

## **CHAPTER 51-18 REGULATION OF HOME SOLICITATION SALES**

### **51-18-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Consumer goods or services" means goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.
2. "Person" includes a corporation, limited liability company, company, partnership, firm, association, or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state, or country, or any political subdivision of this state which may lawfully own any property, or a public or private corporation, limited liability company, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, limited liability company, partnership, or any association of persons.
3. "Personal solicitation sale" means a sale, lease, or rental of consumer goods or services in which the seller or the seller's representative solicits the sale, lease, or rental, by telephone or in person, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the person soliciting the same and that agreement or offer to purchase is there given to the seller or the seller's representative. A transaction is not a personal solicitation sale if it is made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, lease, or rental.
4. "Seller" means a person who makes a personal solicitation sale.
5. "Seller's representative" means a person who makes a personal solicitation sale on behalf of a seller.
6. "Telepromoter" means any person who, individually, through salespersons or agents, or through the use of an automatic dialing-announcing device initiates telephone contact with a consumer or who by written notice requests that the consumer contact the person by telephone and who represents one or more of the following:
  - a. That if the consumer buys one or more items from the telepromoter, the consumer will also receive additional or other items, whether or not of the same type as purchased, without further cost or at a cost which the seller states or implies is less than the regular price of those items.
  - b. That a consumer will receive a prize, premium, or gift if the telepromoter also encourages the consumer to do either of the following:
    - (1) Purchase or rent any goods or services.
    - (2) Pay any money, including a delivery or handling charge.
  - c. That the consumer has in any manner been specially selected to receive the written notice or the offer contained in the written notice.

The term does not include any nonprofit or charitable organization exempt from federal taxation under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)].

### **51-18-02. Cancellation period - Method of cancellation - Intent.**

1. In addition to any right otherwise to revoke an offer, the buyer may cancel a personal solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement that complies with this chapter. A buyer sixty-five years of age or older may cancel a personal solicitation sale of a product with a purchase price greater than fifty dollars until midnight of the fifteenth business day after the day on which the buyer enters into an enforceable agreement subject to this chapter or must be provided a written agreement that meets the requirements of section 51-18-04. In addition to other requirements of this chapter, the seller shall orally inform the buyer, at the time the transaction is entered into, of the buyer's right to cancel.

2. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address or electronic mail address specified for notice of cancellation provided by the seller by any of the following methods:
  - a. Delivering written notice to the seller.
  - b. Mailing written notice to the seller.
  - c. Sending an electronic mail message to the seller.
3. Notice of cancellation given by the buyer is effective if it indicates the intention on the part of the buyer not to be bound by the personal solicitation sale.

**51-18-03. Referral sales - Rebate or discount violations.**

No seller in a personal solicitation sale may offer to pay a commission or give a rebate or discount to the buyer in consideration of the buyer's giving to the seller the names of prospective purchasers or otherwise aiding the seller in making a sale to another person, if the earning of the commission, rebate, or discount is contingent upon an event that is to happen subsequent to the time the buyer agrees to buy. Any sale made in respect to which a commission, rebate, or discount is offered in violation of this chapter is voidable at the option of the buyer.

**51-18-04. Agreement requirement.**

No agreement of the buyer in a personal solicitation sale is enforceable unless it is in writing, dated, contains the signature of the buyer, and contains a conspicuous notice in substantially the following form:

**NOTICE TO BUYER**

1. Do not sign this agreement if any of the spaces intended for the agreed terms to the extent of then available information are left blank.
2. You are entitled to a copy of this agreement at the time you sign it.
3. You may pay off the full unpaid balance due under this agreement at any time, and in so doing you may receive a full rebate of the unearned finance and insurance charges.
4. You 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 form for an explanation of this right.
5. The seller cannot enter your premises unlawfully or commit any breach of the peace to repossess goods purchased under this agreement.

The agreement must also have attached the following completed form, in duplicate:

**NOTICE OF CANCELLATION**

(Enter date of transaction)

1. You may cancel this transaction, without any penalty or obligation, within three business days from the above date.
2. 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 canceled.
3. 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.
4. 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.
5. Buyer acknowledges receiving an oral notification that the buyer may cancel this transaction at any time before midnight of the third business day after the date of this transaction or fifteen business days if the buyer is sixty-five years of age or older.

(Date)

(Buyer's signature)

6. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send an electronic mail message to (electronic mail address of seller), to (name of seller), at (address of seller's place of business) not later than midnight of (date).

I hereby cancel this transaction.

(Date)

(Buyer's signature)

If the buyer is sixty-five years of age or older, and the purchase price of the product is greater than fifty dollars, the agreement required by this chapter must either state that the buyer may cancel the agreement within fifteen business days in accordance with this chapter, or state in a conspicuous manner that if the buyer is not satisfied with the product for any reason, the buyer may contact the seller within a period of not less than thirty days from the date of purchase for a full refund of the purchase price, if the product has not been intentionally damaged or misused.

#### **51-18-04.1. Notice to consumer - Contract requirement for sales by telepromoter.**

In addition to the requirements of section 51-18-04, an agreement by a consumer to obtain a consumer good or service from a telepromoter, seller, or seller's representative is not enforceable unless it contains the following information:

1. The name, address, and telephone number of the telepromoter, seller, or seller's representative;
2. A statement of the price or fee, including any handling, shipping, delivery, or other charge being requested;
3. A detailed description of the consumer good or service; and
4. In a type size in a minimum of twelve points, in a space immediately preceding the space allotted for the consumer signature, the statement: "YOU ARE NOT OBLIGATED TO PAY ANY MONEY UNLESS YOU SIGN THIS CONTRACT AND RETURN IT TO THE SELLER."

#### **51-18-04.2. Credit card charges.**

A telepromoter, seller, or seller's representative, in a personal solicitation sale, may not make or submit any charge to the consumer's credit card or bank account, or otherwise solicit or accept any advance payment, until the telepromoter, seller, or seller's representative has received from the consumer an original copy of a contract that complies with this section.

#### **51-18-04.3. Agreement by telepromoter or seller in violation of chapter void.**

Any agreement for sale, lease, or rental of a consumer good or service in a personal solicitation sale by a telepromoter, seller, or seller's representative in violation of this chapter is unenforceable and void.

#### **51-18-05. Evidence of indebtedness.**

1. A note or other evidence of indebtedness given by a buyer in respect of a personal solicitation sale must be dated not earlier than the date of the agreement or offer to purchase. Any transfer of a note or other evidence of indebtedness bearing the statement required by subsection 2 must be deemed an assignment only and any right, title, or interest which the transferee may acquire thereby is subject to all claims and defenses of the buyer against the seller pursuant to this chapter.
2. Each note or other evidence of indebtedness given by a buyer in respect of a personal solicitation sale must bear on its face a conspicuous statement as follows: "This instrument is based upon a personal solicitation sale, which is subject to the provisions of the North Dakota Century Code. This instrument is not negotiable."
3. Compliance with the requirements of this section is a condition precedent to any claim for relief by the seller or any transferee of an instrument bearing the statement required under subsection 2 against the buyer upon such instrument and must be

pledged and proved by any person who may institute an action or suit against a buyer in respect thereof.

**51-18-06. Time limitation - Disposition of goods.**

1. Except as provided in this section, within ten days after a personal solicitation sale has been canceled, the seller shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness and shall take any action necessary to promptly terminate any security interest created in the transaction.
2. If the downpayment includes goods traded in, the goods must be tendered in substantially as good condition as when received. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.
3. The buyer may retain possession of goods delivered to the buyer by the seller and has a lien on the goods for any recovery to which the buyer is entitled until the seller has complied with the obligations imposed by this section.

**51-18-07. Buyer responsibility - Services.**

1. Except as provided in subsection 3 of section 51-18-05, within twenty days after a personal solicitation sale has been canceled, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale, but the buyer is not obligated to tender at any place other than the buyer's own address. If the seller fails to take possession of such goods within twenty days after cancellation, the goods become the property of the buyer without obligation to pay for them.
2. The buyer shall take reasonable care of the goods in the buyer's possession both prior to cancellation and during the following twenty-day period. During the twenty-day period after cancellation, except for the buyer's duty of care, the goods are at the seller's risk.
3. If the seller has performed any services pursuant to a personal solicitation sale prior to its cancellation, and if the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was in at the time the services were rendered.
4. The buyer may not cancel a personal solicitation sale if the buyer initiates the contract with the seller and requests the seller to provide goods or services without delay and the seller in good faith makes a substantial beginning of performance before notice of cancellation, and the goods cannot be returned to the seller in substantially as good condition as when the buyer received them.

**51-18-07.1. Place of transaction.**

Any sale subject to this chapter is considered to have taken place in the state where the consumer resides, regardless of the location of the seller.

**51-18-08. Exceptions.**

The provisions of this chapter do not apply to:

1. Sales of insurance.
2. Sales of goods or services with a purchase price of less than twenty-five dollars.
3. Sales of services provided by a cable television system licensed or franchised by any city.
4. Sale of a subscription to or advertising in a newspaper of general circulation.
5. Sales of services or advertising by a broadcaster licensed by the federal communications commission.
6. Telecommunications companies regulated by the public service commission under title 49 or regulated by the federal communications commission.
7. Sales when the seller provides that the consumer may receive a full refund for the return of undamaged and unused goods if the consumer requests a refund no later than fifteen days after the date the consumer receives the goods and if the seller

- provides the refund within thirty days after the date the seller receives the returned goods from the consumer. The return and refund privilege must be disclosed to the consumer orally and in writing with delivery of the goods.
8. Sales when the seller provides that the consumer may receive a full refund for a cancellation of services if the consumer requests a refund no later than fifteen days after the date the consumer receives the services and if the seller provides the refund within thirty days after the consumer cancels the order for the purchase of services not performed or provides a proportional refund for any services not yet performed for the consumer. The return and refund privilege must be disclosed to the consumer orally and in writing with delivery of the services.

**51-18-08.1. Waiver.**

Any waiver of this chapter is unenforceable and void.

**51-18-09. Enforcement - Powers - Remedies - Penalty.**

Any person who violates any provision of this chapter is guilty of a class B misdemeanor. The state's attorney or attorney general may enforce this chapter. The attorney general in enforcing this chapter has all the powers provided in this chapter and chapter 51-15 and may seek all remedies in this chapter and chapter 51-15. A violation of this chapter constitutes a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law.