

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2993 (Grayson)
Version: June 24, 2024
Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Home improvement and home solicitation: right to cancel contracts: loan financing regulation

DIGEST

This bill adds requirements and restrictions related to home improvement contracts and a certain category of financing offered to consumers to pay for such improvements.

EXECUTIVE SUMMARY

Home improvement contracts are, broadly speaking, contracts made by an owner or resident to improve their place of residence. A consumer might pay for the contract outright, or might finance the contract through a home equity loan or other financing instrument. According to the author, however, vulnerable homeowners, including seniors and those with limited English proficiency, are often the targets of too-good-to-be-true home improvement contract offers that result in poor work or excessive debt. The author states that evidence suggests that solar-related contracts and lending terms have become a particular problem, with contract salespeople making outsized claims about the cost savings from solar.

This bill is intended to strengthen existing protections for consumers who enter into home improvement contracts. For purposes of this Committee's jurisdiction, this bill extends the existing statutory time window in which a consumer has a right to cancel a home improvement contract after executing it. Current law grants a three-day window, and a five-day window for individuals 65 years of age and older; this bill extends those windows to five days and seven days, respectively.

This bill is sponsored by Housing and Economic Rights Advocates (HERA) and is supported by the California Low-Income Consumer Coalition, the Center for Responsible Lending, Consumer Advocates Against Reverse Mortgage Abuse, the Consumer Federation of California, East Bay Community Law Center, Haven Services,

Inc., the National Housing Law Project, Public Counsel, and Rise Economy. This bill is opposed by the California Solar & Storage Association, Heating, Air Conditioning, and Refrigeration Distributors International, the Institute of Heating & Air Conditioners Industries, Inc., and the Solar Energy Industries Association. The Senate Banking and Financial Institutions Committee passed this bill with a vote of 6-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Contractors State License Law (CSLL), which governs the licensure and conduct of contractors, including subcontractors, who undertake or offer to undertake construction or repair projects. (Bus. & Prof. Code, div. 3, ch. 9, §§ 7000 et seq.)
- 2) Defines the following relevant terms:
 - a) "Senior citizen" means a person who is 65 years of age or older. (Bus. & Prof. Code, § 7150.)
 - b) "Home improvement contract" means an agreement, oral or written, between a contractor and an owner or a contractor and a tenant, if the work is to be performed in, to, or upon the residence or dwelling unit, for the performance of a home improvement, as defined, and includes all labor, services, and materials to be furnished and performed thereunder; "home improvement contract" also means an agreement, oral or written, between a salesperson and an owner or tenant, which provides for the sale, installation, or furnishing of home improvement goods. (Bus. & Prof. Code, § 7151.2.)
 - c) "Home improvement salesperson" is a person who is registered under the Contractors State License Law and engaged in the building of soliciting, selling, negotiating, or executing contracts for home improvements, for the sale, installation, or furnishing of home improvement goods or services, or for swimming pools, spas, or hot tubs on behalf of a home improvement contractor licensed under the Contractors State Licensing Law, subject to specified exceptions. (Bus. & Prof. Code, § 7152.)
- 3) Establishes consumer protections for home improvement contracts in excess of \$500, including:
 - a) The contract must be in writing and in at least 10-point or 12-point typeface, as specified.
 - b) The contractor shall give the buyer a copy of the contract signed and dated by both the contractor and the buyer before any work is started.
 - c) The contract must include specified terms and information about the contractor.
 - d) If a down payment is required, it may not exceed \$1,000 or 10 percent of the contract price, whichever is less.

- e) A buyer has the right to cancel the contract within three business days of executing the contract; or, if the buyer is a senior citizen, the buyer has the right to cancel the contract within five business days of executing the contract. (Bus. & Prof. Code, § 7159.)
- 4) Provides that failure of a licensed contractor or a person subject to licensure, or their agent or salesperson, to comply with specified home improvement contract requirements, including the following, is cause for discipline:
 - a) The contract must be in writing and include the agreed contract amount in dollars and cents. The contract amount must include the entire cost of the contract, including profit, labor, and materials, but not finance charges.
 - b) If a downpayment will be charged, the downpayment cannot exceed \$1,000 or 10 percent of the contract amount, whichever amount is less.
 - c) Except for a downpayment, a contractor cannot request nor accept payment that exceeds the value of the work performed or material delivered. This prohibition includes advance payment in whole or in part from any lender or financier for the performance or sale of home improvement goods or services. (Bus. & Prof. Code, § 7159.5.)
 - 5) Provides that a contract is extinguished by its rescission, and establishes the general means by which a contract may be rescinded, including if all of the parties thereto consent, or if the consent of the party rescinding was given by mistake or obtained by duress, menace, fraud, or undue influence by the other party to the contract. (Civ. Code, §§ 1688, 1689.)
 - 6) Establishes requirements for home solicitation contracts or offers to contract not covered by the CSLL, including:
 - a) A buyer has the right to cancel a home solicitation contract or offer until midnight of the third business day, or midnight on the fifth business day if the buyer is a citizen, after the day on which the buyer signs an agreement or offer to purchase, or after their receipt of a signed and dated copy of the contract.
 - b) The buyer's agreement or offer to purchase must be written in the same language as principally used in the oral sales presentation, shall be dated and signed as specified, and must include specified language regarding the three-day or five-day right to cancel. (Civ. Code, §§ 1689.6, 1689.7.)
 - 7) Provides that the requirements in 6) do not apply to a contract that meets all of the following requirements:
 - a) The contract is initiated by the buyer or the buyer's agent or insurance representative.
 - b) The contract is executed in connection with the making of emergency or immediately necessary repairs that are necessary for the immediate protection of persons or real or personal property.

- c) The buyer gives a separate statement that is dated and signed that describes the situation that requires immediate remedy, and expressly acknowledges the right to cancel within the applicable period. (Civ. Code, § 1689.13.)
- 8) Establishes the California Finance Law (CFL), which regulates consumer and commercial loans with the goals of ensuring an adequate supply of credit to borrowers in the state and protecting borrowers against unfair lending practices. (Fin. Code, div. 9, §§ 22000 et seq.)
 - 9) Defines the following relevant terms within the CFL:
 - a) "PACE assessment" means a voluntary contractual assessment, voluntary special tax, or special tax, as defined in the Public Resources Code. (Fin. Code, § 22015.)
 - b) "Consumer loan" means a loan, whether secured by real or personal property, or both, or unsecured, the proceeds of which are intended by the borrower for use primarily for personal, family, or household purposes, as specified. (Fin. Code, § 22203.)

This bill:

- 1) Extends the three-day and five-day right-to-cancel windows for home improvement contracts to five days and seven days, respectively; and specifies that these extended right-to-cancel windows apply only to contracts entered into on or after January 1, 2025.
- 2) Prohibits a contractor, when performing on a home improvement contract paid for through financing, from requesting or accepting full payment from a lender or financier until the following has occurred:
 - a) The contractor, lender, or financier has received written confirmation from the owner that the home improvement project has been completed in accordance with the contract and is in operation or fit for its intended use.
 - b) The lender has confirmed with the contractor that final approval has been provided by all permitting agencies.
- 3) Defines the following relevant terms within the CFL:
 - a) "Home improvement loan" means a consumer loan issued by a finance lender subject to the CFL, the proceeds of which will be disbursed to a contractor in connection with a home improvement contract negotiated outside the contractor's place of business to finance a home improvement, as defined in the CSLL; however, "home improvement loan" does not include a PACE assessment, as defined.
 - b) "Home improvement" has the same meaning as in the CSLL.
 - c) "Home improvement contract" has the same meaning as in the CSLL.

- d) "Key terms" means the terms of the home improvement loan, including what home improvements are being financed, the name of the contractor who will receive the loan proceeds, the loan term or period of time for repayment, total cost, monthly payment amounts, finance charge, and due dates, whether the amount of monthly payments due will change during the term of the loan, annual percentage rate of interest, how late fees may be incurred, how payments more than the minimum payment will be applied, whether there are any prepayment penalties, and when the first payment is due.
 - e) "Their own interpreter" means a person, who is not a minor, who is able to speak fluently and read with full understanding of both the English language and any of the languages specified in the Civil Code (currently Spanish, Chinese, Tagalog, Vietnamese, and Korean), and who is not employed by, and whose services are not made available through, the finance lender or the contractor.
- 4) Requires a finance lender, before a consumer executes a contract for a home improvement loan to pay for a home improvement and before the right-to-cancel window for the home improvement contract expires, for a home improvement contract that is being financed by a home improvement loan, to do all of the following:
- a) Obtain a copy of the home improvement contract of the home improvement that is being financed by the home improvement loan.
 - b) Complete and document a telephone, video, or digital call to make oral confirmations of (i) all of the property owners' receipt of a copy of the home improvement loan contract with key terms completed, the financing estimate and disclosure form required by the federal Truth in Lending Act, and the right to cancel form; and (ii) the key terms of the home improvement loan contract, in plain language, with the consumer on the call or to a verified authorized representative designated by the consumer on the call, and acknowledgement of the key terms from the consumer.
- 5) Requires the finance lender, at the commencement of oral confirmation, to ask if the consumer on the call would prefer to communicate during the oral confirmation primarily in a language other than English that is specified in the Civil Code (Spanish, Chinese, Tagalog, Vietnamese, or Korean).
- a) If the preferred language is supported by the finance lender, the oral confirmation shall be given in that primary language, except where the consumer on the call chooses to communicate through their own interpreter.
 - b) If the preferred language is not supported and an interpreter is not chosen by the consumer on the call, the finance lender shall not execute the home improvement loan with the consumer.
- 6) Requires the oral confirmation to include, at a minimum, the following information:

- a) The consumer on the call has the right to have other persons present for the call, and an inquiry as to whether the consumer requests to exercise the right to include anyone else on the call. This shall occur at the onset of the call, after the determination of the preferred language of communication. The contractor or contractor salesperson, or both, for the home improvements being financed by the loan shall not be present during or participate in the call. A third party shall not be allowed to participate in the call unless expressly authorized by the consumer.
 - b) The consumer on the call is informed that they should review the home improvement loan and financing estimate and disclosure form with all other owners of the property.
 - c) The home improvements being installed that are being financed by the home improvement loan, including, but not limited to, the description of the home improvements as described in the home improvement contract.
 - d) The key terms of the home improvement loan.
 - e) Confirmation of the consumer's gross monthly household income and ability to pay the monthly payment amount and total cost.
 - f) The consumer understands that any estimates of cost savings from home improvements are not guaranteed and may be unreliable.
 - g) Whether the property will be subject to a financing statement filing requirement, as defined, during the term of the loan contract and that the obligations under the loan contract may be required to be paid in full before the property owner sells or refinances the property.
 - h) Confirmation of the identity of the customer, including their email address and, if the finance lender will send communications to the borrower through email, confirmation that the customer is able to access their email.
- 7) Requires the finance lender to maintain a recording of the oral confirmation telephone, video, or digital call for at least five years after the loan term ends and shall make it available to the consumer upon request.
- 8) Requires, if the oral confirmation was conducted primarily in a language other than English, the finance lender to deliver in writing in the language used during the oral confirmation in the disclosures and contract or agreement required by law, including, but not limited to, all of the following:
- a) The loan contract.
 - b) The right to cancel form.
 - c) The financing estimate and disclosure form required under the federal Truth in Lending Act.
- 9) Requires a finance lender that engages in offering or providing a home improvement loan to make available to the consumer or property owner, or both, upon request, information in the control or possession of the lender concerning the home improvement loan that was provided to the consumer to finance the home

improvement contract, including information relating to any transaction, series of transactions, or to the account, including costs, charges, and payment history.

- 10) Requires a finance lender to provide the consumer or their verified authorized representative, upon request, any of the following documentation:
 - a) Financing application information provided by the consumer.
 - b) Financing agreement and disclosures, including all certificates, disclosures, and contracts associated with the home improvement loan, and including any signed or initialed copies.
 - c) A copy of the home improvement contract obtained by the finance lender for financed work.
 - d) Completion certificates or other evidence that performance of a home improvement is complete or satisfactorily concluded, including any signed copies.
 - e) Documentation of any electronic signatures obtained in connection with the home improvement loan, including electronic certificates, electronic signature envelopes, or audit trails.
 - f) Documentation of all payments to the contractor.
 - g) Financing estimate and disclosures.
 - h) An accounting from the date of the original transaction to the present.
 - i) If secured by a financing statement, the financing lender shall provide that financing statement and the list of collateral or statement of account, or both, as specified.
 - j) Recordings of all oral confirmation calls with the consumer or their verified representative.

- 11) Provides that a finance lender has a duty to maintain each of the records specified in 10) relating to any transaction for five years from the date that the financed amount is remitted to the contractor, or five years after the loan is repaid in full, whichever is later, and requires a finance lender to provide the specified information in response to any written request for information from a consumer or their verified representative that includes the name of the consumer, information that enables the lender to identify the consumer's account, and states the information the consumer is requesting.

- 12) Requires a finance lender, no later than 30 business days after the finance lender receives the request for information, to do one of the following:
 - a) Provide the consumer with the requested information and contact information, including a telephone number, for further assistance in writing.
 - b) Conduct a reasonable search for the requested information and provide the consumer with a written notification that states that the lender has determined that the requested information is not available to the lender. The notification shall also identify the basis for the lender's determination, and

- provide contact information, including a telephone number, for further assistance.
- 13) Prohibits a finance lender from charging a fee or making a payment that may be owed on a consumer's account as a condition of responding to a consumer's information request.
- 14) Permits a finance lender, by written notice provided to a consumer, to establish an address that a consumer must use to request information in accordance with the procedures set forth in 9)-13).
- 15) Provides that a finance lender who makes a home improvement loan shall not release funds to the home improvement contractor, other than the down payment or other payments permitted under the CSLL, unless the following conditions have occurred:
- a) The property owner has certified both orally in a confirmation call and through a written confirmation signed by the property owner that the home improvements for which the payment is being made have been completed in accordance with the contract.
 - b) Upon satisfaction of the condition in (a), no more than 85 percent of the funds shall be released to the home improvement contractor. The balance of the funds to be paid to the contractor shall not be released until the finance lender has confirmed that all home improvements have been given final approval by all permitting agencies and are operational or fit for its intended use. A solar energy system shall not be deemed operational until the property owner confirms the utility supplying electricity has been connected to the solar energy system, the utility supplying electricity grants permission to operate the solar energy system, and the property owner confirms the solar energy system is functioning. "Solar energy system" has the same meaning as in the CSLL.
- 16) Provides that payment shall not be received from the consumer on the home improvement loan until the conditions set forth in 15)(b) are satisfied.

COMMENTS

1. Author's statement

According to the author:

AB 2993 establishes new consumer protections in the home improvement lending industry. These new protections will help prevent situations where a contractor and lender use aggressive solicitation tactics to convince a vulnerable homeowner to agree to a home improvement project they do not need, funded

by a costly consumer loan with unclear terms. Among other provisions, AB 2993 extends the time a homeowner has to cancel a home improvement contract and requires a finance lender to confirm the loan terms with the homeowner. These protections will ensure greater transparency and accountability in the industry.

2. Background on consumer home improvement contracts and concerns raised by the author and sponsor

Home improvement contracts are, broadly speaking, contracts made by an owner or resident to improve their place of residence.¹ A consumer might pay for the contract outright, or might finance the contract through a home equity loan or other financing instrument. According to the author, however, vulnerable homeowners, including seniors and those with limited English proficiency, are often the targets of too-good-to-be-true home improvement contract offers that result in poor work or excessive debt. The author states that evidence suggests that solar-related contracts and lending terms have become a particular problem, with contract salespeople making outsized claims about the cost savings from solar.

Home improvement loans are already regulated under state law. For example, home improvement contracts mostly provide a right-to-cancel window – three days for most consumers, and five days for seniors – that gives the consumer a chance to cool down and revisit an agreement that may have been signed using high-pressure tactics.² However, as explained by the Senate Banking and Financial Institutions Committee’s analysis of this bill, recourse for violations can be hard to come by:

State law recognizes the need to regulate the home improvement marketplace. Home improvement contractors are required to be licensed by the Contractors State License Board (CSLB). Per the CSLB, there are around 285,000 contractor licensees in the state, for which the CSLB’s approximately 400 employees are responsible for overseeing. CSLB commonly receives complaints about contractors related to poor workmanship; abandonment of a project; use of false, misleading, or deceptive advertising; and violations of the law governing home improvement contracts, among other complaints.³ Upon receipt of a complaint, CSLB has authority to attempt mediation, after which, if unsuccessful, CSLB may recommend settlement through its arbitration program or recommend that the complainant contact the surety company that issued the contractor’s bond, file a claim in small claims court, or file a civil suit in superior court. Given the size of the home improvement market in California compared to the size of the CSLB, it

¹ Bus. & Prof. Code, § 7151.2.

² See, e.g., *id.*, §§ 7159, 7519.5; Civ. Code, §§ 1689.6, 1689.7, 1689.13.

³ See discussion of enforcement procedures in Chapter 1 of Section 1 of the California Contractors License Law & Reference Book, 2024 edition, accessed here:

<https://www.cslb.ca.gov/Resources/GuidesAndPublications/2024/2024-CA-License-Law-Reference-Book.pdf> (link current as of June 28, 2024).

is likely that many instances of consumer harm are not resolved administratively, leaving consumers with the difficult decision of assessing whether the cost of litigation is worth the risk of pursuing a complaint.

3. This bill adds requirements and restrictions related to home improvement contracts and a certain category of financing offered to consumers to pay for such improvements

This bill is intended to add additional protections for consumers who enter into home improvement contracts. The brunt of the bill, which imposes new obligations on the finance lenders who provide financing for home improvement loans, are within the jurisdiction of the Senate Banking and Financial Institutions Committee. That Committee passed this bill with a vote of 6-0, and the Committee analysis is incorporated herein by reference. Additionally, the author is continuing to work with stakeholders on this issue and reportedly is working on amendments that will be crossed in the Senate Appropriations Committee.

For purposes of this Committee's jurisdiction, this bill extends the time window in which a consumer has a right to cancel a home improvement contract after executing it. Current law grants a three-day window, and a five-day window for seniors; this bill extends those windows to five days and seven days, respectively. It does not appear that any of the opposition objects to these portions of the bill.

4. Arguments in support

According to a coalition of the bill's supporters, including HERA, the sponsor:

AB 2993 is a crucial step towards addressing the abuses and harm that arises from finance lenders using contractors to market their loans for home improvements, signing homeowners up electronically (often without their knowledge or informed consent), and then releasing the funds directly to the contractor without taking steps to ensure the work has been finished properly.

Because of the inherent likelihood of abuse, existing law provides special protections for "home solicitation contracts", those that are negotiated outside the contractor's place of business, such as through door-to-door sales. Unfortunately, the law does not adequately address the role of lenders who finance these improvements, often leaving consumers vulnerable. Aggressive marketing tactics and door-to-door solicitation often lead homeowners to agree to projects they may not necessarily need, funded by costly unsecured consumer loans with opaque terms. Furthermore, when projects are left incomplete or poorly executed, homeowners have limited recourse with the finance lender who is seeking repayment of the loan for substandard or incomplete work.

AB 2993 presents a solution to these challenges by enacting changes that prioritize transparency and accountability on the part of the finance lender as well as the contractor. By extending the "right to rescind" timeline, requiring lenders to clearly communicate loan terms, and prohibiting the release of funds until certain conditions are met, this legislation empowers homeowners to make informed decisions about their home improvement projects.

5. Arguments in opposition

According to the California Solar & Storage Association and the Solar Industries Association:

Section 9 of the bill proposes modifying the progress payment schedule from lender to contractor, and the subsequent repayment schedule from customer to lender, based on milestones outside of each party's control. This will put significant financial strain on both contractors and lenders, cause costs to increase for Californians who seek these financing options, and risk eliminating this customer financing option entirely in this state. Section 9 says that the lender cannot release more than the down payment and the value of the work performed and equipment delivered to the contractor until there is both a confirmation call and a completion certificate from the property owner, in writing, that states that the home improvement has been completed in accordance with the home improvement contract...Given the cost outlay required by contractors and lenders to install and finance a solar project, these requirements would have the unintended consequences of increasing the cost of solar projects for consumers and put financial strain on contractors, making it harder to deliver high-quality service.

SUPPORT

HERA (sponsor)
California Low-Income Consumer Coalition
Center for Responsible Lending
Consumer Advocates Against Reverse Mortgage Abuse
Consumer Federation of California
East Bay Community Law Center
Haven Services, Inc.
National Housing Law Project
Public Counsel
Rise Economy

OPPOSITION

California Solar & Storage Association

Heating, Air Conditioning, and Refrigeration Distributors International
Institute of Heating & Air Conditioners Industries, Inc.
Solar Energy Industries Association

RELATED LEGISLATION

Pending Legislation: None known

Prior Legislation:

SB 601 (McGuire, Ch. 403, Stats. 2023) increased penalties for contractors who violate home improvement contract requirements when the violation occurs in a location damaged by a natural disaster, as specified.

AB 2471 (Maienschein, Ch. 158, Stats. 2020) provided senior citizens with the current five-day right to cancel various contracts and agreements, including home improvement and home solicitation contracts.

PRIOR VOTES:

Senate Banking and Financial Institutions Committee (Ayes 6, Noes 0)
Assembly Floor (Ayes 71, Noes 0)
Assembly Appropriations Committee (Ayes 15, Noes 0)
Assembly Judiciary Committee (Ayes 11, Noes 0)
Assembly Banking and Finance Committee (Ayes 9, Noes 0)
