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April 26, 2007

The Honorable Martin O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

RE: *House Bill 1036*

Dear Governor O'Malley:

We have reviewed and hereby approve House Bill 1036, "Identity Fraud - Inducing Another to Provide Identifying Information - Prohibited." In approving the bill, we have concluded that the title does not violate the requirement of Maryland Constitution, Article III, § 29 that the subject matter of the bill be described in its title.

House Bill 1036 provides that "a person may not knowingly and willfully claim to represent another person without the knowledge and consent of that person, with the intent to solicit, request, or take any other action to otherwise induce another person to provide personal identifying information or a payment device number." The title to the bill provides that the bill is for "the purpose of prohibiting the act of claiming to be another person without the knowledge and consent of that person with the intent of soliciting, requesting, persuading, or otherwise inducing another person to provide the personal identifying information or payment device information of another person without the knowledge and consent of that person." Ordinarily to "represent another person" means to exercise power derived from another, *Pomona City School Dist. v. Payne*, 50 P.2d 822 (Cal.App. 1935), to act in the place of that person, to act as his substitute, to exercise his rights, or to conduct his case, *Roberson v. City of Rome*, 25 S.E.2d 925 (Ga.App. 1943), *see also Gate-Way, Inc. v. Hillgren*, 82 F.Supp. 546, 555 n. 4 (D.C.Cal. 1949) *affirmed* 181 F.2d 1010 (9th Cir. 1950); *Brown v. Massey*, 76 P. 226 (Okla.Terr. 1904), or to speak or act with authority on behalf of another, *Evans v. Johnston*, 20 N.E.2d 841, 847 (Ill.App. 1939) *cert. denied* 309 U.S. 662 (1940); *Gabby v.*

Roberts, 35 S.W.2d 284 (Ky.App. 1931). However, it can also be used to describe appearing in the character of, or personating, another. *In re Matthews*, 62 P.2d 578, 580 (Idaho 1936).

The Fiscal and Policy Note on the bill reflects that it is primarily aimed at “pretexting,” which is described on the Federal Trade Commission web site,¹ as “the practice of getting your personal information under false pretenses.” The FTC web site gives the following example:

For example, a pretexter may call, claim he's from a research firm, and ask you for your name, address, birth date, and social security number. When the pretexter has the information he wants, he uses it to call your financial institution. He pretends to be you or someone with authorized access to your account. He might claim that he's forgotten his checkbook and needs information about his account. In this way, the pretexter may be able to obtain other personal information about you such as your bank and credit card account numbers, information in your credit report, and the existence and size of your savings and investment portfolios.

In the first portion of this example, where the pretexter purports to be calling from an organization, whether it be a research firm, bank or other entity, there is no difference between the language of the bill and the description in the title. Whether the individual making the call says “This is XYZ Research firm,” or “This is Joe from XYZ Research firm,” it is generally understood that all contact with such an agency is ordinarily conducted by an individual representative and not the entity itself. In the second portion of the example, where the pretexter purports to be an individual seeking information about themselves, the action falls within the description of the title, in that the pretexter claims to be another person, and also within the broadest sense of representation of another person as recognized in the *Mathews* case. The same is true where the pretexter purports to be one individual for the purpose of getting information about another. A difference between the two arises however, where the pretexter does not purport to be any other individual, but falsely represents that he or she represents another individual. In that case, the action would fall within the language of the body of the bill, but would not be a claim to be another person as described in the first sentence of the title. However, because this provision would arguably be included in the generally relating clause of the title, which states that the bill is “generally relating to the unauthorized disclosure of

¹ <http://www.ftc.gov/bcp/edu/microsites/idtheft/consumers/pretexting.html>

The Honorable Martin O'Malley
April 26, 2007
Page 3

personal identifying information or payment device numbers and identity fraud,” the title adequately describes the provisions of the bill.

For the foregoing reasons it is our view that the subject matter of House Bill 1036 is adequately described by its title as required by Maryland Constitution Article III, § 29.

Very truly yours,

/s/

Douglas F. Gansler
Attorney General

DFG/KMR/kmr
hb1036.wpd

cc: Joseph Bryce
Secretary of State
Karl Aro
The Honorable Susan C. Lee