

Enrolled Senate Bill 214

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CHAPTER

AN ACT

Relating to home solicitation sales; creating new provisions; and amending ORS 83.710, 83.720 and 83.730.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 83.710 is amended to read:

83.710. (1) As used in ORS 83.710 to 83.750[, *a sale of goods or services as defined in ORS 83.010 is*]:

(a) A **transaction is a** “home solicitation sale” if:

[(A) The seller or a person acting for the seller engages in a personal solicitation of the sale at a residence other than that of the seller; and]

[(B) The buyer’s agreement or offer to purchase is there given to the seller or a person acting for the seller.]

(A) It is a sale, lease or rental of goods or services, as defined in ORS 83.010;

(B) The seller or the seller’s representative personally solicits the sale, lease or rental, including a sale, lease or rental in response to or following an invitation by the buyer; and

(C) The buyer’s written agreement or offer to purchase is made at a place other than the place of business of the seller. As used in this subparagraph, “a place other than the place of business of the seller” means a place that is not the seller’s main or permanent branch office or permanent local address and includes but is not limited to the residence or workplace of the buyer and facilities rented by the seller on a temporary or short-term basis, such as a hotel or motel room, restaurant or dormitory lounge.

(b) A **transaction is a** “telephone solicitation sale” if:

(A) The seller or person acting for the seller engages in a solicitation conducted by telephone to a residence;

(B) The transaction is initiated by the seller or person acting for the seller and is in no way solicited by the buyer;

(C) The buyer’s agreement or offer to purchase is given over the telephone to the seller or person acting for the seller; and

(D) There is no personal contact between the buyer and the seller or person acting for the seller prior to delivery of goods or performance of services.

(c) “Business day” does not include a Saturday, Sunday or legal holiday.

(2) The provisions of ORS 83.710 to 83.750 relating to home solicitation sales do not apply to:

(a) A sale made pursuant to a preexisting revolving charge account **unless the sale is made at the residence of the buyer;**

(b) **The activities of a financial institution as defined in 15 U.S.C. 6827;**

[(b)] (c) A contract in writing for the sale or lease of a house or business property or the construction of a new house or business property;

[(c)] (d) A sale made pursuant to prior business negotiations relevant to [such] **the** sale between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale;

[(d)] (e) A sale for cash or check in the amount of less than \$25; [or]

[(e)] (f) A sale of insurance, farm equipment or motor vehicles[.];

(g) **A sale of arts and crafts at a fair;**

(h) **A sale made at an event conducted under and governed by ORS chapter 565; or**

(i) **Except as provided in subsection (3) of this section, a transaction in which the buyer initiated the contact and specifically requested that the seller come to the buyer's home for the purpose of repairing or performing maintenance on the buyer's personal property.**

(3) **The provisions of ORS 83.710 to 83.750 apply to a sale under subsection (2)(i) of this section if the seller, while at the home of the buyer to repair or perform maintenance on the buyer's personal property at the request of the buyer, sells the buyer the right to receive additional goods or services other than replacement parts necessary to perform the maintenance or to make the repairs on the buyer's personal property.**

[(3)] (4) The provisions of ORS 83.710 to 83.750 relating to telephone solicitation sales apply only to a sale of periodicals, magazines or any other reading material with or without illustrations that the buyer is to receive at fixed intervals and do not apply to sales of newspaper subscriptions or advertising and sales in which the buyer is offered reasonable opportunity to preview and return reading material without contractual obligation.

SECTION 2. ORS 83.720 is amended to read:

83.720. (1) Except as provided in subsection (5) of this section, in addition to any other right to revoke an offer or rescind a transaction [which] **that** the buyer may have, the buyer has the right to cancel a home solicitation sale until 12 midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase [which] **that** complies with ORS 83.710 to 83.750 or pays by cash or check.

(2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(3) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by a form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(5) The buyer may not cancel a home solicitation sale if the buyer **initiates the contact with the seller and the buyer**, in a separate signed writing not furnished by the seller, requests **that** the seller [to] provide goods or services without delay because of an emergency, **describes the emergency and expressly acknowledges and waives the right to cancel the sale within three business days**, and:

(a) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation[.]; and

(b) In case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

SECTION 3. ORS 83.730 is amended to read:

83.730. (1) [In a home solicitation sale the seller must present to the buyer and obtain the signature of the buyer to a written agreement or offer to purchase which] **A home solicitation sale must be evidenced by a written agreement or offer to purchase signed by the buyer. At the time a buyer executes the written agreement or offer to purchase:**

(a) The seller must furnish the buyer with a fully completed copy of the written agreement or offer to purchase.

(b) The written agreement or offer to purchase must:

(A) Designate [designates] as the date of the transaction the date on which the buyer actually signs; [and]

(B) Contain the name of the seller and address of the seller's place of business;

(C) Be in the same language as the language that is principally used in the sales presentation; and

(D) [contains a statement of the buyer's right which complies with subsection (2) of this section.] Contain, in immediate proximity to a space reserved for the signature of the buyer, in at least 10-point boldfaced type, a statement in substantially the following form:

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 buyer's right to cancel for an explanation of the right to cancel.

(c) The seller must provide the buyer, by a method chosen by the seller, with a duplicate copy of the notice of the buyer's right to cancel described in subsection (2) of this section so that, if the buyer cancels the transaction, the buyer can retain a complete copy of the written agreement or offer to purchase. If both copies of the notice are not attached to the written agreement or offer to purchase, the seller shall change the last sentence in the statement required under paragraph (b)(D) of this subsection to conform to the actual location of the copies of the notice. Both copies of the notice must contain:

(A) The name of the seller;

(B) The address of the seller's place of business;

(C) The date of the transaction; and

(D) The date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(d) The seller must orally inform the buyer of the buyer's right to cancel.

(2) The [statement] notice of the buyer's right to cancel must be in conspicuous type, [8-point] 10-point or larger, and must read as follows:

NOTICE OF BUYER'S RIGHT TO CANCEL

[If this agreement was solicited at a residence other than that of the seller and you do not want the goods or services,]

(1) (Date) You, the buyer, may cancel this agreement without any penalty, cancellation fee or other financial obligation by mailing or delivering a notice to the seller[. The notice must say that you do not want the goods or services and must be mailed before 12 midnight of the third business day after you sign this agreement. The notice must be mailed to:]

[_____]

[_____]

[(insert name and mailing address of seller)]

[However: you may not cancel if you have requested the seller to provide goods or services without delay because of an emergency, and]

[(1) The seller in good faith makes a substantial beginning of performance of the contract before you give notice of cancellation, and]

[(2) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.] **within THREE BUSINESS DAYS from the above date.**

(2) If you cancel:

(a) Any property you traded in, any payments you made under the sales contract and any checks or notes you signed will be returned within 10 business days following receipt by the seller of your notice of cancellation. Any security interest that arises from the transaction will be canceled.

(b) You may either make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under the sales contract or you may comply with the seller's instructions regarding the return shipment of the goods at the seller's expense and risk.

(c) If you make the goods available to the seller at your residence and the seller does not pick up the goods within 20 days of the date of your notice of cancellation, you may keep or discard the goods without further obligation.

(d) If you do not make the goods available to the seller, or if you agree to return the goods to the seller and you do not return the goods, you must perform all of your obligations under the sales contract.

(3) To cancel this transaction, mail or deliver a signed and dated copy of this notice or other written expression of your intention to cancel, or send a telegram, to (name of seller) at (address of seller's place of business) not later than 12 midnight on (date), the third business day after you signed the written agreement or offer to purchase.

I HEREBY CANCEL THIS TRANSACTION.

(Signature of buyer)

(Date)

(4) In a home solicitation sale subject to federal rules under 16 C.F.R. part 429, the seller may provide the notice required by the federal rules in lieu of the notice required under subsection (2) of this section if the notice required under federal rules contains the information specified in subsection (1)(c) of this section.

[(3)] **(5) Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of an intention to cancel.**

SECTION 4. The amendments to ORS 83.710, 83.720 and 83.730 by sections 1, 2 and 3 of this 2005 Act apply only to transactions entered into on or after the effective date of this 2005 Act.

Passed by Senate April 12, 2005

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Secretary of Senate

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President of Senate

Passed by House May 31, 2005

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Speaker of House

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State