

LEGISLATIVE BILL 212

Approved by the Governor January 22, 1974

Introduced by Interim on Truth-in-Advertising, Waldron,
42, Chmn.

AN ACI relating to sales; to provide the rights and
duties of the parties to home solicitation
sales.

Be it enacted by the people of the State of Nebraska,

Section 1. For purposes of this act, unless the
context otherwise requires:

(1) Home solicitation sale shall mean a sale,
lease, or rental of consumer goods or services with a
purchase price of twenty-five dollars or more, whether
under a single or multiple contract, in which the seller
or his representative personally solicits the sale,
including those in response to or following the
invitation by the buyer, and the buyer's agreement or
offer to purchase is made at a place other than the place
of business of the seller. The term home solicitation
sale does not include a transaction:

(a) Made pursuant to prior negotiations in the
course of a visit by the buyer to a retail business
establishment having a fixed permanent location where the
goods are exhibited or the services are offered for sale
on a continuing basis;

(b) In which the consumer is accorded the right
to rescission by the provisions of the Consumer Credit
Protection Act (15 U.S.C. 1635) or regulations issued
pursuant thereto;

(c) In which the buyer has initiated the contact
and the goods or services are needed to meet a bona fide
immediate personal emergency of the buyer, and the buyer
furnishes the seller with a separate dated and signed
personal statement in the buyer's handwriting describing
the situation requiring immediate remedy and expressly
acknowledging and waiving the right to cancel the sale
within three business days;

(d) Conducted and consummated entirely by mail or
telephone, and without any other contact between the
buyer and the seller or its representative prior to
delivery of the goods or performance of the services;

(e) In which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If, in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or

(f) Pertaining to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission;

(2) Buyer shall mean both actual and prospective purchasers or lessees of any goods or services offered through home solicitation selling; and

(3) Seller shall mean a person or organization who advertises, offers, or deals in goods or services for the purpose of home solicitation selling or provides or exercises supervision, direction or control over sales practices used in the home solicitation sale, but shall not include banks, savings and loan associations, insurance companies, public utilities, licensed motor vehicle dealers, or licensed real estate brokers or salesmen with respect to real estate listings or the sale or leasing of real estate, but the term shall include a supplier or distributor if:

(a) The seller is a subsidiary or affiliate of the supplier or distributor;

(b) The seller interchanges personnel or maintains common or overlapping officers or directors with the supplier or distributor; or

(c) The supplier or distributor provides or exercises supervision, direction or control over the selling practices of the seller.

Sec. 2. In a home solicitation sale the seller shall, at the outset, clearly and expressly disclose the seller's individual name, the name of the business firm or organization he represents, and the identity or kind of goods or services he offers to sell.

Sec. 3. (1) In addition to any right otherwise to revoke an offer, to rescind the transaction or to exercise any remedy for the seller's breach, a buyer may cancel a home solicitation sale until midnight of the third business day after the seller has given notice to

the buyer in accordance with section 4 of this act.

(2) Notice of cancellation shall be by mail addressed to the seller and shall be considered given at the time mailed.

(3) Notice of cancellation by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by such home solicitation sale.

Sec. 4. (1) Whenever a buyer has the right to cancel a home solicitation sale, the seller's contract shall contain a notice to be printed in capital and lowercase letters of not less than ten point boldface type and appear under the conspicuous caption: BUYER'S RIGHT TO CANCEL; which shall read as follows: You may cancel this agreement by mailing a written notice to (Insert name and mailing address of seller) before midnight of the third business day after you signed this agreement. If you wish, you may use this page as that notice by writing "I hereby cancel" and adding your name and address.

(2) A home solicitation sales contract which contains the Notice of Cancellation form and content provided in the Federal Trade Commission's trade regulation rule providing a cooling-off period shall be deemed as complying with the requirements of subsection (1) of this section, so long as the Federal Trade Commission language provides at least equal information to the consumer concerning his right to cancel as is required by this act.

(3) A seller who in the ordinary course of business regularly uses a language other than English in any advertising or other solicitation of customers or in any printed forms for use by buyers or in any face-to-face negotiations with buyers, shall give the notice described in this section to a buyer whose principal language is such other language, both in English and in the other language.

(4) The notice required under this section shall be delivered either after all the credit cost disclosures have been made to the buyer as required by the federal Consumer Credit Protection Act and the buyer has signed the writing evidencing the transaction, or contemporaneously therewith, but not before.

(5) 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

his intention to cancel. The three business day period prescribed by this act shall begin to run from the time the seller complies with this section.

(6) The notice provisions under this section shall not be required in a transaction involving an order for goods to be delivered at one time if: (a) The order is evidenced only by a sales ticket or invoice, a copy of which must be provided to the buyer, which clearly and unmistakably sets forth on the face or reverse side of the sales ticket or invoice the buyer's right to cancel the order, refuse delivery or return the goods without obligation or charge; (b) the goods are not delivered within three business days of the date of the order; and (c) the buyer may refuse to accept the goods when they are delivered without incurring any obligation to pay for them or the expenses associated with the transaction, including mailing or shipping charges, or the buyer may, upon inspecting the goods after delivery, return them within three business days to the seller and receive a full refund for any amounts the buyer has paid including mailing and shipping charges.

Sec. 5. (1) Within ten days after a home solicitation sale has been canceled, the seller shall cause any money paid by the buyer, including a down payment, to be returned to the buyer and shall take appropriate action to reflect the termination of the transaction including any security interest created as a result.

(2) Upon cancellation, as allowed by this act, the buyer shall not be liable for any finance or other charge and the transaction, including any security interest, shall be void.

(3) If the seller receives any property from the buyer, he shall return such property in substantially as good condition as it was when it was given within twenty days after cancellation of the transaction. If such property is not returned within such time, the buyer may recover the property or the greater of its agreed or fair market value at retail.

Sec. 6. (1) The buyer shall take reasonable care of any property received pursuant to the home solicitation sale in his possession before cancellation and for a reasonable time after tender, not to exceed twenty days.

(2) Upon the performance of the seller's obligations under section 5 of this act, the buyer shall tender such property to the seller except that if the

return of such property to the seller is inequitable, the buyer shall tender its reasonable value.

(3) Tender shall be made at the location of the property or at the residence of the buyer at the option of the buyer.

(4) If the seller does not take possession of such property within twenty days after tender by the buyer, ownership of such property shall vest in the buyer without obligation on his part to pay for it.

(5) If a seller performs any services pursuant to a home solicitation sale prior to its cancellation, the seller shall not be entitled to compensation.

Sec. 7. Any sale made in violation of this act shall entitle the buyer to recover any sums paid to the seller pursuant to the transaction along with the actual damages, including any incidental and consequential damages, sustained by the buyer by reason of the violation, together with the costs of the suit, including a reasonable attorney's fee.