
THIRD READING

Bill No: AB 2471
Author: Maienschein (D)
Amended: 8/25/20 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 9-0, 7/30/20

AYES: Jackson, Borgeas, Durazo, Lena Gonzalez, Melendez, Monning, Stern,
Umberg, Wieckowski

ASSEMBLY FLOOR: 78-0, 6/10/20 - See last page for vote

SUBJECT: Senior citizens: rescission of contracts

SOURCE: California District Attorneys Association
San Diego County District Attorney

DIGEST: This bill provides senior citizens with a five-day right to cancel various contracts and agreements.

Senate Floor Amendments of 8/25/20 address potential chaptering out issues raised by AB 1551 (Arambula, 2020), which also makes changes to Section 5898.17 of the Streets and Highways Code.

ANALYSIS:

Existing law:

- 1) Defines a “home improvement contract” to include an agreement between a contractor and an owner or between a contractor and a tenant for the performance of a home improvement, or an agreement between a salesperson and an owner or a tenant, which provides for the sale, installation, or furnishing of home improvement goods or services, as specified. (Bus. & Prof. Code § 7159(b).)

- 2) Identifies the projects for which a home improvement contract is required, outlines the contract requirements, and lists the items that shall be included in or attached to the contract. (Bus. & Prof. Code § 7159.)
- 3) Affords consumers the right to cancel home improvement contracts within three days, as specified. (Bus. & Prof. Code § 7159.)
- 4) Governs the use and contents of “service and repair contracts,” which are defined as agreements between contractors or salespeople for contractors, as specified, and homeowners or tenants, for the performance of home improvements, as defined. (Bus. & Prof. Code § 7159.10.)
- 5) Requires, except as provided, contractors or their salespeople to include contractual terms that afford consumers the right to cancel service and repair contracts any time before a signed contract is received by the consumer or before works begins, or within three days of signing a normal service and repair contract or within seven days in the event of certain emergency conditions, where the following conditions are met:
 - a) the contract price is above \$750;
 - b) the consumer did not initiate the contract with the contractor;
 - c) the contractor sold the consumer goods or services beyond those reasonably necessary to take care of the underlying problem; or
 - d) the payment was due or the contractor accepted any money before the work was complete. (Bus. & Prof. Code § 7159.10(e)(12).)
- 6) Regulates a “home solicitation contract or offer,” defined to mean any contract for the sale, lease, or rental of goods or services or both, made at other than appropriate trade premises in an amount of \$25 or more, including any interest or service charges. It does not include any contract under which the buyer is afforded certain federal rights to rescind. (Civ. Code § 1689.5(a).)
“Appropriate trade premises” means premises where either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises. (Civ. Code § 1689.5(b).)
- 7) Provides a buyer, except as provided, and in addition to any other right to revoke, the right to cancel a home solicitation contract or offer until midnight of the third business day after the buyer signs a compliant agreement or offer to purchase or after the buyer receives a signed and dated copy of the contract or offer to purchase, as specified. (Civ. Code § 1689.6(a).) The right to rescind

the contract must be clearly disclosed in the underlying contract or offer. (Civ. Code § 1689.7.)

- 8) Provides the terms under which a seminar sales solicitation contract can be entered into. (Civ. Code § 1689.20 et seq.) “Seminar sales solicitation contract or offer” means any contract for the sale, lease, or rental of goods or services or both, made using selling techniques on premises other than the residence of the buyer in an amount of \$25 or more, including any interest or service charges. “Seminar sales solicitation contract” does not include any contract under which the buyer has certain federal rights to rescission.
- 9) Provides the buyer, in addition to any other right to revoke an offer, the right to cancel a seminar sales solicitation contract or offer until midnight of the third “business day” after the day on which the buyer signs a compliant agreement or offer to purchase. (Civ. Code § 1689.20(a).)
- 10) Regulates contractual assessments, including Property Assessed Clean Energy (PACE) financing, as specified. (Streets & Highways Code § 5898.10 et seq.) As a requirement of the financing agreements, property owners must be given the right to cancel the contractual assessments within three days of specified events, including the signing of the assessment, the date the required Financing Estimate and Disclosure is received, or the date notice of the right to cancel was received by the property owner.

This bill:

- 1) Defines a “senior citizen” as an individual who is 65 years of age or older for purposes of the above statutes.
- 2) Extends the three-day right to cancel provisions in the above statutes to five years for customers, buyers, or property owners who are senior citizens and provides the requisite forms and disclosures.
- 3) Makes conforming changes.
- 4) Incorporates amendments made to Section 5898.17 of the Streets and Highways Code by AB 1551 (Arambula, 2020), which will take effect if both bills are enacted and become effective on or before January 1, 2021, amend such section, and this bill is enacted after AB 1551.

Background

Executive Summary

Given the dynamics that are often involved in the formation of certain contracts and the stakes that may be involved, California law affords consumers a number of protections in connection with them. Relevant examples are home improvement contracts, service and repair contracts, home solicitation contracts or offers, seminar sales solicitation contracts or offers, and contractual assessment program agreements. Many of the protections afforded in connection with these contracts are triggered where the contract is not initiated by the consumer or takes place in certain premises that might lead to high-pressure situations. The statutory schemes regulating these contractual arrangements all include a three-day right to cancel the underlying agreement.

This bill amends the above statutes to extend the period to cancel from three days to five days for senior citizens. The new right to cancel afforded in these statutes only applies prospectively to contracts entered into on or after January 1, 2021.

This bill is sponsored by the California District Attorneys Association and the San Diego County District Attorney. There is no known opposition.

Comments

According to the author:

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. Specifically, AB 2471 grants senior citizens an extended right to cancel: 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. 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. These five specific types of contracts were selected for an extended right to cancel because: 1) they can involve high-pressure or intimidating sales tactics -- often taking place in the senior citizen’s home; and/or 2) they involve a large financial commitment which senior citizens are ill equipped to recover from should the financial obligation prove to be too much.

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.

Three-day right to cancel: protecting consumers and property owners

California law meticulously lays out the parameters for the formation of various consumer contracts and provides a number of important protections in connection with these contracts, agreements, and offers. One right afforded consumers in connection with many of these consumer agreements is a statutorily mandated three-day right of rescission. This period provides customers who may have felt pressured during sales pitches or discovered additional information in the wake of purchases or contracting for certain services the right to cancel the agreement without penalty or obligation. The following statutes govern various contractual arrangements, include this three-day right to cancel, and are amended by this bill.

First, Business and Professions Code Section 7159 regulates “home improvement contracts,” which include agreements between contractors and homeowners or between contractors and tenants for the performance of a home improvement. It also includes agreements between salespeople and owners or tenants, which provides for the sale, installation, or furnishing of home improvement goods or services. The law specifically identifies the projects for which a home improvement contract is required, outlines the contract requirements, and lists the items that shall be included in the contract, or may be provided as an attachment. One right afforded customers, with certain exceptions, is the ability to cancel a qualifying home improvement contract within three business days by the methods specified; contractors must notify customers of this right.

Second, Business and Professions Code Section 7159.10 regulates “service and repair contracts,” which are defined as agreements between contractors or salespeople for contractors, as specified, and homeowners or tenants, for the performance of home improvements, as defined. There are clear guidelines for the costs of such contracts and the specific elements that must be included in these contracts. Relevant here, Section 7159.10 provides that service and repair contracts

must make clear that consumers can cancel them at any time before a signed and dated contract is received by the consumer or before the work has begun.

Additionally, the consumer can cancel within three days of signing the contract (seven days under certain emergency conditions) where certain conditions are met, including where the costs rise above a certain level or the consumer is sold unnecessary goods or services or where the consumer did not initiate the contract.

Third, Civil Code Section 1689.5 et seq. regulates “home solicitation contracts or offers,” defined to mean any contract for the sale, lease, or rental of goods or services or both, made at other than appropriate trade premises in an amount of \$25 or more, including any interest or service charges. “Appropriate trade premises” means premises where either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises. (Civ. Code § 1689.5(b).) Similar to above, buyers are afforded the right to cancel home solicitation contracts or offers within three days, as specified, in addition to any other right to revoke.

Fourth, Civil Code Section 1689.20 et seq. provides the terms under which a seminar sales solicitation contract can be entered into. “Seminar sales solicitation contract or offer” means any contract for the sale, lease, or rental of goods or services or both, made using selling techniques on premises other than the residence of the buyer in an amount of \$25 or more. Again, buyers are afforded the right to cancel a seminar sales solicitation contract or offer until midnight of the third “business day” after the day on which the buyer signs a compliant agreement or offer to purchase. (Civ. Code § 1689.20(a).)

Finally, Streets and Highways Code Section 5898.10 et seq. regulates contractual assessments, including PACE financing, as specified. As a requirement of the program, property owners must be given the three-day right to cancel the contractual assessments, including the signing of the assessment.

Extending existing protections for senior citizens

This bill amends the above statutes to provide stronger protections to senior citizens, defined as persons who are 65 years of age or older. The bill extends the three-day right to cancel home improvement contracts, service and repair contracts, home solicitation contracts or offers, seminar sales solicitation contracts or offers, and contractual assessment program agreements to five days for senior citizens. This bill provides for conforming contractual terms and conditions. This extension of the law further protects these older consumers from the inherent pitfalls and consequences of these particular contractual arrangements.

The new five-day right to cancel afforded in these statutes only applies prospectively to contracts entered into on or after January 1, 2021. Therefore, no previously existing contracts should be impacted by the bill.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 8/26/20)

California District Attorneys Association (co-source)
San Diego County District Attorney (co-source)
AFSCME, AFL-CIO
Ageless Alliance
Alzheimer's Association - San Diego
Association of California Caregiver Resource Centers
California Association of Realtors
California Commission on Aging
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
Contra Costa Senior Legal Services
Contractors State License Board
County of San Diego
Housing and Economic Rights Advocates
Institute on Aging
International Network for the Prevention of Elder Abuse
Los Angeles City Attorney Michael Feuer

OPPOSITION: (Verified 8/26/20)

None received

ARGUMENTS IN SUPPORT: The co-sponsor of this bill, the California District Attorneys Association writes: "Home improvement and PACE assessment contracts, in particular, involve the largest financial asset many seniors have – their home – which can be significantly encumbered or even lost to foreclosure as a result of contracts which were either misrepresented or not fully understood by the senior. Extending by two days the opportunity to cancel these specified contracts will alleviate some of the pressure sometimes felt during a sales presentation and allow for a more thoughtful and informed choice while working very little hardship on the companies seeking to enter into these contracts."

ASSEMBLY FLOOR: 78-0, 6/10/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Quirk

Prepared by: Christian Kurpiewski / JUD. / (916) 651-4113

8/26/20 15:05:29

**** END ****