

HOUSE BILL No. 4397

March 9, 1999, Introduced by Reps. Switalski, DeHart, Martinez, Baird, Lemmons, Jacobs, Schauer, Dennis, Woodward, Rivet, Bogardus, Pappageorge, Cherry, Wojno, Spade, Vaughn, Scott, Callahan, Gielegem, Minore, Jamnick, Koetje, Hardman, Daniels, Woronchak, Reeves, Hale, Bob Brown, Vear, Sanborn, Richner, Tabor, Hart, Rocca, Brater, Stallworth, DeWeese, Byl, Bishop, O'Neil, Bovin, Thomas, LaForge, Cassis, Mortimer, Toy, Julian, Garcia, Kilpatrick, Hanley and Patterson and referred to the Committee on Insurance and Financial Services.

A bill to amend 1971 PA 227, entitled
"An act to prescribe the rights and duties of parties to home solicitation sales,"
by amending sections 2 and 3 (MCL 445.112 and 445.113).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) Except as provided in subsection (5) ~~—~~ AND in
2 addition to any right otherwise to revoke an offer, a buyer has
3 the right to cancel a home solicitation sale until midnight of
4 the third business day after the day on which the buyer signs an
5 agreement or offer to purchase ~~—which—~~ THAT complies with this
6 act.

7 (2) Cancellation occurs when the buyer mails or delivers the
8 notice of cancellation ~~—provided for—~~ DESCRIBED in section 3(2)
9 or any other written notice, ~~—or sends a—~~ INCLUDING A WRITTEN

1 NOTICE TRANSMITTED BY E-MAIL, FACSIMILE, OR telegram, to the
2 seller at the address stated in the notice of cancellation.

3 (3) A notice of cancellation or other written notice ~~—, if—~~
4 mailed to the seller ~~—,~~ is given when it is deposited in a mail-
5 box properly addressed and postage prepaid.

6 (4) A written notice or telegram given by the buyer other
7 than the notice of cancellation need not take a particular form
8 and is sufficient if it indicates by any form of written expres-
9 sion the intention of the buyer not to be bound by the home
10 solicitation sale.

11 (5) A buyer may not cancel a home solicitation sale if the
12 buyer requests THAT the seller ~~to~~ provide goods or services
13 without delay because of an emergency, and ALL OF THE FOLLOWING
14 CONDITIONS ARE MET:

15 (a) ~~the~~ THE seller in good faith makes a substantial
16 beginning of performance of the contract before the buyer gives
17 notice of cancellation. ~~—,~~

18 (b) ~~the~~ THE buyer furnishes the seller with a separate
19 dated and signed personal statement in the buyer's handwriting
20 describing the situation requiring immediate remedy and expressly
21 acknowledging and waiving the right to cancel the sale within 3
22 business days. ~~—, and—~~

23 (c) ~~in~~ IN the case of goods, the goods cannot be returned
24 to the seller in substantially as good condition as when received
25 by the buyer.

1 (6) If a home solicitation sale is also subject to the
2 debtor's right to rescind certain transactions, the buyer may
3 proceed either under those provisions or under this section.

4 Sec. 3. (1) ~~In~~ UNLESS THE BUYER IN a home solicitation
5 sale ~~, unless the buyer~~ requests THAT the seller ~~to~~ provide
6 goods or services without delay in an emergency, the seller shall
7 present to the buyer and obtain the buyer's signature ~~to~~ ON a
8 written agreement or offer to purchase ~~which designates as the~~
9 ~~date of the transaction the date on which the buyer actually~~
10 ~~signs.~~ THAT IS WRITTEN IN A CLEAR AND COHERENT MANNER USING
11 WORDS AND PHRASES OF COMMON AND EVERYDAY MEANING, APPROPRIATELY
12 DIVIDED AND CAPTIONED BY ITS VARIOUS SECTIONS, AND INCLUDING ALL
13 OF THE FOLLOWING:

14 (A) ~~The agreement or offer to purchase shall contain a~~ THE
15 NAME, ADDRESS, AND TELEPHONE NUMBER OF THE SELLER.

16 (B) AN ITEMIZATION OF ALL CHARGES ARISING FROM THE TRANSAC-
17 TION, INCLUDING ANY HANDLING, SHIPPING, OR DELIVERY FEES.

18 (C) THE DATE OF THE TRANSACTION.

19 (D) A DETAILED DESCRIPTION OF THE GOODS OR SERVICES BEING
20 PROVIDED BY THE SELLER IN ACCORDANCE WITH THE TRANSACTION.

21 (E) A STATEMENT SPECIFYING THAT THE DATE OF THE TRANSACTION
22 IS THE DATE UPON WHICH THE BUYER ACTUALLY SIGNS THE WRITTEN
23 AGREEMENT OR OFFER TO PURCHASE.

24 (F) A statement substantially as follows in immediate prox-
25 imity to the space reserved in the agreement or offer to purchase
26 for the signature of the buyer:

1 "You, the buyer, may cancel this transaction at any time
2 prior to midnight of the third business day after the date of
3 this transaction. See the attached notice of cancellation form
4 for an explanation of this right."

5 (2) The seller shall attach to the copy or cause to be
6 printed on the reverse side of the written agreement or offer to
7 purchase retained by the buyer a notice of cancellation in dupli-
8 cate which shall appear as follows:

9

10 "notice of cancellation

11 _____ (enter date of transaction)
12 (date)

13 You may cancel this transaction, without any penalty or
14 obligation, within 3 business days from the above date.

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

21 If you cancel, you must make available to the seller at your
22 residence, in substantially as good condition as when received,
23 any goods delivered to you under this contract or sale; or you
24 may if you wish, comply with the instructions of the seller
25 regarding the return shipment of the goods at the seller's
26 expense and risk.

27 If you do make the goods available to the seller and the
28 seller does not pick them up within 20 days of the date of your

1 notice of cancellation, you may retain or dispose of the goods
 2 without any further obligation. If you fail to make the goods
 3 available to the seller or if you agree to return the goods to
 4 the seller and fail to do so, then you remain liable for per-
 5 formance of all obligations under the contract.

6 To cancel this transaction, mail or deliver a signed and
 7 dated copy of this cancellation notice or any other written
 8 notice, or send a telegram to (name of seller), at (address of
 9 seller's place of business) not later than midnight on

10

11 _____
 12 (date)
 13 I hereby cancel this transaction.

14 _____
 15 (date)

16 _____
 17 (buyer's signature) "

18 (3) The notices required by this section shall be in not
 19 less than 10-point bold type and shall be 2 points larger than
 20 the text of the contract. A written agreement or offer to pur-
 21 chase and the notice of cancellation attached to the agreement or
 22 offer shall be written in the same language as that used in any
 23 oral presentation ~~which~~ THAT was given to facilitate sale of
 24 the goods or services. The seller shall enter on the blanks in
 25 the notice of cancellation the date of transaction, which is the
 26 date the buyer signs the written agreement, and the date for
 27 mailing the notice of cancellation. An error in entering this
 28 information ~~shall~~ DOES not diminish the buyer's rights under
 29 this act.

30 (4) Until the seller has complied with this section, the
 31 buyer may cancel the home solicitation sale by notifying the

1 seller in any manner and by any means of his or her intention to
2 cancel.