

CONSUMER PROTECTION SECTION

**HOME
SOLICITATION
SALES ACT**



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Table of Contents

CHAPTER 1345: HOME SOLICITATION SALES ACT

Section	Page
1345.21 Definitions	1
1345.22 Buyer's right to cancel; notice	4
1345.23 Writing required; contents, warning	4
1345.24 Seller to retain notice of cancellation	8
1345.25 Presumption of home solicitation sale	9
1345.26 Buyer's rights after cancellation	9
1345.27 Seller's rights after cancellation	9
1345.28 Deceptive sales act or practice	10
1345.99 Penalty	10

CHAPTER 1345: HOME SOLICITATION SALES ACT

§1345.21

Definitions.

As used in sections 1345.21 to 1345.28 of the Revised Code:

- (A) “Home solicitation sale” means a sale of consumer goods or services in which the seller or a person acting for the seller engages in a personal solicitation of the sale at a residence of the buyer, including solicitations in response to or following an invitation by the buyer, and the buyer’s agreement or offer to purchase is there given to the seller or a person acting for the seller, or in which the buyer’s agreement or offer to purchase is made at a place other than the seller’s place of business. It does not include a transaction or transactions in which:
- (1) The total purchase price to be paid by the buyer, whether under single or multiple contracts, is less than twenty-five dollars;
 - (2) The transaction was conducted and consummated entirely by mail or by telephone if initiated by the buyer, and without any other contact between the seller or the seller’s representative prior to the delivery of goods or performance of the service;
 - (3) The final agreement is 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;
 - (4) The buyer initiates the contact between the parties for the purpose of negotiating a purchase and the seller has a business establishment at a fixed location in this state where the goods or services involved in the transaction are regularly offered or exhibited for sale.

Advertisements by such a seller in newspapers, magazines, catalogues, radio, or television do not constitute the seller initiation of the contact.

- (5) The buyer initiates the contact between the parties, the goods or services are needed to meet a bona fide immediate personal emergency of the buyer which will jeopardize the welfare, health, or safety of natural persons, or endanger property which the buyer owns or for which the buyer is responsible, and the buyer furnishes the seller with a separate, dated, and signed 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;
 - (6) The buyer has initiated the contact between the parties and specifically requested the seller to visit the buyer's 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 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 does not fall within this exclusion.
 - (7) The buyer is accorded the right of rescission by the "Consumer Credit Protection Act," (1968) 82 Stat. 152, 15 U.S.C. 1635, or regulations adopted pursuant thereto.
- (B) "Sale" includes a lease or rental.
 - (C) "Seller" includes a lessor or anyone offering goods for rent.
 - (D) "Buyer" includes a lessee or anyone who gives a consideration for the privilege of using goods.
 - (E) "Consumer goods or services" means goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses or instruction or training regardless of the purpose for which they are taken.

- (F) “Consumer goods or services” does not include goods or services pertaining to any of the following:
- (1) Sales or rentals of real property by a real estate broker or salesperson, or by a foreign real estate dealer or salesperson, who is licensed by the Ohio real estate commission under Chapter 4735. of the Revised Code;
 - (2) The sale of securities or commodities by a broker-dealer registered with the securities and exchange commission;
 - (3) The sale of securities or commodities by a securities dealer or salesperson licensed by the division of securities under Chapter 1707. of the Revised Code;
 - (4) The sale of insurance by a person licensed by the superintendent of insurance;
 - (5) Goods sold or services provided by automobile dealers and salespersons licensed by the registrar of motor vehicles under Chapter 4517. of the Revised Code;
 - (6) The sale of property at an auction by an auctioneer licensed by the department of agriculture under Chapter 4707. of the Revised Code.
- (G) “Purchase price” means the total cumulative price of the consumer goods or services, including all interest and service charges.
- (H) “Place of business” means the main office, or a permanent branch office or permanent local address of a seller.
- (I) “Business day” means any calendar day except Sunday, or the following business holidays: New Year’s Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

HISTORY: 134 v S 24 (Eff 1-1-73); 135 v H 241 (Eff 9-30-74); 141 v H 82 (Eff 9-11-85); 148 v H 18 (Eff 10-20-99); 149 v H 94. Eff 10-1-2001.

§1345.22

Buyer's right to cancel; notice.

In addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase. Cancellation is evidenced by the buyer giving written notice of cancellation to the seller at the address stated in the agreement or offer to purchase. The buyer may deliver the notice by mail, telegram, manual delivery, or other personal delivery. Written notice of cancellation shall be effective upon the date of postmarking. Telegram delivery is effective when the telegram is ordered. Manual delivery or other personal delivery is effective when delivered to the seller or to the seller's address, whichever comes first. Notice of cancellation 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 the home solicitation sale. Notice of buyer's right to cancel must appear on all notes or other evidence of indebtedness given pursuant to any home solicitation sale.

Where a home solicitation sale requires a seller to provide services, he shall not commence performance of such services during the time in which the buyer may cancel.

HISTORY: 134 v S 24 (Eff 1-1-73); 135 v H 241. Eff 9-30-74

§1345.23

Writing required; contents, warning.

- (A) Every home solicitation shall be evidenced by a written agreement or offer to purchase in the same language as that principally used in the oral sales presentation and shall contain the name and address of the seller. The seller shall present the writing to the buyer and obtain the buyer's signature to it. The writing shall state the date on which the buyer actually signs. The seller shall leave with the buyer a copy of the writing which has been signed by the seller and complies with division (B) of this section.

(B) In connection with every home solicitation sale:

- (1) The following statement shall appear clearly and conspicuously on the copy of the contract left with the buyer in bold-face type of the minimum size of ten points, in substantially the following form and in immediate proximity to the space reserved in the contract for the signature of the buyer: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation for an explanation of this right."
- (2) A completed form, in duplicate, captioned "notice of cancellation," shall be attached to the contract signed by the buyer and be easily detachable, and shall contain in ten-point, bold-face type, the following information and statements in the same language as that used in the contract:

"NOTICE OF CANCELLATION

 (enter date of transaction)
(Date)

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

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled. If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the

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

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

_____ at _____ not later
(Name of seller) (Address of seller's place of business)
than midnight of _____
(Date)

I hereby cancel this transaction.

_____ (Date) _____ (Buyer's Signature)"

- (3) Before furnishing copies of the notice of cancellation to the buyer, the seller shall complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction which is the date the buyer signed the contract and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.
- (4) A home solicitation sales contract which contains the notice of buyer's right to cancel and notice of cancellation in the form and language provided in the federal trade commission's trade regulation rule providing a cooling-off period for door-to-door sales shall be deemed to comply with the requirements of divisions (B) (1), (2), and (3) of this section with respect to the form and language of such notices 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 divisions (B) (1), (2), and (3) of this section.

- (C) Until the seller has complied with divisions (A) and (B) of this section the buyer may cancel the home solicitation sale by notifying the seller by mailing, delivering, or telegraphing written notice to the seller of his intention to cancel. The three-day period prescribed by section 1345.22 of the Revised Code begins to run from the time the seller complies with divisions (A) and (B) of this section.
- (D) In connection with any home solicitation sale, no seller shall:
 - (1) Include in any home solicitation sales contract, any confession of judgment or any waiver of any rights to which the buyer is entitled under this section, including specifically his right to cancel the sale in accordance with this section.
 - (2) Fail to inform each buyer orally, at the time he signs the contract for the goods or services, of his right to cancel.
 - (3) Misrepresent in any manner the buyer's right to cancel.
 - (4) Fail or refuse to honor any valid notice of cancellation by a buyer and within ten business days after receipt of such notice to:
 - (a) Refund all payments made under the contract or sale;
 - (b) Return any goods or property traded in, in substantially as good condition as when received by the seller;
 - (c) Cancel and return any note, negotiable instrument, or other evidence of indebtedness executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to reflect the termination of any security interest or lien created under the sale or offer to purchase.
 - (5) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other

third party prior to midnight of the fifth business day following the day the contract for the goods or services was signed.

- (6) Fail to notify the buyer, within ten business days of receipt of the buyer's notice of cancellation, whether the seller intends to repossess or abandon any shipped or delivered goods.

HISTORY: 134 v S 24 (Eff 1-1-73); 135 v H 241. Eff 9-30-74.

§1345.24

Seller to retain notice of cancellation.

In a home solicitation sale, the seller shall retain, for the period in which an action to enforce the sale could be commenced, any notice of cancellation made pursuant to section 1345.22 of the Revised Code. The seller shall also retain the envelope in which any notice of cancellation is sent or delivered. If the date of delivery is not indicated or recorded on the notice of cancellation or on the envelope, the seller shall record the date of delivery on the notice of cancellation.

HISTORY: 134 v S 24 (Eff 1-1-73); 135 v H 241. Eff 9-30-74.

§1345.25

Presumption of home solicitation sale.

Where a sale is made pursuant to negotiations that occur at a place other than the seller's fixed location business establishment where goods or services are offered or exhibited for sale, but the agreement or offer to purchase is signed at a seller's fixed location business establishment, a presumption arises that the sale was a home solicitation sale.

HISTORY: 134 v S 24. Eff 1-1-73.

§1345.26

Buyer's rights after cancellation.

If, following the cancellation of a home solicitation sale by the buyer, the seller fails to return any goods traded in by the buyer, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement. Until division (D) (4) of section 1345.23 of the Revised Code has been complied with by the seller, the buyer may retain possession of the goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

HISTORY: 134 v S 24 (Eff 1-1-73); 135 v H 241. Eff 9-30-74.

§1345.27

Seller's rights after cancellation.

Except as provided in section 1345.26 of the Revised Code, within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase has been revoked, the buyer upon demand must make available to the seller any goods delivered by the seller pursuant to the sale. The goods made available shall not have been diminished in quantity nor subjected to unreasonable wear or use. The buyer is not obligated to make the goods available at any place other than his residence. If the buyer does make the goods available to the seller and the seller fails to pick them up within twenty days of the buyer's notice of cancellation, the goods become the property of the buyer without obligation to pay for them. The buyer has the duty to take reasonable care of the goods in his possession before cancellation and twenty days thereafter, during which time the goods are otherwise at the seller's risk.

HISTORY: 134 v S 24 (Eff 1-1-73); 135 v H 241. Eff 9-30-74.

§1345.28

Deceptive sales act or practice.

Failure to comply with sections 1345.21 to 1345.27 of the Revised Code constitutes a deceptive act or practice in connection with a consumer transaction in violation of section 1345.02 of the Revised Code.

HISTORY: 135 v H 241. Eff 9-30-74.

§1345.99

Penalty.

(A) Whoever violates section 1345.23 or 1345.24 of the Revised Code is guilty of a minor misdemeanor.

HISTORY: 134 v S 24 (Eff 1-1-73); 135 v H 241. Eff 9-30-74.



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