

# HOUSE BILL 439

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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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## A BILL ENTITLED

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 it is an unfair or deceptive trade practice for a seller in a door-to-door sale  
8 transaction to fail to furnish a buyer with a certain “Notice of Cancellation” form;  
9 altering the time period for cancellation of a door-to-door sale specified in a “Notice  
10 of Cancellation” form; specifying that it is an unfair or deceptive trade practice for a  
11 seller in a door-to-door sale transaction to fail to obtain the signature of a buyer on  
12 a certain acknowledgment of the buyer’s right to cancel or furnish to the buyer a copy  
13 of the written acknowledgment with the completed receipt or copy of the contract;  
14 making stylistic changes; and generally relating to consumer protection and  
15 door-to-door sales.

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

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

23 **Article – Commercial Law**

24 14–301.

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) "Business day" means any calendar day except Sunday or the following  
2 business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence  
3 Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

4 (c) "Consumer goods" and "consumer services" mean:

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

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

9 (d) (1) "Door-to-door sale" means a sale, lease, or rental of consumer goods or  
10 consumer services under single or multiple contracts with a purchase price of \$25 or more,  
11 in which:

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

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

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

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

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

24 (iii) In which the buyer has initiated the contact and the goods or  
25 services are needed to meet a bona fide immediate personal emergency of the buyer, and  
26 the buyer furnishes the seller with a separate dated and signed personal statement in the  
27 buyer's handwriting which describes the situation that requires immediate remedy and  
28 expressly acknowledges and waives the right to cancel the sale within [three] **5** business  
29 days, **OR 10 BUSINESS DAYS IF THE BUYER IS AT LEAST 65 YEARS OLD**, and the seller  
30 in good faith makes a substantial beginning of the performance of the contract;

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

34 (v) In which the buyer has initiated the contact and specifically  
35 requests the seller to visit [his] **THE BUYER'S** home to repair or perform maintenance on

1 the buyer's personal property, except that, if, in the course of the visit, the seller sells the  
2 buyer the right to receive any additional consumer services or consumer goods, other than  
3 replacement parts necessarily used to perform the maintenance or to make the repairs, the  
4 sale of the additional consumer goods or consumer services is not within this exclusion; or

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

8 (e) "Person" includes an individual, corporation, business trust, statutory trust,  
9 estate, trust, partnership, association, two or more persons having a joint or common  
10 interest, or any other legal or commercial entity.

11 (f) "Place of business" means the main or permanent branch office or local  
12 address of a seller.

13 (g) "Purchase price" means the total price paid or to be paid for the consumer  
14 goods or consumer services, including all interest and service charges.

15 (h) "Sale" means a door-to-door sale.

16 (i) "Seller" means a person engaged in the door-to-door sale of consumer goods  
17 or consumer services.

18 14-302.

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

21 (1) Fail to furnish the buyer with:

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

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

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

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

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

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

"Notice of Cancellation

(Enter date of transaction)

.....

(Date)

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

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

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller 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

1 business day following the date of the transaction, by which the buyer may give notice of  
2 cancellation;

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

7 (5) Fail to [inform]:

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

11 (II) OBTAIN THE SIGNATURE OF THE BUYER ON THE  
12 FOLLOWING WRITTEN ACKNOWLEDGMENT OF THE BUYER’S RIGHT TO CANCEL:

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

19  CHECK IF BUYER IS AT LEAST 65 YEARS OLD

20 \_\_\_\_\_  
21 (BUYER’S SIGNATURE) (DATE)”; OR

22 (III) FURNISH TO THE BUYER A COPY OF THE WRITTEN  
23 ACKNOWLEDGMENT OF THE BUYER’S RIGHT TO CANCEL WITH THE COMPLETED  
24 RECEIPT OR COPY OF THE CONTRACT;

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

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

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

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

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

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

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

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

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

16 (ii) The trade name of the person represented by the person making  
17 the solicitation.

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

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

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

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