

HOUSE No. 5455

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, February 10, 1975.

The committee on Bills in the Third Reading, to whom was referred the Bill making changes in the law relative to cancellation of certain contracts consummated at a place other than the seller's place of business (House, No. 5384), report recommending that the same be amended by the substitution of the accompanying bill (House, No. 5455).

For the committee,

JOHN E. MURPHY, JR.

The Commonwealth of Massachusetts

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

AN ACT MAKING 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:

1 SECTION 1. Section 48 of chapter 93 of the General Laws is
2 hereby amended by striking out subsection B, as most recently
3 amended by chapter 660 of the acts of 1970, and inserting in place
4 thereof the following subsection: —

5 B. Each such agreement shall be in writing, which is in the same
6 language as that principally used in the oral sales presentation,
7 signed by the seller or lessor, contain his address, the date of the
8 transaction and all the terms agreed upon by the parties or
9 required by law. The failure to include a required or an agreed
10 term or to deliver a copy of the agreement signed by the seller or
11 lessor shall give the buyer the right to cancel said agreement until
12 the omitted term is provided or the copy of the agreement
13 delivered. In either case, the time period during which the buyer
14 may cancel under subsection A shall not commence until the
15 failure to include terms or deliver a copy has been corrected.

16 Each agreement shall contain the following statement appear-
17 ing on the front page thereof in immediate proximity to the space
18 reserved for the buyer's signature and in boldface type of a
19 minimum size of ten points: —

20 "You may cancel this agreement if it has been consummated by
21 a party thereto at a place other than an address of the seller,
22 which may be his main office or branch thereof, provided you
23 notify the seller in writing at his main office or branch by
24 ordinary mail posted, by telegram sent or by delivery, not later
25 than midnight of the third business day following the signing of
26 this agreement.

27 See the attached notice of cancellation form for an explanation
28 of this right."

29 Each such agreement shall have attached thereto a completed
30 form in duplicate, which shall be easily detachable, and which
31 shall contain in ten point boldface type the following in the same
32 language as that used in the agreement:

33 NOTICE OF CANCELLATION

34 [enter date of transaction]
35 (Date)

36 You may cancel this transaction, without any penalty or
37 obligation, within three business days from the above date.

38 If you cancel, any property traded in, any payments made by
39 you under the agreement, and any negotiable instrument
40 executed by you will be returned within ten business days
41 following receipt by the seller of your cancellation notice, and any
42 security interest arising out of the transaction will be cancelled.

43 If you cancel, you must make available to the seller at your
44 residence, in substantially as good condition as when received,
45 any goods delivered to you under this agreement; or you may if
46 you wish, comply with the instructions of the seller regarding the
47 return shipment of the goods at the seller's expense and risk.

48 If you do make the goods available to the seller and the seller
49 does not pick them up within twenty days of the date of your
50 notice of cancellation, you may retain or dispose of the goods
51 without any further obligation. If you fail to make the goods
52 available to the seller, or if you agree to return the goods to the
53 seller and fail to do so, then you remain liable for performance of
54 all obligations under the contract.

55 To cancel this transaction, mail or deliver a signed and dated
56 copy of this cancellation notice or any other written notice, or
57 send a telegram to _____,

58 [Name of seller]

59 at _____ not later

60 [address of seller's place of business]

61 than midnight of _____.

62 (date)

63 I hereby cancel this transaction.

64 _____
(Date)

65 _____
(Buyer's signature)

1 SECTION 2. Said section 48 of said chapter 93 is hereby
2 further amended by striking out subsection D, as appearing in
3 chapter 272 of the acts of 1970, and inserting in place thereof the
4 following subsection:—

5 D. In the event of cancellation pursuant to this section the
6 seller or lessor shall within ten business days of the receipt of any
7 valid notice of cancellation (i) refund all payments made,
8 including any down payment made under the agreement; (ii)
9 return any goods or property traded in to the seller on account of
10 or in contemplation of the agreement, in substantially as good
11 condition as when received by the seller; (iii) cancel and return
12 any copies of the agreement and any negotiable instrument signed
13 by the buyer with a notation indicating that it has been cancelled;
14 and (iv) take any action necessary or appropriate to terminate
15 promptly any security interest created in connection with the
16 agreement.

17 The seller or lessor shall be entitled to reclaim and the buyer
18 shall return whenever possible or hold at the seller's disposal any
19 goods received by the buyer under the agreement. The buyer may,
20 at his option, comply with the instructions of the seller or lessor
21 regarding the return shipment of the goods at the seller's or
22 lessor's expense and risk. If the buyer does make the goods
23 available to the seller and the seller does not pick them up within
24 twenty days of the date of the buyer's notice of cancellation, the
25 buyer may retain or dispose of the goods without any further
26 obligation. If the buyer fails to make the goods available to the
27 seller, or if the buyer agrees to return the goods to the seller and
28 fails to do so, then the buyer shall remain liable for performance
29 of all obligations under the contract.

30 The seller or lessor shall within ten business days of receipt of
31 the buyer's notice of cancellation notify the buyer whether the
32 seller or lessor intends to repossess or to abandon any shipped or
33 delivered goods.

1 SECTION 3. Said section 48 of said chapter 93 is hereby
2 further amended by adding the following three subsections: —

3 G. An agreement subject to this section shall not contain any
4 waiver of the buyer's rights provided under this section.

5 H. The seller or lessor shall inform the buyer orally, at the time
6 he signs the agreement, of his right to cancel and shall not
7 misrepresent in any manner such right.

8 I. The seller or lessor shall not negotiate, transfer, sell, or assign
9 any agreement or other evidence of indebtedness to a finance
10 company or other third party prior to midnight of the fifth
11 business day following the day the agreement was signed.

1 SECTION 4. Subsection D of section 9 of chapter 255D of the
2 General Laws is hereby amended by striking out clause (6).

1 SECTION 5. Said subsection D of said section 9 of said
2 chapter 255D is hereby further amended by striking out the last
3 paragraph, as amended by section 3 of chapter 775 of the acts of
4 1967, and inserting in place thereof the following paragraph: —

5 If the seller takes no security interest in the goods, clauses (4)
6 and (5) need not be included in the notice.

1 SECTION 6. Said section 9 of said chapter 255D is hereby
2 further amended by inserting after subsection D the following
3 subsection: —

4 D1/2. Every retail installment sale agreement shall be in
5 writing which is in the same language as that principally used in
6 the oral sales presentation, except as further provided herein and
7 shall also contain the following statement appearing on the front
8 page thereof in the immediate proximity to the space reserved for
9 the buyer's signature and in boldface type of a minimum size of
10 ten points:

11 "You may cancel this agreement if it has been consummated by
12 a party thereto at a place other than an address of the seller,
13 which may be his main office or branch by ordinary mail posted,
14 by telegram sent or by delivery, not later than midnight of the
15 third business day following the signing of this agreement.

16 See the attached notice of cancellation form for an explanation
17 of this right."

18 Each such agreement, except as further provided herein, shall
 19 have attached thereto a completed form in duplicate, which shall
 20 be easily detachable, and which shall contain in ten point
 21 boldface type the following in the same language, as that used in
 22 the agreement:

23 NOTICE OF CANCELLATION

24 [enter date of transaction]
 25 (Date)

26 You may cancel this transaction, without any penalty or
 27 obligation, within three business days from the above date.

28 If you cancel, any property traded in, any payments made by
 29 you under the agreement, and any negotiable instrument
 30 executed by you will be returned within ten business days
 31 following receipt by the seller of your cancellation notice, and any
 32 security interest arising out of the transaction will be cancelled.

33 If you cancel, you must make available to the seller at your
 34 residence, in substantially as good condition as when received,
 35 any goods delivered to you under this agreement; or you may if
 36 you wish, comply with the instructions of the seller regarding the
 37 return shipment of the goods at the seller's expense and risk.

38 If you do make the goods available to the seller and the seller
 39 does not pick them up within twenty days of the date of your
 40 notice of cancellation, you may retain or dispose of the goods
 41 without any further obligation. If you fail to make the goods
 42 available to the seller, or if you agree to return the goods to the
 43 seller and fail to do so, then you remain liable for performance of
 44 all obligations under the contract.

45 To cancel this transaction, mail or deliver a signed and dated
 46 copy of this cancellation notice or any other written notice, or
 47 send a telegram, to _____,

48 [Name of seller]

49 at _____ not later
 50 [address of seller's place of business]

51 than midnight of _____
 52 (date)

53 I hereby cancel this transaction.

54 _____
(Date)

55 _____
Buyer's signature)

56 If the agreement was not signed by the buyer at a place other
57 than an address of the seller, which may be his main office or any
58 branch thereof, one of which must be shown on the agreement,
59 the notice of cancellation need not be included.

60 The seller shall inform the buyer orally, at the time he signs the
61 agreement, of his right to cancel and shall not misrepresent in any
62 manner this right.

63 The seller shall not negotiate, transfer, sell or assign any
64 agreement to a finance company or other third party prior to
65 midnight of the fifth business day following the day the
66 agreement was signed.

1 SECTION 7. Subsection B of section 14 of said chapter 255D,
2 as amended by section 40 of chapter 517 of the acts of 1969, is
3 hereby further amended by inserting after the word "agreement",
4 in line 5, the words: — or the date a completed agreement signed
5 by the seller is delivered to the buyer, whichever is later.

1 SECTION 8. Said section 14 of said chapter 255D is hereby
2 further amended by striking out subsections C and D, as
3 appearing in section 1 of chapter 284 of the acts of 1966, and
4 inserting in place thereof the following subsection: —

5 C. In the event of cancellation pursuant to this section the
6 installment seller shall within ten business days of the receipt of
7 any valid notice of cancellation (i) refund all payments made,
8 including any down payment made under the agreement; (ii)
9 return any goods or property traded in to the seller on account of
10 or in contemplation of the agreement, in substantially as good
11 condition as when received by the seller; (iii) cancel and return
12 any copies of the agreement and any negotiable instrument signed
13 by the buyer with a notation indicating that it has been cancelled;
14 and (iv) take any action necessary or appropriate to terminate

15 promptly any security interest created in connection with the
16 agreement.

17 The seller shall be entitled to reclaim and the buyer shall return
18 whenever possible or hold at the seller's disposal any goods
19 received by the buyer under the agreement. The buyer may, at his
20 option, comply with the instructions of the seller regarding the
21 return shipment of the goods at the seller's expense and risk. If
22 the buyer does make the goods available to the seller and the
23 seller does not pick them up within twenty days of the date of the
24 buyer's notice of cancellation, the buyer may retain or dispose of
25 the goods without any further obligation. If the buyer fails to
26 make the goods available to the seller, or if the buyer agrees to
27 return the goods to the seller and fails to do so, then the buyer
28 shall remain liable for performance of all obligations under the
29 contract.

30 The seller shall within ten business days of receipt of the buyer's
31 notice of cancellation notify the buyer whether the seller intends
32 to repossess or to abandon any shipped or delivered goods.