

CONCURRENCE IN SENATE AMENDMENTS

AB 2471 (Maienschein)

As Amended August 25, 2020

Majority vote

SUMMARY:

Extends, from three to five business days, the right to cancel certain consumer contracts for persons 65 years of age and older.

Major Provisions

- 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.

The Senate Amendments:

Add language to address conflicts with AB 1551 (Arambula) of the current legislative session for the purpose of chaptering and several small technical adjustments.

COMMENTS:

This bill 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.

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), Chapter 236 Statutes of 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.*)

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. ... 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.

Arguments in Support:

In support of this 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.

Arguments in Opposition:

None on file

FISCAL COMMENTS:

None

VOTES:

ASM JUDICIARY: 10-0-1

YES: Mark Stone, Gallagher, Chau, Chiu, Gonzalez, Holden, Kalra, Kiley, Obernolte, Reyes

ABS, ABST OR NV: Maienschein

ASSEMBLY FLOOR: 78-0-1

YES: 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, O'Donnell, Obernolte, 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

ABS, ABST OR NV: Quirk

SENATE FLOOR: 39-0-1

YES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Melendez, Mitchell, Monning, Moorlach, Morrell, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Jones

UPDATED:

VERSION: August 25, 2020

CONSULTANT: Emily Wonder and Jith Meganathan / JUD. / (916) 319-2334 FN: 0002789