

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 959
Economic Matters

(Delegate Kramer)

Finance

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

This bill establishes that the Maryland Door-to-Door Sales Act does not apply to transactions that are a result of written change orders that meet specified requirements. The bill also makes other changes that are generally clarifying and/or stylistic.

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, 2017.

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 the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled 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 the bill generally clarifies current requirements.

Analysis

Bill Summary: The bill establishes that door-to-door sales requirements do not apply to a transaction if the transaction is the result of a written change order; the change order must be agreed to by the buyer and the seller and must be a part of a transaction under a contract

previously signed by the buyer and the seller. Further, the buyer must furnish the seller a separate, personal statement that is dated, signed in the buyer's handwriting, generally describes the change order, and expressly acknowledges and waives the right to cancel the change order within specified time periods.

The bill also clarifies that, in addition to transactions conducted and consummated entirely by mail or telephone, the Maryland Door-to-Door Sales Act provisions also do not apply to transactions conducted and consummated by electronic communications. Finally, the bill establishes that the Act does not apply when, among other specified requirements, the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, *including improving the accessibility of the property for individuals who are mobility impaired or otherwise disabled.*

Current Law: 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.

Background: Chapter 485 of 2016 extended the time period during which a buyer in a door-to-door sales transaction for a home improvement contract may cancel the transaction – from three to five days generally and from three to seven days if the buyer is age 65 or older. Chapter 485 also specified the manner in which the seller of a home improvement contract must notify the buyer of the right to cancel a transaction. A home improvement contract seller must obtain the signature of a buyer acknowledging the buyer's right to cancel a transaction within a specified period.

Additional Information

Prior Introductions: None.

Cross File: SB 929 (Senator Astle) - Finance.

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

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Analysis by: Eric Pierce

Direct Inquiries to:
(410) 946-5510
(301) 970-5510