

# HOUSE BILL 439

I3

6lr1047

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By: **Delegates Kramer and Fraser-Hidalgo**  
Introduced and read first time: January 29, 2016  
Assigned to: Economic Matters

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: February 17, 2016

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## 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; altering a certain definition; defining a certain term; making stylistic  
16 changes; and generally relating to consumer protection and door-to-door sales.

17 BY repealing and reenacting, with amendments,  
18 Article – Commercial Law  
19 Section 14–301 and 14–302  
20 Annotated Code of Maryland  
21 (2013 Replacement Volume and 2015 Supplement)

22 BY adding to  
23 Article – Commercial Law

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### 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.



1 Section 14-302.1  
2 Annotated Code of Maryland  
3 (2013 Replacement Volume and 2015 Supplement)

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

6 **Article – Commercial Law**

7 14-301.

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

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

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

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

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

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

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

23 (ii) The buyer’s agreement or offer to purchase is made at a place  
24 other than the place of business of the seller.

25 (2) “Door-to-door sale” does not include a transaction:

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

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

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

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

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

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

22 **(E) "HOME IMPROVEMENT CONTRACT" HAS THE MEANING STATED IN §**  
 23 **8-101 OF THE BUSINESS REGULATION ARTICLE.**

24 ~~(F)~~ **(F)** "Person" includes an individual, corporation, business trust, statutory  
 25 trust, estate, trust, partnership, association, two or more persons having a joint or common  
 26 interest, or any other legal or commercial entity.

27 ~~(G)~~ **(G)** "Place of business" means the main or permanent branch office or local  
 28 address of a seller.

29 ~~(H)~~ **(H)** "Purchase price" means the total price paid or to be paid for the  
 30 consumer goods or consumer services, including all interest and service charges.

31 ~~(I)~~ **(I)** "Sale" means a door-to-door sale.

32 ~~(J)~~ **(J)** "Seller" means a person engaged in the door-to-door sale of consumer  
 33 goods or consumer services.

34 14-302.

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

3 (1) Fail to furnish the buyer with:

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

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

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

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

20 (i) Is attached to the contract or receipt and is easily detachable;  
21 and

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

24 “Notice of Cancellation  
25 (Enter date of transaction)  
26 .....  
27 (Date)

28 You may cancel this transaction, without any penalty or obligation, within ~~three~~  
29 ~~5~~ business days from the above date, ~~OR WITHIN 10 BUSINESS DAYS FROM THE ABOVE~~  
30 ~~DATE IF YOU ARE AT LEAST 65 YEARS OLD.~~

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

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

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

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to  
(name of seller) (address of seller's place of business)

....., at .....

not later than midnight of .....

(date)

I hereby cancel this transaction.

.....

(date)

.....  
(Buyer's signature);

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

(4) Include in any door-to-door sales contract or receipt any confession of judgment or waiver of any of the rights to which the buyer is entitled under this section, including specifically [his] THE BUYER'S right to cancel the sale in accordance with the provisions of this section;

(5) Fail to ~~inform~~;

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

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

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

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

1 \_\_\_\_\_  
 2 ~~(BUYER'S SIGNATURE)~~

\_\_\_\_\_

3 ~~(H) FURNISH TO THE BUYER A COPY OF THE WRITTEN~~  
 4 ~~ACKNOWLEDGMENT OF THE BUYER'S RIGHT TO CANCEL WITH THE COMPLETED~~  
 5 ~~RECEIPT OR COPY OF THE CONTRACT;~~

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

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

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

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

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

15 (8) Negotiate, transfer, sell, or assign any note or other evidence of  
 16 indebtedness to a finance company or other third party before midnight of the fifth business  
 17 day following the day the contract was signed or the consumer goods or consumer services  
 18 were purchased;

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

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

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

27 (ii) The trade name of the person represented by the person making  
 28 the solicitation.

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

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

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

5 **14-302.1.**

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

8 **(1) THE STATEMENT REQUIRED UNDER § 14-302(1)(II) OF THIS**  
9 **SUBTITLE SHALL ALLOW THE BUYER TO CANCEL A TRANSACTION PRIOR TO**  
10 **MIDNIGHT OF THE FIFTH BUSINESS DAY AFTER THE DATE OF THE TRANSACTION, OR**  
11 **MIDNIGHT OF THE 10TH BUSINESS DAY AFTER THE DATE OF THE TRANSACTION IF**  
12 **THE BUYER IS AT LEAST 65 YEARS OLD;**

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

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

17 **(II) ALLOW THE BUYER TO CANCEL A TRANSACTION PRIOR TO**  
18 **MIDNIGHT OF THE FIFTH BUSINESS DAY AFTER THE DATE OF THE TRANSACTION, OR**  
19 **MIDNIGHT OF THE 10TH BUSINESS DAY AFTER THE DATE OF THE TRANSACTION IF**  
20 **THE BUYER IS AT LEAST 65 YEARS OLD;**

21 **(3) THE DATE BY WHICH THE BUYER MAY GIVE NOTICE OF**  
22 **CANCELLATION THAT MUST BE ENTERED BY THE SELLER ON THE "NOTICE OF**  
23 **CANCELLATION" UNDER § 14-302(3) OF THIS SUBTITLE MAY NOT BE EARLIER THAN**  
24 **THE FIFTH BUSINESS DAY FOLLOWING THE DATE OF THE TRANSACTION, OR THE**  
25 **10TH BUSINESS DAY FOLLOWING THE DATE OF THE TRANSACTION IF THE BUYER IS**  
26 **AT LEAST 65 YEARS OLD; AND**

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

29 **(I) OBTAIN THE SIGNATURE OF THE BUYER ON THE**  
30 **FOLLOWING WRITTEN ACKNOWLEDGMENT OF THE BUYER'S RIGHT TO CANCEL:**

31 **"I, (INSERT NAME), HAVE BEEN PROVIDED ORAL NOTICE THAT I HAVE THE**  
32 **RIGHT TO CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION,**  
33 **WITHIN 5 BUSINESS DAYS FROM THE DATE OF THE TRANSACTION SPECIFIED ON THE**

1 “NOTICE OF CANCELLATION”, OR, IF I AM AT LEAST 65 YEARS OLD, WITHIN 10  
2 BUSINESS DAYS FROM THE DATE OF THE TRANSACTION SPECIFIED ON THE “NOTICE  
3 OF CANCELLATION”.

4  CHECK IF BUYER IS AT LEAST 65 YEARS OLD

5 \_\_\_\_\_  
6 (BUYER’S SIGNATURE) \_\_\_\_\_ (DATE)”; OR

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

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
11 October 1, 2016.

Approved:

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Governor.

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Speaker of the House of Delegates.

\_\_\_\_\_  
President of the Senate.