

Date of Hearing: May 27, 2020

ASSEMBLY COMMITTEE ON JUDICIARY

Mark Stone, Chair

AB 2471 (Maienschein) – As Amended May 21, 2020

**SUBJECT:** SENIOR CITIZENS: RESCISSION OF CONTRACTS

**KEY ISSUE:** SHOULD SENIOR CITIZENS BE GIVEN AN ADDITIONAL TWO DAYS TO REVIEW, EVALUATE, AND POSSIBLY RESCIND CERTAIN CONTRACTS THAT ARE ASSOCIATED WITH INCREASED RISK OF UNFAIR BUSINESS PRACTICES?

**SYNOPSIS**

*This bill, sponsored by the California District Attorneys Association and the San Diego County District Attorney, seeks to protect elderly consumers from high pressure sales tactics and complex contracts by extending the right to cancel certain contracts for people 65 years of age or older from three business days to five business days. The bill applies to specific contracts that have an increased risk of unfair business practices: 1) home solicitation contracts; 2) home improvement contracts; 3) Property Assessed Clean Energy (PACE) assessment contracts; 4) service or repair contracts; and 5) seminar sales contracts. California law already provides a three-day right to cancel these contracts for all consumers, but the sponsors report a significantly greater risk to senior citizens who are entering into these contracts. The author argues that because of the increased financial and cognitive vulnerability of some senior citizens, additional consumer protections are necessary. This bill extends the right to cancel these types of contracts from three days to five days for individuals age 65 years and older. The bill is supported by California Retired Teachers Association, the Association of California Caregiver Resource Centers, California Association of Realtors, and a number of nonprofit organizations that serve elderly and indigent populations. It has no opposition.*

**SUMMARY:** Extends, from three to five business days, the right to cancel certain consumer contracts for persons 65 years of age and older. Specifically, **this bill:**

- 1) Defines a senior citizen as an individual who is 65 years of age or older.
- 2) Extends the buyer's right to cancel a home improvement contract to five business days if the buyer is a senior citizen. Prescribes the form and content of a notice of this right to cancel.
- 3) Extends the buyer's right to cancel a service and repair contract to five business days if the buyer is a senior citizen, unless specified emergency conditions exist. Prescribes the form and content of a notice of this right to cancel.
- 4) Extends the buyer's right to cancel a home solicitation contract to midnight of the fifth business day after the contract or offer is signed if the buyer is a senior citizen. Prescribes the form and content of a notice of this right to cancel.
- 5) Extends the buyer's right to cancel a seminar sales solicitation contract or offer to midnight of the fifth business day after the contract or offer is signed if the buyer is a senior citizen. Prescribes the form and content of a notice of this right to cancel.

- 6) Extends a senior citizen property owner's right to cancel a Property Assessed Clean Energy (PACE) assessment contract to within five business days of the latest of (a) the date on which the contract was signed, (b) the date on which the property owner received a statutorily-prescribed Financing Estimate or Disclosure, or (c) the date on which the property owner received the notice of their right to cancel. Prescribes the form and content of a notice of this right to cancel.
- 7) Applies the extended right to cancel set forth in 2) through 6) to contracts entered into on or after January 1, 2021.

**EXISTING LAW:**

- 1) Provides that a contract is extinguished by its rescission. (Civil Code Section 1688.)
- 2) Regulates home improvement contractors and home improvement contracts. (Business and Professions Code Sections 7150-7170.)
- 3) Provides various definitions of a "home improvement contract." (Business and Professions Code Section 7159.)
- 4) Prescribes the form and content of a notice of the buyer's right to cancel a home improvement contract within three business days. (Business and Professions Code Section 7159 (e)(6).)
- 5) Defines "service and repair contract" as an agreement between a homeowner or tenant and a contractor for a home improvement (a) valued at \$750 or less, (b) for which the buyer initiated the contact with the contractor, (c) for which no payment is due until the work is completed, and (d) under which only good or services that are reasonably necessary are provided. (Business and Professions Code Section 7159.10 (a).)
- 6) Prescribes the form and content of a notice of the buyer's right to cancel a service and repair contract within three business days if any of the conditions (a)-(d) in (5) are not met. (Business and Professions Code Section 7159.10 (e)(12).)
- 7) Regulates home solicitation contracts. (Civil Code Sections 1689.5-1689.14.)
- 8) Defines "home solicitation contract or offer" as a contract or offer that is made at a place other than business premises, for the sale, lease, or rental of goods and/or services, in an amount of \$25 or more. (Civil Code Section 1689.5 (a).)
- 9) Provides buyers the right to cancel a home solicitation contract or offer until midnight of the third business day after the contract or offer is signed. (Civil Code Sections 1689.6 (a).)
- 10) Prescribes the form and content of the notice of the right to cancel a home solicitation contract or offer. (Civil Code Section 1689.7.)
- 11) Provides that the three-day right to cancel a home solicitation contract or offer may be waived by the buyer under circumstances requiring emergency repairs that are necessary for the immediate protection of persons or real or personal property. (Civil Code Section 1689.13.)

- 12) Defines “seminar sales solicitation contract or offer” as a contract or offer made using selling techniques in a seminar setting, for the sale, lease, or rental of goods and/or services in an amount of \$25 or more. (Civil Code Section 1689.24.)
- 13) Provides buyers the right to cancel a seminar sales solicitation contract or offer until midnight of the third business day after the contract or offer is signed. (Civil Code Sections 1689.20, 1689.21.)
- 14) Regulates contractual assessments, including PACE financing, repaid through property taxes. (Streets and Highways Code Sections 5898.10-5899.4, 5900-5954.)
- 15) Requires property owners to receive a notice of their right to cancel a PACE assessment contract within three business days of the latest of (a) the date on which the contract was signed, (b) the date on which they received a statutorily-prescribed Financing Estimate or Disclosure, or (c) the date on which they received the notice of their right to cancel. (Streets and Highways Code Sections 5898.16, 5898.17.)

**FISCAL EFFECT:** As currently in print this bill is keyed non-fiscal.

**COMMENTS:** AB 2471 seeks to address consumer protection concerns by extending the right to cancel certain contracts for people of 65 years of age or older. Specifically addressed in this bill are home solicitation contracts, home improvement contracts, PACE assessment contracts, service or repair contracts, and seminar sales contracts. Current law already allows a consumer three business days to cancel these types of contracts. This bill would expand this right to cancel from three to five business days for older consumers to take into consideration their increased vulnerability to financial exploitation. In support of the bill, the author writes:

AB 2471 extends the right to cancel certain contracts for persons 65 years of age or older from three (3) business days to five (5) business days. ... This modest extension of time will help alleviate some of the pressure felt during sales presentations and allow for a more measured and informed choice, while protecting the ability of individuals and companies to negotiate and enter into mutually beneficial contracts.

Elderly consumers are at great financial risk when they enter contracts in which they do not fully understand according to National Association of Area Agencies on Aging and the San Diego County District Attorney’s Office of Economic Crimes Division/Consumer Protection Unit. Many times, seniors sign contracts due to high-pressure sales tactics or they sign despite not fully comprehending the difference between the verbal presentation and the actual terms of the written contract. These contracts can have dire consequences, not only financially, but also psychologically for seniors who unknowingly place their home – their largest financial asset – at risk to foreclosure due to assessments or liens.

***Under existing law there is a right to cancel for specified contracts.*** California law has specifically provided all consumers with a three-day right to cancel for the following types of contracts: 1) home solicitation contracts; 2) home improvement contracts; 3) “PACE” assessment contracts; 4) service or repair contracts; and 5) seminar sales contracts. These transactions, in which the consumer is directly engaging with the contractor, require a higher level of contractual and financial competency on the part of the consumer. These transactions also often occur in non-traditional business environments (i.e., the consumer’s home or seminars) and may involve high-pressure or intimidating sales tactics. Because of the typically

non-traditional business setting in which these contracts are often negotiated, there is an increased risk of unfair or predatory business practices. These factors when combined make it much more likely that a consumer will enter into a contract that they misinterpret, do not fully understand, or would simply not choose to enter under normal circumstances. Further, several of these contract types use the consumer's home as security and may open up the homeowner both to significant financial obligation and potential loss of their home through foreclosure. As a result, the Legislature has provided additional consumer protections in the form of a three-day right to cancel these contracts. The goal of these rights to cancel is to provide consumers with the opportunity to review and reevaluate the terms of the contract before fully committing. To ensure the right to cancel is meaningful, California law requires these contractors to provide notice to buyers of their right to cancel.

Similarly, federal law protects consumers with a three-day right to cancellation for any federally-insured loan used to finance home improvement (Truth in Lending Act of 1968).

***Additional consumer protections needed for senior citizens.*** Current law gives all consumers the same three-day period to review and cancel these contracts, which the author argues does not adequately take into consideration the differing needs and abilities of consumers 65 years of age or older. This bill's proposed expansion of the right to cancel, as with the other laws protecting elders from potential financial abuse, reflects the fact that some senior citizens may have difficulty understanding complex financial transactions, may be vulnerable to high pressure sales tactics, particularly if they occur in the senior's home, and may need more time to consult with family members or others about the implications of their financial decisions. Needless to say, many senior citizens have a better understanding of financial transactions than many younger consumers, but it is well-documented that advanced age is associated with changes in cognitive ability and this may affect their capacity to understand and evaluate complex contracts. Justice in Aging, a national non-profit legal advocacy organization, specifically cites concerns about transactions or agreements that are damaging to elderly clients, stating that "rescission or a reversal can be sought when your client was 'induced' into a contract by a misrepresentation or undue influence by the perpetrator or if the client lacked necessary capacity at the time of the transaction." (Justice in Aging, *Financial Exploitation of Older Adults*, (2018), <https://www.justiceinaging.org/wp-content/uploads/2018/11/California-Financial-Exploitation-Guide.pdf>)

One of the sponsors of this bill, the San Diego County District Attorney, reports a rash of elder abuse cases resulting from the contract types named in this bill. The victims in these cases entered into contracts which they did not fully understand or were the result of unfair business practices, including high-pressure sales tactics or intentional miscommunication of the terms of the written contract. By providing an additional two days for senior citizens to consult with family or other advisors, this bill should decrease the likelihood that senior consumers will experience the negative financial impacts of entering into damaging, ill-advised contracts.

***This bill is consistent with previous legislative efforts to protect vulnerable seniors.*** California legislation has previously addressed similar concerns about the vulnerability of older consumers in the Reverse Mortgage Elder Protection Act of 2009. (AB 329 (Feuer), Chap. 236 Stats. 2009.) Among other protections, that bill extended the right of senior citizen, reverse mortgage borrowers to rescind the agreement from three days to 30 days. Similarly, seniors 65 years of age or older have a 30-day examination period in which to cancel an insurance contract. (Insurance Code section 786.) California also recognizes the vulnerability of this population by

providing enhanced damages or penalties for unfair business practices perpetrated against senior citizens. (Civil Code Section 1780 (b)(1); Business & Professions Code section 17206.1 (a) (1); Business & Professions Code Section 7159.2 (e).) Additionally, the Elder Abuse and Dependent Adult Civil Protection Act also recognizes and guards against abuse, including financial abuse, of elderly and dependent adults. (*See Welfare and Institutions Code Section 15600 et seq.*)

**ARGUMENTS IN SUPPORT:** In support of the bill, the San Diego County District Attorney writes:

Home improvement and PACE assessment contracts, in particular, involve the largest financial asset many senior citizens have – their home – which can be placed at risk or even lost to foreclosure as a result of contracts which were misrepresented or misunderstood. The California State Licensing Board (“CSLB”), which is tasked with protecting consumers by licensing and regulating the state’s construction industry, keeps track of complaints involving consumers 65 years old or older. According to CSLB statistics, in 2018, there were 12,775 home improvement complaints filed with the Board. Of that total number, 2,057 complaints were filed by consumers who checked the box ‘over 64’ on the complaint form. Thus, senior citizens represented approximately 16% of home improvement contract complainants. ... These numbers demonstrate, at a minimum, dissatisfaction or financial injury sufficient to cause the senior citizen, or their representative, to file a complaint.

Senior citizens have also suffered devastating consequences as a result of ill-advised PACE assessment contracts. Last year, our office, as a member of a statewide task force, sued Renovate America, Inc., one of California’s largest PACE administrators, for unfair business practices and false advertising. As part of the settlement of that civil law enforcement action, Renovate America agreed to certain injunctive provisions specifically designed to protect senior citizens, including an extended right to cancel for a number of energy efficient home improvement projects from three (3) business days to five (5) business days. AB 2471 simply codifies what is already being done to protect seniors from aggressive sales tactics before it is too late.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California District Attorneys Association (co-sponsor)  
 San Diego County District Attorney (co-sponsor)  
 Ageless Alliance  
 Alzheimer’s Association - San Diego  
 American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO  
 Association of California Caregiver Resource Centers  
 California Association of Realtors  
 California Low-Income Consumer Coalition  
 California Retired Teachers Association  
 Center for Public Interest Law, University of San Diego School of Law  
 Consumer Attorneys of California  
 Housing and Economic Rights Advocates  
 International Network for The Prevention of Elder Abuse  
 Los Angeles City Attorney Michael Feuer

**Opposition**

None on file

**Analysis Prepared by:** Emily Wonder and Jith Meganathan / JUD. / (916) 319-2334