SENATE . . . . . No. 74

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 74) of Arthur Joseph Lewis, Jr., for legislation to make corrective changes in the law relative to cancellation of certain contracts consummated at a place other than the seller's place of business. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-seven.

AN ACT MAKING CORRECTIVE CHANGES IN THE LAW RELATIVE TO CANCELLATION OF CERTAIN CONTRACTS CONSUMMATED AT A PLACE OTHER THAN THE SELLER'S PLACE OF BUSINESS.

Be it enacted by the Senate and House of Representatives in General Court assembled and by the authority of the same, as follows:

SECTION 1. Subsection B of section 48 of Chapter 93 of the General Laws, as most recently amended by Chapter 90 of the Acts of 1975, is hereby further amended by striking out the second paragraph and inserting in place thereof the following:–

Each agreement shall contain the following statement appearing on the front page thereof in immediate proximity to the space reserved for the buyer's signature and in boldface type of a minimum size of ten points:–

"You may cancel this agreement if it has been signed by a party thereto at a place other than an address of the seller, which may be his main office or branch thereof, provided you notify the seller in writing at his main office or branch by ordinary mail posted, by telegram sent or by delivery, not later than midnight of the third business day following the signing of this agreement. See the attached notice of cancellation form for an explanation of this right."

SECTION 2. Said subsection B of section 48 of Chapter 93 is hereby further amended by adding at the end thereof the following paragraph:–

The Notice of Cancellation form prescribed by the Federal Trade Commission Trade Regulation Rule, Title 16, Code of Federal Regulations, Chapter I, Subchapter D,

7 part 429 may be substituted for the Notice of Cancellation
8 required by this subsection.
9 SECTION 3. Said section 48 of said Chapter 93, as most
10 recently amended by Chapter 90 of the Acts of 1975, is
11 hereby further amended by adding the following sub-
12 section:—
13 *J.* This section shall not apply to a transaction in which (i)
14 the buyer is accorded the Right of Rescission by the
15 provisions of Chapter 140C; or (ii) the buyer has initiated
16 the contact and the goods or services are needed to meet a
17 bona fide immediate personal emergency of the buyer, and
18 the buyer furnishes the seller with a separate dated and
19 signed personal statement in the buyer's handwriting
20 describing the situation requiring immediate remedy and
21 expressly acknowledging and waiving the right to cancel
22 the sale within three business days.

1 SECTION 4. Section 9 of Chapter 255D of the General
2 Laws is hereby amended by striking out subsection D½, as
3 inserted by Chapter 90 of the Acts of 1975, and inserting in
4 place thereof the following subsection:—
5 *D½.* Every retail installment sale agreement signed by
6 the buyer at a place other than an address of the seller,
7 which may be his main office or branch thereof, one of
8 which must be shown on the agreement, shall be in writing
9 in the same language as that principally used in the oral
10 sales presentation, except as further provided herein and
11 shall also contain the following statement appearing on the
12 front page thereof in the immediate proximity to the space
13 reserved for the buyer's signature and in boldface type of a
14 minimum size of ten points:— "You may cancel this agree-
15 ment if it has been signed by a party thereto at a place other
16 than an address of the seller, which may be his main office
17 or branch thereof, provided you notify the seller in writing
18 at his main office or branch, by ordinary mail posted, by
19 telegram sent or by delivery, not later than midnight of the
20 third business day following the signing of this agreement.
21 See the attached notice of cancellation form for an explana-
22 tion of this right."
23 Each such agreement, except as further provided herein,

24 shall have attached thereto a completed form in duplicate,
25 which shall be easily detachable, and which shall contain in
26 ten point boldface type the following in the same language
27 as that used in the agreement:—

28 NOTICE OF CANCELLATION

(Enter date of transaction)

(Date)

29 You may cancel this transaction, without any penalty or
30 obligation, within three business days from the above date.
31 If you cancel, any property traded in, any payments
32 made by you under the agreement, and any negotiable
33 instrument executed by you will be returned within ten
34 business days following receipt by the seller of your
35 cancellation notice, and any security interest arising out of
36 the transaction will be cancelled.
37 If you cancel, you must make available to the seller at
38 your residence, in substantially as good condition as when
39 received, any goods delivered to you under this agreement;
40 or you may if you wish, comply with the instructions of the
41 seller regarding the return shipment of the goods at the
42 seller's expense and risk.
43 If you do make the goods available to the seller and the
44 seller does not pick them up within twenty days of the date
45 of your notice of cancellation, you may retain or dispose of
46 the goods without any further obligation. If you fail to
47 make the goods available to the seller, or if you agree to
48 return the goods to the seller and fail to do so, then you
49 remain liable for performance of all obligations under the
50 contract.

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

_____

(Name of seller)

_____

(Address of seller's place of business)

54 not later than midnight of _____
(Date)

55 I hereby cancel this transaction.

_____
(Date)

_____
(Buyer's signature)

56 The notice of Cancellation form prescribed by the
57 Federal Trade Commission Trade Regulation Rule, Title
58 16, Code of Federal Regulations, Chapter I, Subchapter D,
59 part 429 may be substituted for the Notice of Cancellation
60 required by this subsection.
61 The seller shall inform the buyer orally, at the time he
62 signs the agreement, of his right to cancel and shall not
63 misrepresent in any manner this right.
64 The seller shall not negotiate, transfer, sell or assign any
65 such agreement to a finance company or other third party
66 prior to midnight of the fifth business day following the day
67 the agreement was signed. No negotiation, transfer, sale or
68 assignment of any agreement shall defeat or limit the
69 buyer's right to cancel the agreement because of failure to
70 include a required or an agreed term or to deliver an
71 accurate copy of the agreement.
72 This subsection shall not apply to a transaction in which
73 (i) the buyer is accorded the Right of Rescission by the
74 provisions of Chapter 140C; or (ii) the buyer has initiated
75 the contact and the goods or services are needed to meet a

76 bona fide immediate personal emergency of the buyer, and
77 the buyer furnishes the seller with a separate dated and
78 signed personal statement in the buyer's handwriting de-
79 scribing the situation requiring immediate remedy and
80 expressly acknowledging and waiving the right to cancel
81 the sale within three business days.

82 SECTION 5. Subsection B of section 27 of Chapter 255D of
83 the General Laws is hereby amended by striking out clause
84 (6) and inserting in place thereof the following:—

85 *(6)* You may cancel a purchase under this agreement if it
86 has been signed by a party thereto at a place other than the
87 address of the seller which may be his main office or branch
88 thereof; provided you notify the seller in writing at his main
89 office or branch, by ordinary mail posted, by telegram sent
90 or by delivery, not later than midnight of the third business
91 day following a purchase under this agreement.