

ALEXANDER & CLEAVER

Professional Association

E-Business Advisory

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www.alexander-cleaver.com

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Attorneys

Gary R. Alexander
James A. Cleaver
Todd K. Pounds
Denise M. Bowman
Joseph P. Hart
Jason A. DeLoach
Chantel R. Ornstein
Jennifer S. Lancaster
James K. McGee

Government Relations Consultants

Casper R. Taylor, Jr.
Robin F. Shaivitz
Lyle W. Fowlkes
J. Kenneth Battle, Jr.
Kelley Ray

Our Offices

Ft. Washington, MD
301-292-3300

Annapolis, MD
410-974-9000

Cumberland, MD
301-724-9234

Waldorf, MD
301-934-4477

Alexandria, VA
703-548-7777

Contact Us

1-800-292-LAWS
acnews@alexander-cleaver.com

Alexander & Cleaver has
licensed attorneys in Maryland,
Washington D.C., Virginia,
and Pennsylvania.

Alexander & Cleaver is Serving in the Community

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In This Issue

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The E-Business Advisory is intended to provide business ideas and comments to our clients and friends. Topics in this business newsletter discuss the law, opinions, and other developments on a wide variety of issues. The law of each jurisdiction may be different. The articles are presented for general reading and should not be relied upon as legal opinion or legal advice. We would be happy to answer further questions or discuss particular factual situations or problems with you in more detail. The Law Offices of Alexander & Cleaver is a full-service law firm that represents clients in a wide range of legal matters, lobbying, procurement and government relations services and association management.

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Employers Use Criminal Background Checks to Curb Liability



The rise of negligent hiring lawsuits; the large amounts of false information on resumes of prospective employees; the heightened scrutiny of corporate directors, officers and other executives; and an increase of violence in the workplace are all cited as reasons why more and more employers are turning to screening techniques, such as criminal history records checks.

Generally, it is a wise business practice for employers to screen prospective employees carefully for jobs in which employees handle financial or other sensitive data, or for jobs involving interaction with the public, particularly with vulnerable members of the public. Some employers, such as those that work with minors or senior citizens, are required by Maryland law to obtain criminal history background checks of prospective employees.

Employers who wish to obtain the criminal history of prospective employees, whether or not they are required by law to do so, must contact the State of Maryland's Criminal Justice Information System Central Depository of the Department of Public Safety and Correctional Services. Depending on the type of employment in which an employer engages, an employer must complete the applicable paperwork to obtain an authorization code and fingerprint cards before it can obtain a criminal history records check.

After an employer has obtained a criminal background check, what can be done with the information? The mere discovery of disparaging information about a prospective employee is not necessarily enough to disqualify that person from employment. According to the Equal Employment Opportunity Commission, the deficiencies found in the criminal background check must be shown to be "job-related."

COMMENT OF COUNSEL: The old adage of "it is better to be safe than sorry" applies regarding the proper investigation of prospective employees. Spending effort at the beginning of the employment process by properly screening prospective employees will save an employer time and money in the courtroom as well as embarrassment in the court of public opinion. If you need assistance in preparing a proper employee screening process or in understanding your obligations regarding criminal history background checks, contact our legal team at 301-292-3300 or email us at acnews@alexander-cleaver.com.



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New Maryland Computer Recycling Pilot Program: A Boost to the Environment, but a Burden to Computer Manufacturers

The new Maryland Statewide Computer Recycling Pilot Program that became law on July 1, 2005 (House Bill 575) may make the business of selling computers in Maryland a little more expensive. Beginning January 1, 2006, companies that manufacture an average of more than one thousand computers per year will not be permitted to sell new computers in Maryland unless the manufacturer has registered with the Maryland Department of the Environment (MDE). The law defines a "computer" as a "desktop personal computer or laptop computer, including the monitor" but not other electronic hardware or handheld devices.

The Pilot Program is part of a nationwide trend to reduce the amount of electronic waste, which often contains cadmium, lead, mercury and other harmful materials. The U.S. Environmental Protection Agency estimates that more than 3.2 million tons of this waste are deposited in landfills each year. Unless extended by the General Assembly, this Pilot Program will end on December 31, 2010.

To comply with the Pilot Program, computer manufacturers must register annually with MDE and pay an initial registration fee of \$5,000. As part of the registration, the manufacturer must report whether or not it has implemented a "computer takeback program" which allows computer owners to return used computers to the manufacturer for recycling. If, after the first annual registration period, the manufacturer has not implemented a "takeback program," the annual fee will remain at \$5,000 until a program is implemented, at which time the annual fee will be reduced to \$500. Additionally, every computer sold in the state after January 1, 2006, is required to be labeled with the name of the manufacturer or the manufacturers brand label.

COMMENT OF COUNSEL: Any computer manufacturer selling new computers in Maryland should pay particular attention to this new requirement so as to prevent costly fees for non-compliance. If a "takeback program" has not been established by the company, it makes financial sense to begin implementation now so that the annual fee will be reduced to \$500 in 2007. This article is a broad overview and does not cover all of the specific requirements of the Pilot Program, some of which will be developed by MDE regulation in the near future. For assistance in complying with the law or developing a "takeback program," contact our legal team at 301-292-3300 or email us at acnews@alexander-cleaver.com.





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Recent U.S. Court of Appeals Decision on Arbitration Agreements: Beware of Using Unilateral Change Provisions

The recent United States 4th Circuit Court of Appeals decision in *Hill v. PeopleSoft USA, Inc.* confirms that arbitration agreements between employer and employee are enforceable so long as the terms are binding upon both. The court's ruling makes clear that if employers include provisions in their arbitration agreements that allow the employer to unilaterally change the agreement, the agreement will be unenforceable and the employee may skip arbitration and file suit in court.

While this decision does not change the law in any sense, it does stand for one very important principle: an arbitration agreement is a contract and, therefore, the agreement must conform to Maryland contract law, including the existence of adequate consideration between the employer and employee. The problem with a provision allowing the employer to unilaterally alter or amend the arbitration agreement is that the employer is essentially not promising to live up to the agreement to arbitrate since the agreement can be changed at any time. With no binding promise by the employer, the contract cannot be enforced.

COMMENT OF COUNSEL: An unenforceable arbitration agreement could mean costly and unnecessary litigation expenses for your business. For assistance with reviewing or creating arbitration agreements with employees, or for help with any other business need, contact our legal team at 301-292-3300 or email us at acnews@alexander-cleaver.com.



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**Understanding the Property Damage
 Portion of your Automobile Policy**



Each insurance policy written in the State of Maryland is required to carry liability insurance for personal injury and property damage. When you review your policy it will have some scenario such as \$20,000/40,000/10,000. These numbers may vary in amounts, but they all constitute a minimal coverage that may apply. The third number represents coverage for property damage resulting from a collision.

Most drivers expect that the insurance coverage from the at-fault vehicle will cover the repair of property damages or replacement of a totaled vehicle. In a perfect world, that would be the case; however, liability is not always crystal clear at the moment of the accident. If in dispute, you are better off having property damage repairs arranged through your own insurance company under the collision portions of your auto insurance. When this occurs you will be responsible for your deductible, which will be reimbursed to you when the adverse insurance company pays your insurance company for the damage caused to your vehicle. Under this scenario you are dealing with a friendly insurance company who has some reason to be concerned about the service they give to you, their loyal customer. Furthermore, it removes a lot of the hassles that occur when you are dealing with the at-fault driver or their insurance company.

The minimal amount of property damage coverage in the State of Maryland is \$10,000. However, you should always carry higher limits for property damage under your policy. The amount of coverage for property damage should at least equal or exceed the value of the automobiles that you have listed on your policy. Also, in the liability portion of your coverage, having minimal property damage coverage may cause you great financial stress in the event that you are the at-fault driver in a collision and the vehicle that you damaged is one of the newer \$50,000+ luxury vehicles that are crowding our local roadways today.

In the event that you have minimal coverage for property damage and you total a luxury vehicle, your insurance company is required to pay only up to the amount of coverage for which you have purchased on your policy. For example, if you damage a Mercedes valued at \$50,000, and you carry \$10,000 in property damage coverage, your insurance company will pay \$10,000 and you will be responsible for the balance of \$40,000.

COMMENT OF COUNSEL: Think carefully when selecting the amount of property damage under your automobile insurance policy. Make sure it is adequate to cover all the vehicles listed on your policy and also make sure it is adequate to replace or repair a high-priced luxury vehicle. Should you have any questions concerning your property damage coverage or if you would like a free insurance policy review with an attorney, please contact our legal team at 301-292-3300 or email us at acnews@alexander-cleaver.com



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**The A&C Team is Serving in
your Community**

The attorneys, lobbyists, and staff of Alexander & Cleaver are in your community. Whether sitting on a Board, volunteering when needed, or serving as the voices for their causes, we take our commitments seriously. Listed below is a sampling of organizations we are involved in throughout Maryland.

Annapolis Neighborhood Watch

Belair-Edison Neighborhoods, Inc.

The Chesapeake Bay Foundation, *Capital Campaign Committee*

Columbia Festival of the Arts, *Board of Directors*

First Night Annapolis

Frostburg State University, *Board of Visitors*

Girl Scout Leader Troop 4494 Nation's Capital Council

Goucher College, *Committee of Visitors*

Historic Annapolis Foundation

Little Patuxent Watershed Association

Live Baltimore, *City Ambassador*

Maryland Boys' State, *Presenter*

Maryland CASA Association, *Board of Directors*

Network 2000, *Chair, 2005 Women of Excellence*

North Harford Road Community Association

Rocky Gap Foundation, *Founder*

Share Our Strength

University of Maryland Biotechnology Institute, *Board of Advisors*

University of Maryland Foundation, *Board of Directors*

University of Maryland School of Public Policy, *Board of Visitors*

University of Notre Dame, *Sorin Society*

Village Learning Place, *Board Member*

Weems Creek Conservancy

Western Maryland Health System, Sacred Heart Hospital, *Board of Advisors*