

House sub. S.F. 329 for H. 7. 617 - 5/2/73 (1118)

SENATE FILE 329

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(Fitzgerald)

FILED MAR 6 1973
S. Commerce 3/7/73 Pass 4/4

Senate File 329
Rodgers, Chairman
Rabedeaux
Priebe

Passed Senate, Date 4-23-73 (965) Passed House, Date 5-2-73 (1118)
Vote: Ayes 46 Nays 0 Vote: Ayes 87 Nays 1
Approved 5-15-73

A BILL FOR

1 An Act relating to home solicitation sales and providing
2 penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. DEFINITIONS. As used in this
2 Act, unless the context otherwise requires:

3 1. "Home solicitation sale" means a sale, lease, or rental
4 of consumer goods or services with a purchase price of twenty-
5 five dollars or more, whether under single or multiple
6 contracts, in which the seller or his representative personally
7 solicits the sale, including those in response to or following
8 an invitation by the buyer, and the buyer's agreement or offer
9 to purchase is made at a place other than the place of business
10 of the seller. Home solicitation sale does not include a
11 transaction:

12 a. Made pursuant to prior negotiations in the course of
13 a visit by the buyer to a retail business establishment having
14 a fixed permanent location where the goods are exhibited or
15 the services are offered for sale on a continuing basis.

16 b. In which the consumer is accorded the right of rescision
17 by the provisions of the Consumer Credit Protection Act, title
18 fifteen (15) United States Code section one thousand six hun-
19 dred thirty-five (1635), or regulations issued pursuant to
20 this Act.

21 c. In which the buyer has initiated the contact and the
22 goods or services are needed to meet a bona fide immediate
23 personal emergency of the buyer, and the buyer furnishes the
24 seller with a separate dated and signed personal statement
25 in the buyer's handwriting describing the situation requiring
26 immediate remedy and expressly acknowledging and waiving the
27 right to cancel the sale within three business days.

28 d. Conducted and consummated entirely by mail or telephone;
29 and without any other contact between the buyer and the seller
30 or its representative prior to delivery of the goods or per-
31 formance of the services.

32 e. In which the buyer has initiated the contact and
33 specifically requested the seller to visit his home for the
34 purpose of repairing or performing maintenance upon the buyer's
35 personal property. If in the course of such a visit, the

1 seller sells the buyer the right to receive additional services
2 or goods other than replacement parts necessarily used in
3 performing the maintenance or in making the repairs, the sale
4 of those additional goods or services would not fall within
5 this exclusion.

6 f. Pertaining to the sale or rental of real property,
7 to the sale of insurance or to the sale of securities or com-
8 modities by a broker-dealer registered with the securities
9 and exchange commission.

10 2. "Consumer goods or services" means goods or services
11 purchased, leased, or rented primarily for personal, family,
12 or household purposes, including courses of instruction or
13 training regardless of the purpose for which they are taken.

14 3. "Seller" means any person engaged in the door-to-door
15 sale of consumer goods or services.

16 4. "Place of business" means the main or permanent branch
17 office or local address of a seller.

18 5. "Purchase price" means the total price paid or to be
19 paid for the consumer goods or services, including all in-
20 terest and service charges.

21 6. "Business day" means any calendar day except Saturday,
22 Sunday, or public holiday, including holidays observed on
23 Mondays.

24 Sec. 2. NEW SECTION. CONTRACT. Every seller shall furnish
25 the buyer with a fully completed receipt or copy of any
26 contract pertaining to a home solicitation sale at the time
27 of its execution, which is in the same language as that
28 principally used in the oral sales presentation and which
29 shows the date of the transaction and contains the name and
30 address of the seller, and in immediate proximity to the space
31 reserved in the contract for the signature of the buyer or
32 on the front page of the receipt if a contract is not used
33 and in bold face type of a minimum size of ten points, a
34 statement in substantially the following form:

35 "You, the buyer, may cancel this transaction at any time

1 prior to midnight of the third business day after the date
2 of this transaction. See the attached notice of cancellation
3 form for an explanation of this right."

4 Sec. 3. NEW SECTION. CANCELLATION. Every seller shall
5 furnish each buyer, at the time he signs the home solicita-
6 tion sales contract or otherwise agrees to buy consumer goods
7 or services from the seller, a completed form in duplicate,
8 captioned "Notice of Cancellation", which shall be attached
9 to the contract or receipt and easily detachable, and which
10 shall contain in ten point bold face type the following in-
11 formation and statements in the same language as that used
12 in the contract:

13 NOTICE OF CANCELLATION

14 [enter date of transaction]

15 (Date)

16 You may cancel this transaction, without any penalty or
17 obligation, within three business days from the above date.

18 If you cancel, any property traded in, any payments made
19 by you under the contract or sale, and any negotiable instru-
20 ment executed by you will be returned within ten business
21 days following receipt by the seller of your cancellation
22 notice, and any security interest arising out of the
23 transaction will be cancelled.

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

30 If you do not agree to return the goods to the seller or
31 if the seller does not pick them up within twenty days of
32 the date of your notice of cancellation, you may retain or
33 dispose of the goods without any further obligation.

34 To cancel this transaction, mail or deliver a signed and
35 dated copy of this cancellation notice or any other written

1 notice, or send a telegram, to [Name of seller], at [address
2 of seller's place of business] not later than midnight of

3 _____.

4 (Date)

5 I hereby cancel this transaction.

6 _____

7 (Date)

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(Buyer's signature)

10 Sec. 4. NEW SECTION. DUTIES OF SELLER. A seller shall:

11 1. Furnish two copies of the notice of cancellation to
12 the buyer, and complete both copies by entering the name of
13 the seller, the address of the seller's place of business,
14 the date of the transaction, and the date, not earlier than
15 the third business day following the date of the transaction,
16 by which the buyer may give notice of cancellation.

17 2. Not include in any contract or receipt any confession
18 of judgment or any waiver of any of the rights to which the
19 buyer is entitled under this Act including specifically his
20 right to cancel the sale in accordance with the provisions
21 of this Act.

22 3. Inform each buyer orally, at the time he signs the
23 contract or purchases the goods or services, of his right
24 to cancel.

25 4. Not misrepresent in any manner the buyer's right to
26 cancel.

27 5. Honor any valid notice of cancellation by a buyer and
28 within ten business days after the receipt of notice shall
29 refund all payments made under the contract or sale, return
30 any goods or property traded in, in substantially as good
31 condition as when received by the seller, and cancel and
32 return any negotiable instrument executed by the buyer in
33 connection with the contract or sale and take any action
34 necessary or appropriate to terminate promptly any security
35 interest created in the transaction.

1 6. Not negotiate, transfer, sell, or assign any note or
2 other evidence of indebtedness to a finance company or other
3 third party prior to midnight of the seventh business day
4 following the day the contract was signed or the goods or
5 services were purchased.

6 7. Within ten business days of receipt of the buyer's
7 notice of cancellation notify him whether the seller intends
8 to repossess or to abandon any shipped or delivered goods.

9 Sec. 5. NEW SECTION. EFFECT ON INDEBTEDNESS. Rescission
10 of any contract pursuant to this Act or the failure to pro-
11 vide a copy of the contract to the buyer as required by this
12 Act shall void any contract, note, instrument, or other evi-
13 dence of indebtedness executed or entered into in connection
14 with the contract and shall constitute a complete defense
15 in any action based on the contract, note, instrument or other
16 evidence of indebtedness brought by the seller, his successors
17 or assigns unless a successor or assignee of the seller after
18 the seventh business day following the day the contract was
19 signed has detrimentally relied upon a representation of the
20 buyer that the contract has not been rescinded. This section
21 shall not affect the rights of holders in due course of checks
22 made by the buyer.

23 Sec. 6. NEW SECTION. PENALTY. Any seller who violates
24 the provisions of this Act shall be guilty of a misdemeanor.

25 EXPLANATION

26 This bill provides a three day "cooling-off" period for
27 cancellation of home solicitation sales in excess of \$25.

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S-369

1 Amend Senate File 329, page 3, line 7, by inserting
2 after the word "insurance" the words "and prepaid health
3 service plans,".

S-369 Filed
April 11, 1973

By McCARTNEY

ad. apte 4/11/73

S-417

1 Amend Senate File 329, page 3, line 14, by adding
2 after the word "person" the word "primarily".

S-417 Filed
April 19, 1973

By HULTMAN

*Withdrawn
4/19/73*

S-421

1 Amend Senate File 329 as follows:
2 1. Page 2, line 27, by striking the word "three"
3 and inserting in lieu thereof the word "five".
4 2. Page 4, line 1, by striking the word "third"
5 and inserting in lieu thereof the word "fifth".
6 3. Page 4, line 17, by striking the word "three"
7 and inserting in lieu thereof the word "five".
8 4. Page 5, line 15, by striking the word "third"
9 and inserting in lieu thereof the word "fifth".

S-421 Filed and lost
April 23, 1973

By SCHWIEGER and DODERER

S-419

1 Amend Senate File 329 as follows:
2 1. Page 2, lines 3 and 10, by striking the words
3 "Home solicitation sale" and inserting in lieu thereof the
4 words "Door-to-door sale".
5 2. Page 3, line 26, by striking the words "home
6 solicitation sale" and inserting in lieu thereof the words
7 "door-to-door sale".
8 3. Page 4, lines 5 and 6, by striking the words "home
9 solicitation sales" and inserting in lieu thereof the
10 words "door-to-door sales".
11 4. Page 1, line 1, by striking the words "home soli-
12 citation sales" and inserting in lieu thereof the words
13 "door-to-door sales".

S-419 Filed and adopted
April 23, 1973

By McCARTNEY