

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 439

(Delegates Kramer and Fraser-Hidalgo)

Economic Matters

Finance

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

This bill extends the time period in which a buyer in a door-to-door sales transaction for a home improvement contract may cancel the transaction – from three days to five days generally and from three days to seven days if the buyer is age 65 or older. The bill also specifies the manner in which the seller of a home improvement contract must notify the buyer of the right to cancel a transaction. The bill requires a home improvement contract seller to obtain the signature of a buyer that acknowledges the buyer’s right to cancel a transaction within a specified time period. The Department of Labor, Licensing, and Regulation (DLLR), in collaboration with the Consumer Protection Division of the Office of the Attorney General (OAG), must convene a stakeholder workgroup to study issues relating to door-to-door sales of home improvement services and report findings to specified committees by December 1, 2016.

Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions.

The bill takes effect June 1, 2016.

Fiscal Summary

State Effect: The bill’s imposition of existing penalty provisions does not have a material impact on State finances or operations. If the Consumer Protection Division of OAG receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources. DLLR and OAG can handle the bill’s workgroup and reporting requirement with existing resources.

Local Effect: The bill’s imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Minimal, as small businesses lose revenue to the extent more home improvement contracts are canceled due to the extended time period for cancellation established in the bill.

Analysis

Bill Summary: The bill clarifies that it is an unfair or deceptive trade practice for a seller of a home improvement contract to fail to furnish the buyer with a statement indicating that the buyer may cancel the transaction at any time prior to midnight of the fifth business day after the date of the transaction, or midnight of the seventh business day after the date of the transaction if the buyer is age 65 or older. The seller must provide the buyer a separate form that is not a part of the home improvement contract, captioned “Notice of Cancellation.”

The bill also clarifies that it is a violation of MCPA for the seller to fail to obtain the signature of the buyer on a written acknowledgment of the buyer’s right to cancel. The acknowledgment must state:

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 7 business days from the date of the transaction specified on the “Notice of Cancellation”.

The seller must indicate if the buyer is age 65 or older by checking a box, and the buyer must sign and date the acknowledgment. The seller must also furnish the buyer a copy of the written acknowledgment of the buyer’s right to cancel with the completed receipt or copy of the home improvement contract.

Under the bill, a “home improvement contract” is defined as an oral or written agreement between a contractor and owner for the contractor to perform a home improvement (as defined in Title 8, Subtitle 1 of the Business Regulation Article). A “home improvement contract” does not include an oral or written agreement between a contractor and an owner for the installation of a smoke detector, a heat detector, or a carbon monoxide detector.

Stakeholder Workgroup

The study must include a review of complaints made by consumers relating to door-to-door sales of home improvement services; a review of recommendations made in the 2010 sunset evaluation of the Maryland Home Improvement Commission; and a review of

relevant laws to determine what, if any, updates are needed to protect consumers and clarify the requirements for providers of home improvement services.

By December 1, 2016, DLLR and OAG must report the workgroup's findings and recommendations to the Senate Finance Committee and House Economic Matters Committee.

Current Law: "Home improvement" means (1) the addition to or alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a building or part of a building that is used or designed to be used as a residence or dwelling place or a structure adjacent to that building or (2) an improvement to land adjacent to the building. "Home improvement" includes (1) construction, improvement, or replacement, on land adjacent to the building, of a driveway, fall-out shelter, fence, garage, landscaping, deck, pier, porch, or swimming pool; (2) a shore erosion control project for a residential property; (3) connection, installation, or replacement, in the building or structure, of a dishwasher, disposal, or refrigerator with an icemaker to existing exposed household plumbing lines; (4) installation, in the building or structure, of an awning, fire alarm, or storm window; and (5) work done on individual condominium units.

A "door-to-door sale" is defined as a sale, lease, or rental of consumer goods or consumer services under single or multiple contracts with a purchase price of at least \$25 in which (1) the seller (or seller's representative) personally solicits the sale, including a solicitation in response to or following an invitation by the buyer and (2) the buyer's agreement or offer to purchase is made at a place other than the seller's place of business.

Door-to-door sales do not include transactions (1) made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment; (2) in which a consumer may rescind under the federal Consumer Credit Protection Act or any regulation adopted under the Act; (3) in which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer under specified circumstances; (4) conducted and consummated entirely by mail or telephone; (5) in which the buyer has initiated the contact and specifically requests the seller to visit to repair or perform maintenance on the buyer's personal property, except that this exclusion does not apply to sales of additional consumer services or goods in the course of the visit, other than replacement parts for repair or maintenance, as specified; or (6) which pertain to real property sales or rentals, insurance sales, or securities or commodities sales by a registered broker-dealer.

If the seller violates any provisions related to door-to-door sales, the buyer may cancel the door-to-door sale by notifying the seller in any manner and by any means of the buyer's intention to cancel. A person who violates the Maryland Door-to-Door Sales Act is liable to the person affected by the violation for all damages proximately caused and for

reasonable attorney fees incurred by the person damaged. Moreover, any person who *willfully* violates any provisions of the Maryland Door-to-Door Sales Act is guilty of a misdemeanor and, in addition to injunctive relief, on conviction is subject to maximum penalties of a \$1,000 fine and/or one year imprisonment.

In addition, *any* violation of the Maryland Door-to-Door Sales Act (by reference to Title 14, Subtitle 3 of the Commercial Law Article) is an unfair or deceptive trade practice under MCPA. Statute also clarifies that it is an unfair or deceptive trade practice under MCPA for a seller in a door-to-door transaction to fail to furnish the buyer with a fully completed receipt or copy of the contract; a statement regarding the buyer's right to cancel the transaction within a specified time period; and a completed "Notice of Cancellation" form.

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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kb/kdm

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