

IC 24-5-10

Chapter 10. Home Solicitation Sales

IC 24-5-10-1

"Business day" defined

Sec. 1. As used in this chapter, "business day" means a day other than Sunday or a legal holiday.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-2

"Consumer" defined

Sec. 2. As used in this chapter, "consumer" means an individual who is the ultimate user of the subject of a consumer transaction.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-3

"Consumer transaction" defined

Sec. 3. As used in this chapter, "consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible to an individual for purposes that are primarily personal, family, or household, or a solicitation to supply any of these things, with or without an extension of credit. The term does not include securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of Indiana.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-4

"Home consumer transaction" defined

Sec. 4. As used in this chapter, "home consumer transaction" means a consumer transaction that the consumer did not solicit that results from the direct contact by a supplier at a place other than the supplier's permanent place of business. For purposes of this chapter, direct contact by the supplier does not include:

- (1) contact conducted and consummated entirely by mail or telephone;
- (2) contact between the buyer and seller or its representatives before delivery of the goods or performance of the services in the case of a supplier regulated under IC 23-7-8; or
- (3) advertising to the general public.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-5

"Person" defined

Sec. 5. As used in this chapter, "person" means an individual, a corporation, the state or its subdivisions or agencies, a business trust, an estate, a trust, a partnership, an association, a cooperative, or any other legal entity.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-6**"Supplier" defined**

Sec. 6. As used in this chapter, "supplier" means a seller, lessor, assignor, or other person who engages in or solicits consumer transactions, including a manufacturer, wholesaler, or retailer, whether or not the supplier deals directly with the consumer.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-7**"Subject of a consumer transaction" defined**

Sec. 7. As used in this chapter, "subject of a consumer transaction" means the personal property, real property, services, or intangibles furnished in a consumer transaction, whether the transaction is governed by a single contract or multiple contracts.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-8**Cancellation of transaction; notice to supplier**

Sec. 8. (a) A consumer may cancel a home consumer transaction if:

- (1) the subject of the consumer transaction has a cash sales price of at least twenty-five dollars (\$25); and
- (2) the consumer gives the supplier a written notice that meets the requirements of 16 C.F.R. 429.1(a) and (b).

(b) The notice given under subsection (a)(2) must meet the following requirements:

- (1) It must be given before midnight of the third business day after the later of the date:
 - (A) the supplier furnishes the consumer with the notice required by section 9 of this chapter; or
 - (B) the consumer and the supplier finally agree to the contract for the subject of the consumer transaction.
- (2) It must express in any form the consumer's intention to cancel the consumer transaction.
- (3) It must be delivered in person or sent by mail or other device to the address given in the supplier's notice required by section 9 of this chapter or to the address of the supplier last known to the consumer if such notice was not given.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-9**Cancellation rights; notice to consumer**

Sec. 9. (a) The supplier in a home consumer transaction subject to section 8 of this chapter shall deliver to the consumer two (2) copies of a written notice of the consumer's right to cancel the transaction.

(b) The notice shall be on a separate document in at least ten (10) point boldface type and contain the following information:

- (1) The address to which the consumer's notice of cancellation may be delivered or sent.

(2) A statement that the transaction may be cancelled before midnight of the third business day after the consumer and the supplier finally agree to the transaction.

(3) A statement of the explanation of the steps the consumer must take to cancel the home consumer transaction.

(4) A statement of the steps the consumer and supplier must take after cancellation of the home consumer transaction.

(5) The date by which the consumer must exercise the right to cancel the transaction.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-10

Supplier's address change as defense

Sec. 10. A change of the supplier's address is not a defense unless the consumer receives written notice of the change by delivery in person or by certified or registered mail within the time the consumer may exercise the consumer's right to cancel under this chapter.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-11

Final agreement

Sec. 11. Final agreement to a contract does not occur until the consumer and the supplier unequivocally agree to the contract and the supplier obtains any required approvals by another supplier or person.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-12

Return of consideration upon cancellation; emergency home improvements completed; quantum meruit

Sec. 12. If the consumer exercises the right to cancel under this chapter, the supplier shall, within ten (10) business days after the notice of cancellation is delivered, return to the consumer any payment or other consideration transferred to the supplier by the consumer. However, if the transaction constitutes a home improvement contract under IC 24-5-11 and if the home improvement has been made on an emergency basis within three (3) days after final agreement to the contract, the supplier is entitled to recover from the consumer the fair market value of the material and labor involved to alleviate the emergency.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-13

Repossession by supplier; conditions

Sec. 13. (a) If the consumer exercises the right to cancel under this chapter and has possession of the subject of the consumer transaction, the supplier may retake possession only:

(1) if the supplier has complied with section 12 of this chapter;

(2) if no more than ten (10) days have passed after compliance with section 12 of this chapter; and

(3) to the extent its return is feasible and can be done without causing damage to any other property of the consumer.

(b) If the supplier fails to take possession of the property within twenty (20) days after receipt of the notice of cancellation, the supplier's right to possession is forfeited.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-14

Mitigation of damages

Sec. 14. The supplier is not entitled to mitigation of damages if a consumer properly exercises the consumer's right to cancel under this chapter.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-15

Supplier provided remedies

Sec. 15. This chapter does not restrict the supplier from offering or providing additional or broader reasons for cancellation.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-16

Other remedies

Sec. 16. The consumer's right to cancel a home consumer transaction under this chapter is in addition to any other remedy available to the consumer. This right cannot be waived.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-17

Violations

Sec. 17. It is a violation of this chapter for a supplier to:

- (1) fail to give the notice required by section 9 of this chapter;
- (2) fail or refuse to make a full refund as required by this chapter; or
- (3) knowingly interfere with the consumer's exercise of the consumer's rights under this chapter.

As added by P.L.251-1987, SEC.2.

IC 24-5-10-18

Penalties

Sec. 18. A supplier who violates this chapter:

- (1) commits a Class C infraction and is required to make a full refund as provided by section 12 of this chapter; and
- (2) commits a deceptive act that is actionable by the attorney general or by a consumer under IC 24-5-0.5-4 and is subject to the remedies and penalties under IC 24-5-0.5.

As added by P.L.251-1987, SEC.2.