

HOUSE BILL No. 4645

May 6, 1999, Introduced by Reps. Rick Johnson, Wojno, Richner, Patterson, Vear and Hale 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), in addi-
2 tion to any right otherwise to revoke an offer, a buyer has the
3 right to cancel a home solicitation sale until midnight of the
4 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. THE SELLER IN A HOME SOLICITATION SALE SHALL NOT ACQUIRE
7 PAYMENT BY HAVING A COURIER OR OTHER THIRD PARTY PICK UP THE
8 BUYER'S PAYMENT AT THE BUYER'S RESIDENCE UNTIL AFTER THE BUYER'S
9 RIGHT-TO-REVOKE PERIOD PRESCRIBED BY THIS ACT HAS EXPIRED.

1 (2) Cancellation occurs when the buyer mails or delivers the
2 notice of cancellation provided for in section 3(2) or any other
3 written notice, or sends a telegram, to the seller at the address
4 stated in the notice of cancellation.

5 (3) A notice of cancellation or other written notice, if
6 mailed to the seller, is given when it is deposited in a mailbox
7 properly addressed and postage prepaid.

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

13 (5) A buyer may not cancel a home solicitation sale if the
14 buyer requests the seller to provide goods or services without
15 delay because of an emergency, and ALL OF THE FOLLOWING CONDI-
16 TIONS ARE MET:

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

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

25 (c) ~~in~~ IN the case of goods, the goods cannot be returned
26 to the seller in substantially as good condition as when received
27 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 a home solicitation sale, unless the buyer
5 requests the seller to provide goods or services without delay in
6 an emergency, the seller shall present to the buyer and obtain
7 the buyer's signature to a written agreement or offer to purchase
8 ~~which~~ THAT designates as the date of the transaction the date
9 on which the buyer actually signs.

10 The agreement or offer to purchase shall contain a statement
11 substantially as follows in immediate proximity to the space
12 reserved in the agreement or offer to purchase for the signature
13 of the buyer:

14 "You, the buyer, may cancel this transaction at any time
15 prior to midnight of the third business day after the date of
16 this transaction. See the attached notice of cancellation form
17 for an explanation of this right. ADDITIONALLY, THE SELLER IS
18 PROHIBITED FROM HAVING A COURIER OR OTHER THIRD PARTY PICK UP
19 YOUR PAYMENT AT YOUR RESIDENCE BEFORE THE END OF THE
20 3-BUSINESS-DAY PERIOD IN WHICH YOU CAN CANCEL THE TRANSACTION."

21 (2) The seller shall attach to the copy or cause to be
22 printed on the reverse side of the written agreement or offer to
23 purchase retained by the buyer a notice of cancellation in dupli-
24 cate ~~which~~ THAT shall appear as follows:

25

26 "notice of cancellation

27 (enter date of transaction)

1 (date)
2 You may cancel this transaction, without any penalty or
3 obligation, within 3 business days from the above date.

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

10 If you cancel, you must make available to the seller at your
11 residence, in substantially as good condition as when received,
12 any goods delivered to you under this contract or sale; or you
13 may if you wish, comply with the instructions of the seller
14 regarding the return shipment of the goods at the seller's
15 expense and risk.

16 If you do make the goods available to the seller and the
17 seller does not pick them up within 20 days of the date of your
18 notice of cancellation, you may retain or dispose of the goods
19 without any further obligation. If you fail to make the goods
20 available to the seller or if you agree to return the goods to
21 the seller and fail to do so, then you remain liable for per-
22 formance of all obligations under the contract.

23 To cancel this transaction, mail or deliver a signed and
24 dated copy of this cancellation notice or any other written
25 notice, or send a telegram to (name of seller), at (address of
26 seller's place of business) not later than midnight on
27

1 _____
 2 (date)
 3 I hereby cancel this transaction.
 4 _____
 5 (date)

6
 7 _____ (buyer's signature) "
 8 (3) The notices required by this section shall be in not
 9 less than 10-point bold type and shall be 2 points larger than
 10 the text of the contract. A written agreement or offer to pur-
 11 chase and the notice of cancellation attached to the agreement or
 12 offer shall be written in the same language as that used in any
 13 oral presentation ~~which~~ THAT was given to facilitate sale of
 14 the goods or services. The seller shall enter on the blanks in
 15 the notice of cancellation the date of transaction, which is the
 16 date the buyer signs the written agreement, and the date for
 17 mailing the notice of cancellation. An error in entering this
 18 information shall not diminish the buyer's rights under this
 19 act.

20 (4) Until the seller has complied with this section, the
 21 buyer may cancel the home solicitation sale by notifying the
 22 seller in any manner and by any means of his or her intention to
 23 cancel.