

HOUSE BILL 542

By Gilmore

AN ACT to amend Tennessee Code Annotated, Title 47,
Chapter 18, Part 7, relative to home solicitation
sales.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-18-702(4), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(4) "Home solicitation sale" means a consumer sale or lease of goods:

(A) In which the seller or a person acting for the seller engages in the personal solicitation of the sale or lease at any residence other than that of the seller, and the buyer's written agreement or offer to purchase or lease is given to the seller or a person acting for the seller at any location; and

(B) Which does not include:

- (1) Cash sales of one thousand dollars (\$1,000) or less;
- (2) A sale or lease made pursuant to a preexisting revolving charge account;
- (3) A sale or lease made pursuant to prior negotiations between the parties;
- (4) Real estate sales or listing agreements;
- (5) Sales of farm animals or produce or similar perishable items;
- (6) Sales or leases of farm equipment, motor vehicles or both;
- (7) Insurance and securities sales or agreements; or
- (8) An agreement to pay a monthly fee for the seller to provide utility, security system or pest prevention services;

SECTION 2. Tennessee Code Annotated, Section 47-18-702, is amended by adding the following language as new, appropriately designated subdivisions:

() "Personal solicitation" means the act of a seller communicating with a buyer in person;

() "Family member" means any person at least eighteen (18) years of age who is a buyer's mother, father, stepmother, stepfather, child, spouse, sibling, foster sibling, stepsibling, grandchild, son-in-law, daughter-in-law, brother-in-law, sister-in-law, father-in-law, or mother-in-law;

() "Caregiver" means any person at least eighteen (18) years of age who is responsible for providing supervision and supplying, or assisting with, basic needs of the buyer;

SECTION 3. Tennessee Code Annotated, Section 47-18-703(1), is amended by deleting subdivision (1) in its entirety and by substituting instead the following language:

(1)

(A) Except as provided in subdivision (5), in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until twelve o'clock (12:00) midnight of the tenth business day after the day on which the buyer signs an agreement, offer to purchase, or receipt which complies with § 47-18-704.

(B)

(i) If the buyer is an elder person as defined in § 47-18-125(d), then the agreement, offer to purchase, or receipt shall be witnessed by a third party at the time of signing.

(ii) The third party shall read aloud to the elder person the information page as described in § 47-18-704(b) prior to the buyer signing the receipt, written agreement, or offer to purchase.

(iii) If the third party is a notary public, then any fee or associated cost shall be charged solely to the seller. Noncompliance with this subdivision (1)(B)(iii) voids the receipt, written agreement, or offer to purchase.

(C) For purposes of this subdivision (1), "third party" means:

- (i) Notary public, not affiliated with the seller;
- (ii) Family member of the buyer; or
- (iii) Caregiver of the buyer.

(D) The reading of the information page by the third party shall not constitute the practice of law.

SECTION 4. Tennessee Code Annotated, Section 47-18-703(2), is amended by deleting subdivision (2) in its entirety and by substituting instead the following language:

(2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the mailing address, fax number, or e-mail address stated on the information page of the receipt, written agreement, or offer to purchase;

SECTION 5. Tennessee Code Annotated, Section 47-18-704, is amended by deleting the section in its entirety and by substituting instead the following language:

(a) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller shall:

(1) Obtain the buyer's signature on a receipt and present the receipt to the buyer if the sale is a cash, check or credit card sale; or

(2) In the case of a credit sale:

(A) Obtain the buyer's signature to a written agreement or offer to purchase which designates as the date of the transaction the date on which the buyer actually signs or makes payment in whole or in part on the written agreement or offer to purchase; and

(B) Present a copy of the signed written agreement or offer to purchase to the buyer immediately upon signature.

(b)

(1) Attached to any receipt, written agreement, or offer to purchase shall be an information page which shall contain only the following information:

(A) The title of the page as the "Information Page";

(B) The total amount of payment or the total amount of any installment payments, or both, as applicable, due under the receipt, written agreement, or offer to purchase by the buyer;

(C) The following cancellation statement:

"If this agreement was solicited at your residence and you do not want the goods or services, you may cancel this agreement by mailing, faxing, or e-mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed, faxed, or e-mailed before twelve o'clock (12:00) midnight of the tenth business day after you sign this agreement. The notice must be sent to:

_____ "

(insert seller's name, mailing address, fax number, and e-mail address);

(D) The contact information for canceling the receipt, written agreement, or offer to purchase, which shall include the seller's name, mailing address, fax number, and e-mail address; and

(E) A signature and date line for the seller.

(2) If the seller fails to sign the information page or misrepresents any information on the information page, then the receipt, written agreement, or offer to purchase shall be unenforceable by the seller.

(c) Until the seller has complied with this section, the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of the buyer's intention to cancel without being subject to the time limitations for the buyer's right to cancel as set forth in § 47-18-703(1)(A).

SECTION 6. Tennessee Code Annotated, Section 47-18-706(c), is amended by deleting subsection (c) in its entirety and by substituting instead the following language:

(c) If the seller has performed any services pursuant to a home solicitation sale prior to the extinguishment of the buyer's right to cancel as set forth in § 47-18-703(1)(A), then the seller is entitled to compensation:

(1) Only if the buyer requested the seller to provide the services without delay because of an emergency; and

(2) Only to the extent of the fair market value for any such services performed prior to cancellation.

SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 8. This act shall take effect July 1, 2011, the public welfare requiring it.