(F)” and “(D)”, respectively, and substitute “(H)” and “(F)”, respectively; in line 6, strike “(F)”, “(C)”, and “(D)”, respectively, and substitute “(H)”, “(E)”, and “(F)”, respectively; in lines 11, 17, 30, 32, and 34, strike “(G)”, “(F)”, “(H)”, “(C)”, and “(I)”, respectively, and substitute, “(I)”, “(H)”, “(J)”, “(E)”, and “(K)”, respectively; and in line 31, strike “BUT” and substitute “EXCEPT THAT THE PARTIES MAY PROHIBIT USE OF ELECTRONIC SELF-HELP AND”.

On page 16, in line 11, after “§ 21-214”, insert “OF THIS TITLE”; in the same line, after “OR” insert “THE LIMITATIONS OF”; and in line 12, after “TITLE” insert “IF THE PARTIES HAVE AGREED TO PERMIT THE USE OF ELECTRONIC SELF-HELP”.

On page 4, in line 26, before “RESULTING” insert “:

(A)”;

in line 32, after "WARRANTY" strike the period and substitute ";

(B) RESULTING FROM WRONGFUL USE OF ELECTRONIC SELF-HELP AS DEFINED IN § 21-816 OF THIS TITLE INCLUDES ANY LOSS RESULTING FROM GENERAL OR PARTICULAR REQUIREMENTS AND NEEDS OF WHICH THE PARTY EXERCISING ELECTRONIC SELF-HELP AT THE TIME OF THE EXERCISE HAD REASON TO KNOW AND WHICH COULD NOT REASONABLY BE PREVENTED; AND

(C);

and in the same line, strike "THE TERM".