

1 *Senate* BILL NO. 73
2 INTRODUCED BY *[Signature]*

3 BY REQUEST OF THE DEPARTMENT OF BUSINESS REGULATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
6 REVISION OF LAWS RELATING TO A THREE-DAY COOLING OFF PERIOD
7 ON DOOR-TO-DOOR SALES."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 85-501, R.C.M. 1947, is amended to
11 read as follows:

12 "85-501. Purpose. The purpose of this act is to afford
13 consumers, subjected to high pressure ~~door-to-door~~ personal
14 solicitation sales tactics, a "cooling-off" period."

15 Section 2. There is a new R.C.M. section numbered
16 85-502.1 that reads as follows:

17 85-502.1 Definitions. As used in this act the
18 following definitions apply:

19 (1) "Buyer" means anyone who gives a consideration for
20 the purchase or use of goods or services.

21 (2) "Personal solicitation" means any attempt by a
22 seller who regularly engages in transactions of the same
23 kind to sell goods or services which are primarily for
24 personal, family, or household purposes, when either the
25 seller or a person acting for him contacts the buyer by

1 telephone or in person other than at the place of business
2 of the seller, except:

3 (a) an attempted sale in which the buyer personally
4 knows the identity of the seller, the name of the business,
5 firm, or organization he represents and the identity or
6 kinds of goods or services offered for sale;

7 (b) an attempted sale in which the buyer has initiated
8 the contact with the seller; or

9 (c) an attempted sale of a newspaper subscription in
10 which the seller is a minor child engaged in both the
11 delivery and the sale of the newspaper.

12 (3) "Personal solicitation sale" means the purchase,
13 lease, or rental of any goods or services following a
14 personal solicitation by the seller or a person acting for
15 him, provided the buyer is required to give consideration in
16 excess of \$25 in cash or credit therefor

17 (4) "Seller" means a lessor, renter, or anyone
18 offering goods or services for consideration, including
19 assignees of a seller.

20 Section 3. There is a new R.C.M. section numbered
21 85-502.2 that reads as follows:

22 85-502.2. Disclosure obligation. Before any personal
23 solicitation each seller shall, at the time of initial
24 contact or communication with the potential buyer, clearly
25 and expressly disclose the individual seller's name, the

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1 name of the business, firm, or organization he represents,
 2 the identity or kinds of goods or services he wishes to
 3 demonstrate or sell, and that he wishes to demonstrate or
 4 sell the identified goods or services. When the initial
 5 contact is made in person, the seller shall also show the
 6 potential buyer an identification card which clearly states
 7 the seller's name and the name of the business or
 8 organization he represents. The disclosures required by
 9 this section shall be made before asking any questions or
 10 making any statements except an initial greeting. Nonprofit
 11 organizations are exempt from the requirements of this
 12 section.

13 Section 4. Section 85-503, R.C.M. 1947, is amended to
 14 read as follows:

15 "85-503. Buyer's right to cancel ~~home~~ personal
 16 solicitation sale — time allowed — notice — return of
 17 goods. (1) Except as provided in subsection (5), in
 18 addition to any right otherwise to revoke an offer, the
 19 buyer or any other person obligated for any part of the
 20 purchase price may cancel a ~~home~~ personal solicitation sale
 21 until midnight of the third business day after the day on
 22 which the buyer has signed an agreement or offer to purchase
 23 relating to such sale, provided that in the case of a
 24 personal solicitation sale made by telephone, the buyer may
 25 cancel at any time prior to his signing of an agreement or

1 offer to purchase relating to such sale.

2 (2) Cancellation occurs when written notice of
 3 cancellation is given to the seller.

4 (3) Notice of cancellation, if given by mail, ~~shall be~~
 5 ~~deemed~~ is considered given when deposited in a mailbox
 6 properly addressed and postage prepaid.

7 (4) Notice of cancellation need not take the form
 8 prescribed and shall be sufficient if it indicates the
 9 intention of the buyer not to be bound.

10 (5) A ~~home~~ personal solicitation sale may not be
 11 canceled if, in the case of goods, the goods cannot be
 12 returned to the seller in substantially the same condition
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14 Section 5. Section 85-504, R.C.M. 1947, is amended to
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16 "85-504. Notice to buyer of right to cancel — form
 17 and contents — notice of cancellation. (1) The seller shall
 18 furnish the buyer a notice which ~~shall contain~~ contains the
 19 statement set forth in ~~paragraph subsection~~ (a) or a
 20 statement as prescribed by federal trade commission rule
 21 governing door-to-door sales, and printed in capital and
 22 ~~lower case lowercase~~ boldfaced letters of not less than ~~twelve~~ 12
 23 10-point bold-faced boldfaced type with the seller's name
 24 and business address and the statement set forth in
 25 ~~paragraph subsection~~ (b);

1 (a) YOU MAY CANCEL THIS SALE WITHIN THREE BUSINESS
2 DAYS.

3 If you decide within ~~three~~ 3 days that you want to
4 cancel the sale, tear off and mail the bottom of this
5 card. To cancel, the card must be mailed BY CERTIFIED
6 MAIL within ~~three~~ 3 days after you sign the contract.

7 (date)

8 (b) CONTRACT ~~SIGNED~~ CANCELED
9 I hereby cancel this sale.

10 (Buyer's signature)

11 (2) Until the seller has complied with this section
12 the buyer or any other person obligated for any part of the
13 purchase price may cancel the ~~home personal~~ solicitation
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16 to mail the cancellation by certified mail does not nullify
17 the cancellation as long as the cancellation is mailed
18 within the prescribed time period. The period prescribed by
19 ~~section 3~~ [~~85-503~~] 85-503 shall begin to run from the time
20 the seller complies with this section."

21 Section 6. Section 85-505, R.C.M. 1947, is amended to
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23 "85-505. Repayment to buyer canceling — liability for
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1 ~~home personal~~ solicitation sale has been canceled or an
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3 buyer any payments made by the buyer and any note of other
4 evidence of indebtedness.

5 (2) If the down payment includes goods traded in, the
6 goods shall be tendered in substantially as good condition
7 as when received by the seller. If the seller fails to
8 tender the goods as provided by this section, the buyer may
9 elect to recover an amount equal to the trade-in allowance
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11 (3) If the seller refuses within the period prescribed
12 by subsection (1) to return the cash down payment or goods
13 tendered as down payment, he shall be liable to the buyer
14 for the entire down payment, and if the buyer is successful
15 in his action therefor the court shall also award him ~~one~~
16 ~~hundred dollars~~ (\$100) plus reasonable attorneys' fees and
17 costs.

18 (4) Until the seller has complied with this section
19 the buyer may retain possession of goods delivered to him by
20 the seller and shall have a lien on the goods in his
21 possession or control for any recovery to which he may be
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23 Section 7. Section 85-506, R.C.M. 1947, is amended to
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25 "85-506. Redelivery of goods — care of goods by

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 20 85-507 that reads as follows:

21 85-507. Violation. Except where inconsistent with the
 22 provisions of this act, a violation of this act is a
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25 Section 9. Repealer. Section 85-502, R.C.M. 1947, is

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Approved by Committee
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COMMITTEE ON BUSINESS AND INDUSTRY AMENDMENT TO SENATE BILL NO. 73

1. Amend page 2, section 2, subsection (2)(b), line 10.
Following: "seller;"
Strike: "or"

2. Amend page 2, section 2, subsection (2)(c), line 13.
Following: "newspaper"
Strike: "."
Insert: "; or"

3. Amend page 2, section 2, subsection (2)
Following: line 13
Insert: "(d) an attempted sale of an insurance policy."

AS AMENDED
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10 the contact with the seller; or11 (c) an attempted sale of a newspaper subscription in
12 which the seller is a minor child engaged in both the
13 delivery and the sale of the newspaper; OR14 (D) AN ATTEMPTED SALE OF AN INSURANCE POLICY.15 (3) "Personal solicitation sale" means the purchase,
16 lease, or rental of any goods or services following a
17 personal solicitation by the seller or a person acting for
18 him, provided the buyer is required to give consideration in
19 excess of \$25 in cash or credit therefor20 (4) "Seller" means a lessor, renter, or anyone
21 offering goods or services for consideration, including
22 assignee of a seller.23 Section 3. There is a new R.C.M. section numbered
24 85-502.2 that reads as follows:

25 85-502.2. Disclosure obligation. Before any personal

REFERENCE BILL

1 solicitation each seller shall, at the time of initial
 2 contact or communication with the potential buyer, clearly
 3 and expressly disclose the individual seller's name, the
 4 name of the business, firm, or organization he represents,
 5 the identity or kinds of goods or services he wishes to
 6 demonstrate or sell, and that he wishes to demonstrate or
 7 sell the identified goods or services. When the initial
 8 contact is made in person, the seller shall also show the
 9 potential buyer an identification card which clearly states
 10 the seller's name and the name of the business or
 11 organization he represents. The disclosures required by
 12 this section shall be made before asking any questions or
 13 making any statements except an initial greeting. Nonprofit
 14 organizations are exempt from the requirements of this
 15 section.

16 Section 4. Section 85-503, R.C.M. 1947, is amended to
 17 read as follows:

18 "85-503. Buyer's right to cancel home personal
 19 solicitation sale -- time allowed -- notice -- return of
 20 goods. (1) Except as provided in subsection (5), in
 21 addition to any right otherwise to revoke an offer, the
 22 buyer or any other person obligated for any part of the
 23 purchase price may cancel a home personal solicitation sale
 24 until midnight of the third business day after the day on
 25 which the buyer has signed an agreement or offer to purchase

1 relating to such sales, provided that in the case of a
 2 personal solicitation sale made by telephone, the buyer may
 3 cancel at any time prior to his signing of an agreement or
 4 offer to purchase relating to such sale.

5 (2) Cancellation occurs when written notice of
 6 cancellation is given to the seller.

7 (3) Notice of cancellation, if given by mail, ~~shall be~~
 8 deemed is considered given when deposited in a mailbox
 9 properly addressed and postage prepaid.

10 (4) Notice of cancellation need not take the form
 11 prescribed and shall be sufficient if it indicates the
 12 intention of the buyer not to be bound.

13 (5) A home personal solicitation sale may not be
 14 canceled if, in the case of goods, the goods cannot be
 15 returned to the seller in substantially the same condition
 16 as when received by the buyer."

17 Section 5. Section 85-504, R.C.M. 1947, is amended to
 18 read as follows:

19 "85-504. Notice to buyer of right to cancel -- form
 20 and contents -- notice of cancellation. (1) The seller shall
 21 furnish the buyer a notice which ~~shall contain~~ contains the
 22 statement set forth in paragraph subsection (a) or a
 23 statement as prescribed by federal trade commission rule
 24 governing door-to-door sales, and printed in capital and
 25 ~~lower-case lowercase~~ letters of not less than ~~twelve--(12)~~

1 ~~10-point bold-faced boldfaced~~ type with the seller's name
2 and business address and the statement set forth in
3 paragraph subsection (b)vi

4 (a) YOU MAY CANCEL THIS SALE WITHIN THREE BUSINESS
5 DAYS.

6 If you decide within three 3 days that you want to
7 cancel the sale, tear off and mail the bottom of this
8 card. To cancel, the card must be mailed BY CERTIFIED
9 MAIL within three 3 days after you sign the contract.

10 (date)

11 (b) ~~CONTRACT SIGNED~~ CANCELED

12 I hereby cancel this sale.

13 (Buyer's signature)

14 (2) Until the seller has complied with this section
15 the buyer or any other person obligated for any part of the
16 purchase price may cancel the ~~home personal~~ solicitation
17 sale by notifying the seller in any manner and by any means
18 of his intention to cancel; provided, however, that failure
19 to mail the cancellation by certified mail does not nullify
20 the cancellation as long as the cancellation is mailed
21 within the prescribed time period. The period prescribed by
22 section 3 ~~[85-503]~~ 85-503 shall begin to run from the time
23 the seller complies with this section."

24 Section 6. Section 85-505, R.C.M. 1947, is amended to
25 read as follows:

1 "85-505. Repayment to buyer canceling -- liability for
2 failure to repay -- retention of goods by buyer. (1) Except
3 as provided in this section, within ten-~~{10}~~ days after a
4 ~~home personal~~ solicitation sale has been canceled or an
5 offer to purchase revoked, the seller shall tender to the
6 buyer any payments made by the buyer and any note of other
7 evidence of indebtedness.

8 (2) If the down payment includes goods traded in, the
9 goods shall be tendered in substantially as good condition
10 as when received by the seller. If the seller fails to
11 tender the goods as provided by this section, the buyer may
12 elect to recover an amount equal to the trade-in allowance
13 stated in the agreement.

14 (3) If the seller refuses within the period prescribed
15 by subsection (1) to return the cash down payment or goods
16 tendered as down payment, he shall be liable to the buyer
17 for the entire down payment, and if the buyer is successful
18 in his action therefor the court shall also award him ~~one~~
19 ~~hundred-dollars-{\$100}~~ plus reasonable attorneys' fees and
20 costs.

21 (4) Until the seller has complied with this section
22 the buyer may retain possession of goods delivered to him by
23 the seller and shall have a lien on the goods in his
24 possession or control for any recovery to which he may be
25 entitled."

1 Section 7. Section 85-506, R.C.M. 1947, is amended to
2 read as follows:

3 "85-506. Redelivery of goods -- care of goods by
4 buyer. (1) Except as provided by ~~subsection (4) of section~~
5 ~~5 [85-505]~~ 85-505(4), within a reasonable time after a home
6 personal solicitation sale has been canceled or an offer to
7 purchase revoked, the buyer upon demand shall tender to the
8 seller any goods delivered by the seller pursuant to the
9 sale but need not tender at any place other than his
10 residence. If the seller fails to demand possession of such
11 goods within a reasonable time after cancellation or
12 revocation, the goods shall become the property of the buyer
13 without obligation to pay for them. For the purpose of this
14 section, ~~forty--(40)~~ days shall be presumed to be a
15 reasonable time.

16 {2} The buyer shall take reasonable care of the goods
17 in his possession both before cancellation or revocation and
18 for a reasonable time thereafter, during which time the
19 goods are otherwise at the seller's risk and such goods must
20 be returned in substantially the same condition as
21 received."

22 Section 8. There is a new R.C.M. section numbered
23 85-507 that reads as follows:

24 85-507. Violation. Except where inconsistent with the
25 provisions of this act, a violation of this act is a

1 violation of the Montana Unfair Trade Practices and Consumer
2 Protection Act of 1973.

3 Section 9. Repealer. Section 85-502, R.C.M. 1947, is
4 repealed.

-End-