

1 H.281

2 Introduced by Representative Greshin of Warren

3 Referred to Committee on

4 Date:

5 Subject: Commerce and trade; consumer fraud; home solicitation sales;
6 rescission; all consumers

7 Statement of purpose of bill as introduced: This bill proposes to extend the
8 time allowed to cancel in-person and transient home solicitation sales and to
9 change the civil penalties for consumer protection violations against persons
10 aged 62 or older.

11 An act relating to cancellation periods for home solicitation sales and civil
12 penalties for consumer protection violations against persons aged 62 or
13 older

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. 9 V.S.A. § 2454 is amended to read:

16 § 2454. PURCHASE CONTRACTS; RESCISSION

17 (a) Consumer's or other obligor's right to cancel_

18 (1) Except as provided in subdivision (5) of this subsection, in addition
19 to any right otherwise to revoke an offer;

1 (A) When a home solicitation sale is solicited or consummated
2 wholly or in part by the seller by telephone, the consumer or any other person
3 obligated for any part of the purchase price may cancel ~~a home solicitation~~ the
4 sale until midnight of the third business day after the day on which the
5 consumer has signed an agreement or offer to purchase relating to such sale, or
6 has otherwise agreed to buy consumer goods or services from the seller.

7 (B) When a home solicitation sale is solicited or consummated
8 wholly or in part by the seller either personally or at seller's transient quarters,
9 the consumer or any other person obligated for any part of the purchase price
10 may cancel the sale until midnight of the 15th business day after the date on
11 which the consumer has signed an agreement or offer to purchase relating to
12 such sale, or has otherwise agreed to buy consumer goods or services from the
13 seller.

14 (2) Cancellation occurs when notice of cancellation is given to the
15 seller.

16 (3) Notice of cancellation, if given by mail, shall be deemed given when
17 deposited in a mailbox properly addressed and postage prepaid.

18 (4) Notice of cancellation need not take the form prescribed and shall be
19 sufficient if it indicates the intention of the consumer not to be bound.

1 (5) A home solicitation sale may not be cancelled if the consumer has
2 requested the seller to provide goods or services without delay because of an
3 emergency, and:

4 (A) the seller in good faith has begun substantial performance of the
5 contract before the notice of cancellation has been given, ~~and~~;

6 (B) in the case of goods, the goods cannot be returned to the seller in
7 substantially the same condition as when received by the consumer; and

8 (C) the consumer's request is both handwritten and signed by the
9 consumer.

10 (b) Disclosure obligations.

11 (1) In every home solicitation sale, the seller shall furnish the consumer
12 with a fully completed receipt or copy of any contract pertaining to such sale at
13 the time the consumer signs an agreement or offer to purchase relating to such
14 sale, or otherwise agrees to buy consumer goods or services from the seller.

15 Such receipt or contract copy shall show the date of the transaction and shall
16 contain the name and address of the seller, and in immediate proximity to the
17 space reserved in the contract for the signature of the consumer or on the front
18 page of the receipt if a contract is not used and in boldface type of a minimum
19 size of ten points, a statement in substantially the following form:

20 You, the buyer, may cancel this transaction at any time prior to
21 midnight of the third business day after the date of this transaction for

1 telephone sales and the 15th business day after the date of this transaction for
2 in-person or transient sales. See the attached notice of cancellation for an
3 explanation of this right.

4 (2) In a home solicitation sale, unless a consumer requests the seller to
5 provide goods or services without delay in an emergency, the seller shall
6 furnish a notice of cancellation to the consumer at the time he or she signs an
7 agreement or offer to purchase relating to such sale or otherwise agrees to buy
8 consumer goods or services from the seller, which notice shall be attached to
9 the contract or receipt and easily detachable.

10 (A) The notice of cancellation shall contain the following
11 information and statements, printed in not less than ten point boldface type:

12 NOTICE OF CANCELLATION

13 (enter date of transaction)

14
15 (date)

16 You may cancel this transaction, without any penalty or obligation,
17 within three business days from the above date for telephone sales or within
18 15 business days from the above date for in-person and transient sales.

19 If you cancel, any property traded in, any payments made by you under
20 the contract or sale, and any negotiable instrument executed by you will be
21 returned within ten business days following receipt by the seller of your

1 cancellation notice, and any security interest arising out of the transaction will
2 be canceled.

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

8 If you do make the goods available to the seller and the seller does not
9 pick them up within ~~twenty~~ 20 days of the date of your notice of cancellation,
10 you may retain or dispose of the goods without any further obligation. If you
11 fail to make the goods available to the seller, or if you agree to return the goods
12 to the seller and fail to do so, then you remain liable for performance of all
13 obligations under the contract.

14 To cancel this transaction, mail or deliver a signed and dated copy of
15 this cancellation notice or any other written notice, or send a telegram, to

16 at
17 (name of seller) (address of seller's place of business)

18 not later than midnight of
19 (date)

20 I hereby cancel this transaction.

21
22 (date)

23
24 (buyer's signature)

1 (B) Before furnishing copies of the “Notice of Cancellation” to the
2 buyer, the seller shall complete both copies by entering the name of the seller,
3 the address of the seller’s place of business, the date of the transaction, and the
4 date, not earlier than the third business day following the date of transaction
5 for telephone sales or the 15th business day following the date of the
6 transaction for in-person and transient sales, by which the buyer may give
7 notice of cancellation.

8 (C) The seller shall leave the “Notice of Cancellation” with the
9 consumer.

10 (D) In addition to the written notice of cancellation, the seller shall
11 orally inform the buyer of his or her right to cancel at the time of the
12 transaction.

13 (3) Until the seller has complied with this subsection, the consumer or
14 any other person obligated for any part of the purchase price may cancel the
15 home solicitation sale by notifying the seller in any manner and by any means
16 of his intention to cancel. The cancellation period of three business days for
17 telephone sales or 15 business days for in-person and transient sales shall begin
18 to run from the time the seller complies with this subsection.

19 * * *

1 Sec. 2. 9 V.S.A. § 2458(b) is amended to read:

2 (b) In addition to the foregoing, the ~~attorney general~~ Attorney General or a
3 state's attorney may request and the court is authorized to render any other
4 temporary or permanent relief, or both, as may be in the public interest
5 including, ~~but not limited to:~~

6 (1) the imposition of a civil penalty of not more than \$10,000.00 for
7 each violation; except that in the event that a consumer harmed by a method,
8 act, or practice in violation of section 2453 of this title either is a person
9 62 years of age or older or is a "vulnerable adult" defined in 33 V.S.A.
10 § 6902(14), the Attorney General or a state's attorney may request and the
11 court is authorized to impose a civil penalty of not more than \$25,000.00 for
12 each violation;

13 * * *

14 Sec. 3. 9 V.S.A. § 2461 is amended to read:

15 § 2461. CIVIL PENALTY

16 (a) Any person who violates the terms of an injunction issued under
17 section 2458 of this title shall forfeit and pay to the ~~state~~ State a civil penalty of
18 not more than \$10,000.00 for each violation, except that in the event that a
19 consumer harmed by a method, act, or practice in violation of section 2453 of
20 this title either is a person 62 years of age or older or is a "vulnerable adult" as
21 defined in 33 V.S.A. § 6902(14), the person shall forfeit and pay to the state a

1 civil penalty of not more than \$25,000.00 for each violation. For the purposes
2 of this section, the court issuing such injunction shall retain jurisdiction, and
3 the cause shall be continued, and in such cases the ~~attorney general~~ Attorney
4 General or a state's attorney acting in the name of the ~~state~~ State may petition
5 for recovery of such civil penalty.

6 (b) Any consumer who contracts for goods or services in reliance upon
7 false or fraudulent representations or practices prohibited by section 2453 of
8 this title, or who sustains damages or injury as a result of any false or
9 fraudulent representations or practices prohibited by section 2453 of this title,
10 or prohibited by any rule or regulation made pursuant to section 2453 of this
11 title may sue for appropriate equitable relief and may sue and recover from the
12 seller, solicitor, or other violator the amount of his or her damages, or the
13 consideration or the value of the consideration given by the consumer,
14 reasonable attorney's fees, and exemplary damages not exceeding three times
15 the value of the consideration given by the consumer, except that in the event
16 that the consumer either is a person 62 years of age or older or is a "vulnerable
17 adult" within the meaning of 33 V.S.A. § 6902(14), the court shall award
18 exemplary damages absent good cause not to do so. Any language, written or
19 oral, used by a seller or solicitor, which attempts to exclude or modify recovery
20 of the penalty or reasonable attorney's fees shall be unenforceable.

21 * * *

1 Sec. 4. EFFECTIVE DATE

2 This act shall take effect on July 1, 2013.