

December 6, 2016

The Honorable Thomas McLain Middleton, Chairman
Senate Finance Committee
Miller Senate Office Building, 2 West Wing
11 Bladen Street
Annapolis, Maryland 21401

The Honorable Dereck E. Davis, Chairman
House Economic Matters Committee
House Office Building, Room 231
6 Bladen Street
Annapolis, Maryland 21401

Dear Chairmen Middleton and Davis:

I respectfully submit to you the attached report pursuant to Chapter 485, Acts of 2016 (House Bill 439), which required the Maryland Department of Labor, in collaboration with the Office of the Attorney General, Consumer Protection Division, to convene a stakeholder workgroup to study the issues related to the door-to-door sales of home improvement services.

If you need any additional information, please feel free to contact Victoria Wilkins, Commissioner of Occupational and Professional Licensing, at (410) 230-6226 or Victoria.Wilkins@maryland.gov.

Best Regards,



Kelly M. Schulz
Secretary

KMS/bgt

cc: David Finneran, Executive Director, Maryland Home Improvement Commission
The Honorable Ben Kramer, Maryland House of Delegates
Chris Shank, Chief Legislative Officer, Office of the Governor
Jeff Tosi, Director of Legislative and Regulatory Affairs, DLLR

Victoria Wilkins, Commissioner, Division of Occupational and Professional Licensing, DLLR

**Report to the
Senate Finance Committee
and the
House Economic Matters Committee**

**Issues Relating to
Door-To-Door Sales
of
Home Improvement Services**

PURPOSE

During the 2016 Maryland General Assembly session, the legislature passed and the Governor Hogan ultimately signed into law Chapter 485, Acts of 2016 (House Bill 439). This legislation made changes to the door-to-door sales act by extending the “cooling off” period to five days (seven days if the person is age 65 or older) when consumers in door-to-door sales transactions for home improvement services may rescind the contract. In addition, the bill required the Maryland Department of Labor, in collaboration with the Consumer Protection Division of the Office of the Attorney General, to convene a stakeholder workgroup to study issues relating to door-to-door sales of home improvement services, including but not limited to the following items:

- (i) a review of complaints that have been made by consumers relating to door-to-door sales of home improvement services; and
- (ii) a review of recommendations made in the 2010 sunset evaluation of the Maryland Home Improvement Commission and the laws that govern door-to-door sales and home improvement contracts

The purpose of the study was to determine what, if any, updates are needed to the laws governing door-to-door sales and home improvement contracts to protect consumers and clarify the requirements for providers of home improvement services.

BACKGROUND

Maryland’s Door-to-Door Sales Act (“the Act”) is a long-standing law put in place to protect consumers from the sales of goods or services in which the seller (or the seller’s representative) personally solicits a sale at a place other than the seller’s place of business. Md. Code Ann., Com. Law § 14-301 through § 14-306. This can include a solicitation made at the invitation by the buyer under certain specified circumstances. The sale of many types of goods and services are covered by the Door-to-Door Sales Act, including the sale of home improvement services.

The new law, which took effect on June 1, 2016, created a lengthier “cooling off” period for all contracts that are governed by the Door-to-Door Sales Act (Maryland Commercial Law Code, Sections 14-301 et seq.) and are for the sale of “home improvement” goods and services as defined in the Maryland Business Regulation § 8-101. Generally, the cooling off period is three days. See Com. Law § 14-302. For home improvement contracts, the new cooling off period is five days and seven days if the consumer is age 65 or older.

Every home improvement contract that is covered under the Door-to-Door Sales Act is required to contain a Notice of Cancellation signed by the consumer. See Com. Law § 14-302(2). The notice informs the consumer of the right to cancel the contract during the cooling off period. A consumer may still cancel the contract if the terms fall under the Door-to-Door Sales Act, even if the contractor failed to provide the Notice of Cancellation. See Com. Law § 14-303.

A home improvement contract is not covered under the Door-to-Door Sales Act if the consumer agreed to the terms of the contract with the contractor at the contractor’s fixed permanent location, or if the consumer initiated contact with the contractor for services connected with a *bona fide* personal emergency (accompanied with a signed statement in the consumer’s handwriting that describes the emergency and explains the need to waive the right to cancel the contract). See Com. Law § 14-301(d)(2).

The Door-to-Door Sales Act is enforced by the Consumer Protection Division of the Office of the Attorney General. In addition, Howard and Montgomery Counties each have their own Office of Consumer Protection where residents may file complaints with the respective county consumer protection office.

WORK GROUP MEETINGS

The Maryland Department of Labor, in conjunction with OAG's Consumer Protection Division, hosted two stakeholders meetings during the 2016 interim. Participants included:

- Rebecca Bowman, Office of Consumer Protection, Howard County
- Robyn Dorsey, Maryland Consumer Rights Coalition
- Michelle Escobar, Office of Consumer Protection, Montgomery County
- David Finneran, Executive Director, Maryland Home Improvement Commission, DLLR
- William Funk, Building Inspections, Cecil County
- Jeffrey Gould, National Association of Insurance Adjusters
- Kathleen Maloney, Maryland Building Industries Association
- David Merrick, National Association of the Remodeling Industry
- Tinna Quigley, Funk & Bolton, PA
- Kelley Ray, AARP
- Steven M. Sakamoto-Wengel, Consumer Protection Counsel for Regulation, Legislation & Policy, OAG
- Joe Smith, Owings Home Services
- Karen S. Straughn, Director, Mediation Unit, Consumer Protection Division, OAG
- Victoria Wilkins, Commissioner of Occupational & Professional Licensing, DLLR
- Staff: Jeff Tosi, Director of Legislative and Regulatory Affairs, DLLR

Meeting #1

July 20, 2016

Maryland Department of Labor

At the first meeting for this workgroup, Jeff Tosi from the Maryland Department of Labor and staff to the workgroup reviewed the workgroup's membership and charge as well as the changes made in the 2016 session. Next, Rebecca Bowman presented an overview of the history of the Door-to-Door Sales Act, which was established in the 1940's and has been revised from time to time over the years. The most recent change (prior to House Bill 439 in 2016) happened in the 1990's.

Ms. Bowman's overview evolved into a roundtable discussion amongst the workgroup members about the Act as it stands now. The discussion centered around the existing law and the effect that the new changes would have on consumers and home improvement contractors. The following points were made during discussions:

- Kathleen Maloney: Enforcement of the Act is a concern. Many contractors are doing the right thing, we are not concerned about them, but are concerned about the bad actors, the contractors who deliberately try to evade the law and place consumers in uncomfortable situations. Also, mall kiosks and home improvement shows were brought up as points of discussion as to what constitutes a door-to-door sale under the Act.
- Karen Straughn: Any contract that is not signed at the seller's place of business falls under the Act. This would include home shows and mall kiosks, unless the mall kiosk happens to be the contractor's place of business.
- Steve Sakamoto-Wengel: Both consumers and contractors need to be educated about the laws, and the rights and responsibilities of both contracting parties.

- Rebecca Bowman: While the law provides an exemption for situations where a consumer requests that the seller come to the home to provide maintenance or repair services, the law further states that if, in the course of the visit, the seller sells additional unrelated goods or services, the contract for those goods or services are covered by the Act.

Jeffrey Gould, who is a licensed public adjuster (Maryland Insurance Administration) and past president of the National Association of Public Adjusters, gave a brief overview of the state's public adjuster licensing requirements and a new issue that has emerged in this industry. After a significant event (fire, natural disaster), unscrupulous individuals prey on low-income or elderly persons in vulnerable situations to either defraud them out of insurance money or force them to use specific contractors, who in turn give the contractor a kick-back.

The meeting concluded with a number of unanswered questions and issues to be discussed at the second meeting:

- How should the state proceed to better educate contractors and consumers?
- How does a change order factor in to the Act's requirements?
- How many complaints have been received regarding Act violations for home improvement services?
- There exists a need for clarity as to what does and does not constitute a door-to-door sale.

Meeting #2

August 15, 2016

Maryland Department of Labor

At this meeting, the workgroup first discussed the results from a query on how many complaints there have been on Act violations for home improvement contracts. The group then re-engaged on the discussion regarding education and outreach.

Review of 2010 Sunset Review

David Finneran, Executive Director of the Maryland Home Improvement Commission, presented an overview of the 2010 MHIC sunset review. There was no mention in the sunset review of any issues regarding the MHIC's applicability to the Door-to-Door Sales Act, the sunset review report did mention that complaints had declined for three straight years. The MHIC is scheduled for another sunset review in 2022.

Overview of Door-To-Door Sales Act Complaints Received

The Consumer Protection Division of the Office of the Attorney General is the recipient of all complaints for violations of the Act. There are four entities that may receive a complaint: the Consumer Protection Division, the Maryland Home Improvement Commission (MHIC) – which forwards any Act complaints to the AG, and the Howard County Office of Consumer Protection; and the Montgomery County Office of Consumer Protection. Below is a summary of the number of complaints received:

- OAG: 16 complaints in the last three years on home improvement contracts that raised issues related to the Door-to-Door Sales Act.
- MHIC: 48 complaints from consumers on home improvement contracts were received then forwarded to the OAG. It is unclear how many of these complaints were valid as they were referred to the OAG so outcomes are not tracked by MHIC.

- Howard County: The Office of Consumer Protection closed 121 complaints filed against home improvement contractors, 60 of these were contracts signed outside of the contractor's place of business.
- Montgomery County: The Office of Consumer Protection received 174 complaints involving home improvement contractors in FY 2016, although it is unclear how many of these complaints would constitute a Door-to-Door Sales Act violation as any violation of the Act may only be a secondary issue and may not be automatically reflected in Montgomery County Office of Consumer Protection's data base. Of these 174 complaints, one was identified as violating the Act.

Conclusions on Complaint Data

It is difficult to draw conclusions across the board on this data other than that – as the workgroup members all agreed – that there does not seem to be an overwhelming number of Door-to-Door Sales Act complaints at any level, compared with the volume of complaints received by the OAG, MHIC, and Howard County and Montgomery County Offices of Consumer Protection. The clearest evidence we can present is that for the last three years, the Office of the Attorney General received sixteen Act complaints against home improvement contractors compared with, in 2016 alone, the MHIC has received over 1,500 home improvement complaints (not involving Door-to-Door Sales Act violations). Based on this data, Door-to-Door Sales Act complaints represent approximately 1 percent of all MHIC complaints received.

Additional Discussion Points

The workgroup then continued the discussion around education and outreach to both home improvement contractors and consumers. Below are the highlights from that discussion:

- Brett Lininger, who represents the National Association of Public Insurance Adjusters, and was a non-workgroup member participant, suggested that the Maryland Department of Labor and the Office of the Attorney General jointly work with interested stakeholders to create a comprehensive Frequently Asked Questions and/or a bulletin regarding rights and responsibilities for when the Act applies to a home improvement contract. Also, better outreach efforts from the state as well as other advocacy groups may result in a reduction of these types of situations in the future.
- Kathleen Maloney suggested that there should be some clarity in the statutory language. Specifically, *apropos* to the workgroup's discussion identifying situations that do not involve a "door-to-door" sale that may actually be applicable under the Act, which is causing confusion with consumers and home improvement contractors. Also, other areas of the Act statute may be outdated or unclear. As an example, she suggested that creating something similar to the Home Builder Rights and Responsibilities for Home Improvement Contracts may bring clarity.
- David Merrick suggested overhauling the entire MHIC licensing program. The workgroup dismissed this suggestion as it was not germane to the workgroup's charge, as outlined in HB 439. The second suggestion was to consider changing Maryland law to expand the Act to apply to all home improvement contracts, including scenarios that currently do not fall under the Act. The majority of workgroup members agreed that this may cause more confusion. Mr. Merrick also suggested that the statute needs to be updated, particularly with an emphasis on predatory sales practices and taking advantage of vulnerable consumers, particularly the elderly.
- Joe Smith suggested that there needs to be a clearer line on what falls under the Act and what does not. As a home improvement contractor who makes every effort to comply with all applicable rules, he

suggested that with a lack of clarity a contractor may unknowingly violate the Act. The workgroup members agreed that there exists some confusion and the Act could benefit from some changes.

COMMENTS PROVIDED AFTER CONCLUSION OF MEETINGS

The work group received the following comments after the conclusion of the meetings, two from David Merrick and one from a member of the public (not a work group member):

- 1) Mr. Merrick: The existing Door to Door Act was written at a time when door to door sales were a primary means of selling goods and services. Times have changed and the majority of home improvement services (and other types of sales covered by the act) are no longer sold in door to door solicitations. The majority of home improvement sales are sold in some manner that is not covered by the act, therefore consumers have no right of rescission or any type of consumer protection other than Caveat Emptor. The current act leaves consumers unprotected.
- 2) Mr. Merrick suggested that the low number of complaints related to the Door-to-Door Sales Act is explained because most sales no longer fall under the restrictions included in the Act. There are complaints coming into the system, they just don't relate to the Act. Consumers are at increased risk due to a lack of laws that protect them in situations not covered by the existing Act.
- 3) Brett Lininger, who represents the National Association of Public Insurance Agents, suggested that any statutory changes incorporate add a provision on a ban on solicitation during a loss producing event for the home improvement contractors performing door-to-door sales, similar to the ban on public adjusters.

CONCLUSIONS AND RECOMMENDATIONS

The workgroup included individuals with a vast amount of experience with Maryland's Door-to-Door Sales Act and based on the evidence presented, there does not seem to be an overwhelming or extraordinary problem with complaints received on violations of the Act. Furthermore, the changes passed by the General Assembly in 2016 will not have an effect yet, so it is impossible to determine the impact these changes will have on the consumer and the home improvement industry.

The work group uncovered a potential need for improvements to the Act. There is a distinct ambiguity on certain sales situations that may or may not fall under the Act's requirements. Members of the work group believe that statutory clarity could improve how the Act is interpreted by consumers and the home improvement industry. Representatives of the Office of the Attorney General and both local Offices of Consumer Protection disagreed with this assessment on statutory ambiguity, so the issue of clarity was not fully resolved. Mr. Merrick also disagreed with this recommendation. He suggested that the Act needs to be expanded to cover additional sales scenarios not currently covered under the Door-to-Door Sales Act. The issue of expanding the Act's applicability was discussed and rejected during meeting #2. Ultimately, the work group members did not reach consensus on statutory changes.

Finally, all workgroup members agreed that better outreach and education by the various entities involved in the work group would assist both consumers and home improvement contractors on the applicability and awareness of the Door-to-Door Sales Act.