

HOUSE BILL 439

I3

(6lr1047)

ENROLLED BILL

— *Economic Matters/Finance* —

Introduced by **Delegates Kramer and Fraser-Hidalgo**

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 **Commercial Law – Consumer Protection – Door-to-Door Sales**

3 FOR the purpose of altering the circumstances under which it is an unfair or deceptive
4 trade practice under the Maryland Consumer Protection Act for a seller in a
5 door-to-door sale transaction to fail to furnish a certain statement that specifies the
6 time period in which a buyer has the right to cancel the transaction; ~~clarifying when~~
7 altering the circumstances under which it is an unfair or deceptive trade practice for
8 a seller in a door-to-door sale transaction to fail to furnish a buyer with a certain
9 “Notice of Cancellation” form; altering, under certain circumstances, the time period
10 for cancellation of a door-to-door sale specified in a “Notice of Cancellation” form;
11 specifying that, under certain circumstances, it is an unfair or deceptive trade
12 practice for a seller in a door-to-door sale transaction to fail to obtain the signature
13 of a buyer on a certain acknowledgment of the buyer’s right to cancel or furnish to
14 the buyer a copy of the written acknowledgment with the completed receipt or copy
15 of the contract; requiring the Department of Labor, Licensing, and Regulation, in

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.



1 collaboration with the Consumer Protection Division of the Office of the Attorney
 2 General, to convene a certain workgroup to study certain issues; authorizing the
 3 workgroup to include certain individuals; requiring the Department, in collaboration
 4 with the Division, to report certain findings and recommendations to certain
 5 committees of the General Assembly on or before a certain date; altering a certain
 6 definition; defining a certain term; making stylistic changes; and generally relating
 7 to consumer protection and door-to-door sales.

8 BY repealing and reenacting, with amendments,
 9 Article – Commercial Law
 10 Section 14–301 and 14–302
 11 Annotated Code of Maryland
 12 (2013 Replacement Volume and 2015 Supplement)

13 BY adding to
 14 Article – Commercial Law
 15 Section 14–302.1
 16 Annotated Code of Maryland
 17 (2013 Replacement Volume and 2015 Supplement)

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

20 **Article – Commercial Law**

21 14–301.

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

23 (b) “Business day” means any calendar day except Sunday or the following
 24 business holidays: New Year’s Day, Washington’s Birthday, Memorial Day, Independence
 25 Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas Day.

26 (c) “Consumer goods” and “consumer services” mean:

27 (1) Goods or services purchased, leased, or rented primarily for personal,
 28 family, or household purposes; and

29 (2) Courses of instruction or training regardless of the purpose for which
 30 they are taken.

31 (d) (1) “Door-to-door sale” means a sale, lease, or rental of consumer goods or
 32 consumer services under single or multiple contracts with a purchase price of \$25 or more,
 33 in which:

1 (i) The seller or [his] **THE SELLER'S** representative personally
2 solicits the sale, including a solicitation in response to or following an invitation by the
3 buyer; and

4 (ii) The buyer's agreement or offer to purchase is made at a place
5 other than the place of business of the seller.

6 (2) "Door-to-door sale" does not include a transaction:

7 (i) Made pursuant to prior negotiations in the course of a visit by
8 the buyer to a retail business establishment which has a fixed permanent location where
9 the consumer goods are exhibited or the consumer services are offered for sale on a
10 continuing basis;

11 (ii) In which the consumer may rescind under the provisions of the
12 federal Consumer Credit Protection Act or any regulation adopted under the Act;

13 (iii) In which the buyer has initiated the contact and the goods or
14 services are needed to meet a bona fide immediate personal emergency of the buyer, and
15 the buyer furnishes the seller with a separate dated and signed personal statement in the
16 buyer's handwriting which describes the situation that requires immediate remedy and
17 expressly acknowledges and waives the right to cancel the sale within ~~three~~ **5** business
18 days **FOR A CONTRACT OTHER THAN A HOME IMPROVEMENT CONTRACT, OR, FOR A**
19 **HOME IMPROVEMENT CONTRACT, 5 BUSINESS DAYS OR ~~10~~ 7 BUSINESS DAYS IF THE**
20 **BUYER IS AT LEAST 65 YEARS OLD**, and the seller in good faith makes a substantial
21 beginning of the performance of the contract;

22 (iv) Conducted and consummated entirely by mail or telephone,
23 without any other contact between the buyer and the seller or its representative before
24 delivery of the consumer goods or performance of the consumer services;

25 (v) In which the buyer has initiated the contact and specifically
26 requests the seller to visit [his] **THE BUYER'S** home to repair or perform maintenance on
27 the buyer's personal property, except that, if, in the course of the visit, the seller sells the
28 buyer the right to receive any additional consumer services or consumer goods, other than
29 replacement parts necessarily used to perform the maintenance or to make the repairs, the
30 sale of the additional consumer goods or consumer services is not within this exclusion; or

31 (vi) Which pertains to the sale or rental of real property, to the sale
32 of insurance, or to the sale of securities or commodities by a broker-dealer registered with
33 the Securities and Exchange Commission or with the Division of Securities of this State.

34 **(E) (1) "HOME IMPROVEMENT CONTRACT" HAS THE MEANING STATED IN**
35 **§ 8-101 OF THE BUSINESS REGULATION ARTICLE.**

1 (2) *“HOME IMPROVEMENT CONTRACT” DOES NOT INCLUDE AN ORAL*
 2 *OR WRITTEN AGREEMENT BETWEEN A CONTRACTOR AND AN OWNER FOR THE*
 3 *INSTALLATION OF A SMOKE DETECTOR, A HEAT DETECTOR, OR A CARBON MONOXIDE*
 4 *DETECTOR.*

5 (⇌) (F) “Person” includes an individual, corporation, business trust, statutory
 6 trust, estate, trust, partnership, association, two or more persons having a joint or common
 7 interest, or any other legal or commercial entity.

8 (⇌) (G) “Place of business” means the main or permanent branch office or local
 9 address of a seller.

10 (⇌) (H) “Purchase price” means the total price paid or to be paid for the
 11 consumer goods or consumer services, including all interest and service charges.

12 (⇌) (I) “Sale” means a door-to-door sale.

13 (⇌) (J) “Seller” means a person engaged in the door-to-door sale of consumer
 14 goods or consumer services.

15 14-302.

16 It is an unfair or deceptive trade practice within the meaning of Title 13 of this article
 17 for a seller to:

18 (1) Fail to furnish the buyer with:

19 (i) A fully completed receipt or copy of any contract which pertains
 20 to a door-to-door sale at the time of its execution, which is in the same language as that
 21 principally used in the oral sales presentation, shows the date of the transaction, and
 22 contains the name and address of the seller; and

23 (ii) A statement which is in immediate proximity to the space
 24 reserved in the contract for the signature of the buyer or, if a contract is not used, is on the
 25 front page of the receipt and which, in boldface type of a minimum size of 10 points, is in
 26 substantially the following form:

27 “You, the buyer, may cancel this transaction at any time prior to midnight of the
 28 ~~[third] FIFTH~~ business day after the date of this transaction, ~~OR MIDNIGHT OF THE 10TH~~
 29 ~~DAY AFTER THE DATE OF THIS TRANSACTION IF YOU ARE AT LEAST 65 YEARS OLD.~~
 30 See the attached notice of cancellation form for an explanation of this right”;

31 (2) Fail to furnish the buyer, at the time [he] **THE BUYER** signs the
 32 door-to-door sales contract or otherwise agrees to buy consumer goods or consumer
 33 services from the seller, a ~~SEPARATE~~ completed form in duplicate, ~~THAT IS NOT A PART~~
 34 ~~OF THE CONTRACT~~, captioned “Notice of Cancellation”, which:

1 (i) Is attached to the contract or receipt and is easily detachable;
2 and

3 (ii) Contains in 10 point boldface type the following information and
4 statements, in the same language as that used in the contract:

5 "Notice of Cancellation

(Enter date of transaction)

6
7

(Date)

8 You may cancel this transaction, without any penalty or obligation, within ~~three~~
9 ~~5~~ business days from the above date, ~~OR WITHIN 10 BUSINESS DAYS FROM THE ABOVE~~
10 ~~DATE IF YOU ARE AT LEAST 65 YEARS OLD.~~

11 If you cancel, any property traded in, any payments made by you under the contract
12 or sale, and any negotiable instrument executed by you will be returned within 10
13 business days following receipt by the seller of your cancellation notice, and any security
14 interest arising out of the transaction will be canceled.

15 If you cancel, you must make available to the seller at your residence, in
16 substantially as good condition as when received, any goods delivered to you under this
17 contract or sale; or you may, if you wish, comply with the instructions of the seller
18 regarding the return shipment of the goods at the seller's expense and risk.

19 If you do make the goods available to the seller and the seller does not pick them
20 up within 20 days of the date of your notice of cancellation, you may retain or dispose of
21 the goods without any further obligation. If you fail to make the goods available to the
22 seller, or if you agree to return the goods to the seller and fail to do so, then you remain
23 liable for performance of all obligations under the contract.

24 To cancel this transaction, mail or deliver a signed and dated copy of this
25 (name of seller) (address of seller's place of business)
26, at
27 not later than midnight of
28 (date)

I hereby cancel this transaction.

29

(date)

30
31
32 (Buyer's signature)";

33 (3) Fail, before furnishing copies of the "Notice of Cancellation" to the
34 buyer, to complete both copies by entering the name of the seller, the address of the seller's
35 place of business, the date of the transaction, and the date, not earlier than the third
36 business day following the date of the transaction, by which the buyer may give notice of
37 cancellation;

38 (4) Include in any door-to-door sales contract or receipt any confession of
39 judgment or waiver of any of the rights to which the buyer is entitled under this section,

1 including specifically [his] THE BUYER'S right to cancel the sale in accordance with the
2 provisions of this section;

3 (5) Fail to ~~inform~~;

4 ~~(I) INFORM~~ the buyer orally, at the time [he] THE BUYER signs the
5 contract or purchases the consumer goods or consumer services, of [his] THE BUYER'S right
6 to cancel;

7 ~~(II) OBTAIN THE SIGNATURE OF THE BUYER ON THE~~
8 ~~FOLLOWING WRITTEN ACKNOWLEDGMENT OF THE BUYER'S RIGHT TO CANCEL:~~

9 ~~"I, [INSERT NAME], HAVE BEEN PROVIDED ORAL NOTICE THAT I HAVE THE~~
10 ~~RIGHT TO CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION,~~
11 ~~WITHIN 5 BUSINESS DAYS FROM THE DATE OF THE TRANSACTION SPECIFIED ON THE~~
12 ~~"NOTICE OF CANCELLATION", OR, IF I AM AT LEAST 65 YEARS OLD, WITHIN 10~~
13 ~~BUSINESS DAYS FROM THE DATE OF THE TRANSACTION SPECIFIED ON THE "NOTICE~~
14 ~~OF CANCELLATION".~~

15 ~~CHECK IF BUYER IS AT LEAST 65 YEARS OLD~~

16 _____
17 ~~(BUYER'S SIGNATURE)~~ _____
~~(DATE)"; OR~~

18 ~~(III) FURNISH TO THE BUYER A COPY OF THE WRITTEN~~
19 ~~ACKNOWLEDGMENT OF THE BUYER'S RIGHT TO CANCEL WITH THE COMPLETED~~
20 ~~RECEIPT OR COPY OF THE CONTRACT;~~

21 (6) Misrepresent in any manner the buyer's right to cancel;

22 (7) Fail or refuse to honor any valid notice of cancellation by a buyer and,
23 within 10 business days after the receipt of that notice, to:

24 (i) Refund all payments made under the contract or sale;

25 (ii) Return, in substantially as good condition as when received by
26 the seller, any goods or property traded in;

27 (iii) Cancel and return any negotiable instrument executed by the
28 buyer in connection with the contract or sale and take any action necessary or appropriate
29 to terminate promptly any security interest created in the transaction;

30 (8) Negotiate, transfer, sell, or assign any note or other evidence of
31 indebtedness to a finance company or other third party before midnight of the fifth business

1 day following the day the contract was signed or the consumer goods or consumer services
2 were purchased;

3 (9) Fail, within 10 business days of receiving a buyer's notice of
4 cancellation, to notify [him] **THE BUYER** whether the seller intends to repossess or to
5 abandon any shipped or delivered goods;

6 (10) Solicit a sale or order for sale of goods or services at the residence of a
7 prospective buyer, without clearly, affirmatively and expressly revealing at the time the
8 person initially contacts the prospective buyer, and before making any other statement,
9 except a greeting, or asking the prospective buyer any other questions:

10 (i) The identity of the person making the solicitation.

11 (ii) The trade name of the person represented by the person making
12 the solicitation.

13 (iii) The kind of goods or services being offered.

14 (iv) And, the person making the solicitation shall, in addition to
15 meeting the requirements of paragraphs (i), (ii), and (iii), show and display identification
16 which states the information required by paragraphs (i) and (ii) as well as the address of
17 the place of business of one of the persons identified; or

18 (11) [To use] **USE** any plan, scheme, or ruse in soliciting a sale or order for
19 the sale of goods or services at the residence of a prospective buyer, which misrepresents
20 the solicitor's true status or mission for the purpose of making the sale or order for the sale
21 of goods or services.

22 **14-302.1.**

23 **NOTWITHSTANDING § 14-302 OF THIS SUBTITLE, FOR A HOME IMPROVEMENT**
24 **CONTRACT:**

25 **(1) THE STATEMENT REQUIRED UNDER § 14-302(1)(II) OF THIS**
26 **SUBTITLE SHALL ALLOW THE BUYER TO CANCEL A TRANSACTION PRIOR TO**
27 **MIDNIGHT OF THE FIFTH BUSINESS DAY AFTER THE DATE OF THE TRANSACTION, OR**
28 **MIDNIGHT OF THE ~~10TH~~ 7TH BUSINESS DAY AFTER THE DATE OF THE TRANSACTION**
29 **IF THE BUYER IS AT LEAST 65 YEARS OLD;**

30 **(2) THE "NOTICE OF CANCELLATION" TO BE FURNISHED TO THE**
31 **BUYER UNDER § 14-302(2) OF THIS SUBTITLE SHALL:**

32 **(I) BE ON A SEPARATE FORM THAT IS NOT A PART OF THE HOME**
33 **IMPROVEMENT CONTRACT; AND**

1 (II) ALLOW THE BUYER TO CANCEL A TRANSACTION PRIOR TO
 2 MIDNIGHT OF THE FIFTH BUSINESS DAY AFTER THE DATE OF THE TRANSACTION, OR
 3 MIDNIGHT OF THE ~~10TH~~ 7TH BUSINESS DAY AFTER THE DATE OF THE TRANSACTION
 4 IF THE BUYER IS AT LEAST 65 YEARS OLD;

5 (3) THE DATE BY WHICH THE BUYER MAY GIVE NOTICE OF
 6 CANCELLATION THAT MUST BE ENTERED BY THE SELLER ON THE “NOTICE OF
 7 CANCELLATION” UNDER § 14-302(3) OF THIS SUBTITLE MAY NOT BE EARLIER THAN
 8 THE FIFTH BUSINESS DAY FOLLOWING THE DATE OF THE TRANSACTION, OR THE
 9 ~~10TH~~ 7TH BUSINESS DAY FOLLOWING THE DATE OF THE TRANSACTION IF THE
 10 BUYER IS AT LEAST 65 YEARS OLD; AND

11 (4) IT IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE
 12 MEANING OF TITLE 13 OF THIS ARTICLE FOR A SELLER TO FAIL TO:

13 (I) OBTAIN THE SIGNATURE OF THE BUYER ON THE
 14 FOLLOWING WRITTEN ACKNOWLEDGMENT OF THE BUYER’S RIGHT TO CANCEL:

15 “I, (INSERT NAME), HAVE BEEN PROVIDED ORAL NOTICE THAT I HAVE THE
 16 RIGHT TO CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION,
 17 WITHIN 5 BUSINESS DAYS FROM THE DATE OF THE TRANSACTION SPECIFIED ON THE
 18 “NOTICE OF CANCELLATION”, OR, IF I AM AT LEAST 65 YEARS OLD, WITHIN ~~10~~ 7
 19 BUSINESS DAYS FROM THE DATE OF THE TRANSACTION SPECIFIED ON THE “NOTICE
 20 OF CANCELLATION”.

21 CHECK IF BUYER IS AT LEAST 65 YEARS OLD

22 _____
 23 (BUYER’S SIGNATURE)

_____ (DATE)”; OR

24 (II) FURNISH TO THE BUYER A COPY OF THE WRITTEN
 25 ACKNOWLEDGMENT OF THE BUYER’S RIGHT TO CANCEL WITH THE COMPLETED
 26 RECEIPT OR COPY OF THE HOME IMPROVEMENT CONTRACT.

27 SECTION 2. AND BE IT FURTHER ENACTED, That:

28 (a) (1) The Department of Labor, Licensing, and Regulation, in collaboration
 29 with the Consumer Protection Division of the Office of the Attorney General, shall convene a
 30 stakeholder workgroup to study issues relating to door-to-door sales of home improvement
 31 services.

32 (2) The study shall include:

33 (i) a review of complaints that have been made by consumers relating
 34 to door-to-door sales of home improvement services; and

1 (ii) a review of recommendations made in the 2010 sunset evaluation
 2 of the Maryland Home Improvement Commission and the laws that govern door-to-door
 3 sales and home improvement contracts to determine what, if any, updates are needed to the
 4 laws governing door-to-door sales and home improvement contracts to protect consumers
 5 and clarify the requirements for providers of home improvement services.

6 (b) The workgroup may include:

7 (1) members of the General Assembly;

8 (2) representatives of consumer advocacy organizations;

9 (3) representatives of the National Association of the Remodeling Industry,
 10 the Maryland Building Industry Association, and other home improvement industry
 11 organizations;

12 (4) local officials with responsibility for issuing building permits or
 13 enforcing building codes; and

14 (5) representatives of the homeowner's insurance industry.

15 (c) On or before December 1, 2016, the Department of Labor, Licensing, and
 16 Regulation, in collaboration with the Consumer Protection Division, shall report, in
 17 accordance with § 2-1246 of the State Government Article, its findings and
 18 recommendations to the Senate Finance Committee and House Economic Matters
 19 Committee.

20 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
 21 ~~October~~ June 1, 2016.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.