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SUBCHAPTER 5

CONSUMER SOLICITATION SALES

§4661. Definitions

As used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings. [PL 1977, c. 696, §250 (NEW).]

1. Consumer. "Consumer" means any person who purchases or contracts for the purchase of merchandise for any purpose, except resale in the ordinary course of trade or business.

[PL 1969, c. 395 (NEW).]

2. Merchandise. "Merchandise" includes any objects, wares, goods, commodities, intangibles or services.

[PL 1969, c. 395 (NEW).]

2-A. Permanent place of business. "Permanent place of business" means the building or other permanently affixed structure, including a home residence, which is used in whole or in part for the purpose of engaging in sales of consumer merchandise.

[PL 1987, c. 202, §1 (NEW).]

3. Person. "Person" includes any individual, firm, copartnership, association, society, club, corporation, estate, trust and any agent, employee, salesman, partner, officer, director, member, stockholder or trustee thereof.

[PL 1969, c. 395 (NEW).]

4. Sale. "Sale" includes any sale, transfer, exchange or barter, offer for sale or attempt to sell any merchandise for cash or on credit.

[PL 1969, c. 395 (NEW).]

SECTION HISTORY

PL 1969, c. 395 (NEW). PL 1977, c. 696, §250 (AMD). PL 1987, c. 202, §1 (AMD).

§4662. Contents of contract

1. Contract required. When merchandise is sold or contracted to be sold, whether under a single contract or under multiple contracts, to a consumer as a result of or in connection with a seller's direct contact accomplished by means of and including, but not limited to, a personal visit or a telephone call upon the consumer, other than at the seller's place of business, without the consumer soliciting the initial contact, the contract must:

- A. Be in writing; [PL 2003, c. 452, Pt. R, §6 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]
- B. Bear the signature of the seller and the consumer; [PL 2003, c. 452, Pt. R, §6 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]
- C. Contain the date of the transaction; [PL 2003, c. 452, Pt. R, §6 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]
- D. Contain the terms of the sale or offer; [PL 2003, c. 452, Pt. R, §6 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]
- E. Contain the name and the mailing address of the seller's permanent place of business; [PL 2003, c. 452, Pt. R, §6 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]
- F. Contain a statement of the consumer's right to avoid as provided in this subchapter; and [PL 2003, c. 452, Pt. R, §6 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]
- G. Contain a statement of the limitation contained in section 4664-A. [PL 2003, c. 452, Pt. R, §6 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

The seller shall furnish a completely executed copy of the contract or agreement to the consumer immediately after the consumer signs the agreement or contract.

[PL 2003, c. 452, Pt. R, §6 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

2. Penalty. The following penalties apply to violations of this section.

A. A seller who violates this section commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [PL 2003, c. 452, Pt. R, §6 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

B. A seller who intentionally violates this section commits a Class D crime. [PL 2003, c. 452, Pt. R, §6 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

[PL 2003, c. 452, Pt. R, §6 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

SECTION HISTORY

PL 1969, c. 395 (NEW). PL 1977, c. 331 (RPR). PL 1981, c. 187, §3 (AMD). PL 1987, c. 202, §2 (AMD). PL 2003, c. 452, §R6 (RPR). PL 2003, c. 452, §X2 (AFF).

§4662-A. Frozen food contracts

(REPEALED)

SECTION HISTORY

PL 1991, c. 239, §2 (NEW). PL 1991, c. 750, §3 (RP).

§4663. Consumer's right of avoidance

Where merchandise is sold or contracted to be sold, whether under a single contract or under multiple contracts, to a consumer as a result of or in connection with a salesman's direct contact accomplished by means of and including, but not limited to, a personal visit or a telephone call, upon the consumer other than at the seller's place of business, without the consumer soliciting the initial

contact or sale, the consumer may void the contract or sale by giving notice of his intention not to be bound by the contract or sale and returning or making available for return any merchandise delivered pursuant to the terms of this subchapter. [PL 1977, c. 331 (RPR).]

SECTION HISTORY

PL 1969, c. 395 (NEW). PL 1977, c. 331 (RPR).

§4664. Notice

The consumer may avoid a contract or sale by giving written notice of avoidance to the seller by ordinary mail, postage prepaid, within 3 full business days following the day on which the contract or sale was made. The notice shall be sufficient if addressed to the seller at the address given on the contract or agreement. Notice of avoidance shall be effective upon deposit in the United States mail. The notice of avoidance given under this section need not take a particular form and is sufficient if it expresses the intention of the consumer not to be bound by the sale. [PL 1969, c. 395 (NEW).]

In addition to any other right to avoid a contract or sale, the first-time buyer of a home food service plan has the right prior to delivery of the food or nonfood items to avoid the contract or sale until midnight of the 10th day after the date on which the buyer signs a contract subject to this subchapter. If the contract requires the seller to deliver a home food service plan, the seller shall allow the first-time buyer of a home food service plan to avoid the contract or sale subject to this subchapter, without charge, at the time of delivery of the food or nonfood items. [PL 1991, c. 750, §4 (NEW).]

SECTION HISTORY

PL 1969, c. 395 (NEW). PL 1991, c. 750, §4 (AMD).

§4664-A. Time of seller's performance

1. Performance after right to cancel. If the contract requires the seller to affix merchandise permanently to real estate or its appurtenances, then the seller may not begin performance as long as the consumer has the right to cancel.

[PL 2003, c. 452, Pt. R, §7 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

2. Penalty. The following penalties apply to violations of this section.

A. A person who violates this section commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [PL 2003, c. 452, Pt. R, §7 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who intentionally violates this section commits a Class D crime. [PL 2003, c. 452, Pt. R, §7 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

[PL 2003, c. 452, Pt. R, §7 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

SECTION HISTORY

PL 1981, c. 187, §4 (NEW). PL 2003, c. 452, §R7 (RPR). PL 2003, c. 452, §X2 (AFF).

§4665. Consumer's obligation

Within 20 days of notification to the seller of the avoidance of a contract or sale as provided under this subchapter, the consumer upon demand shall tender to the seller any goods delivered to the buyer pursuant to the sale or contract but need not tender at any place other than his residence. If the seller fails to take possession of such goods within 20 days after cancellation, the goods shall become the property of the consumer without obligation to pay for them. [PL 1971, c. 150, §1 (RPR).]

SECTION HISTORY

PL 1969, c. 395 (NEW). PL 1971, c. 150, §1 (RPR).

§4666. Seller's obligation

1. Return upon avoidance. If the seller is given written notice of avoidance by the consumer pursuant to this subchapter and any merchandise that has been delivered is returned or made available for return to the seller, the seller must return to the consumer within 15 days of the effective date of the notice of avoidance the full amount of any payment or down payment made or consideration given under the contract or sale for the merchandise.

[PL 2003, c. 452, Pt. R, §8 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

2. Penalty. The following penalties apply to violations of this section.

A. A person who violates this section commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [PL 2003, c. 452, Pt. R, §8 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who intentionally violates this section commits a Class D crime. [PL 2003, c. 452, Pt. R, §8 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]
[PL 2003, c. 452, Pt. R, §8 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

SECTION HISTORY

PL 1969, c. 395 (NEW). PL 2003, c. 452, §R8 (RPR). PL 2003, c. 452, §X2 (AFF).

§4667. Criminal penalties

(REPEALED)

SECTION HISTORY

PL 1969, c. 395 (NEW). PL 1987, c. 202, §3 (AMD). PL 1995, c. 681, §2 (RPR). PL 2003, c. 452, §R9 (RP). PL 2003, c. 452, §X2 (AFF).

§4668. Limitation

1. Exclusions. This subchapter does not apply to the following:

A. A sale where the gross sales price, including any interest or carrying charges, is less than \$25; [PL 2001, c. 276, §1 (NEW).]

B. A transaction regulated under Title 9-A, sections 3-501 to 3-507; [PL 2001, c. 276, §1 (NEW).]

C. A sale by a dealer or agent or salesman of a dealer registered pursuant to chapter 135 of stocks, bonds, debentures or securities representing stocks, bonds or debentures registered pursuant to chapter 135 or expressly exempt from registration pursuant to chapter 135; [PL 2005, c. 65, Pt. C, §17 (AMD).]

D. A sale of insurance regulated under Title 24-A, sections 2515-A and 2717; or [PL 2001, c. 276, §1 (NEW).]

E. A sale of credit services by a supervised lender, as defined in Title 9-A, section 1-301, subsection 39, or an agent or affiliate of a supervised lender to the extent the affiliate or agent is selling or offering to sell the credit services of the supervised lender. For purposes of this paragraph, "credit services" includes any extension of credit and any product or service that a supervised lender is authorized by law or regulation to sell in connection with or relating to an extension of credit, such as credit insurance and a debt cancellation policy. For the purposes of this paragraph, "affiliate" has the same meaning as that term is defined in Title 9-B, section 131, subsection 1-A. Transactions covered by this exemption are limited to those that become effective only after the consumer has affirmed the terms and conditions of the agreement by an acceptance initiated by the consumer. [PL 2001, c. 276, §1 (NEW).]

[PL 2005, c. 65, Pt. C, §17 (AMD).]

SECTION HISTORY

PL 1969, c. 395 (NEW). PL 1969, c. 530 (AMD). PL 1971, c. 544, §§118-A (AMD). PL 1973, c. 762, §12 (AMD). PL 1977, c. 696, §251 (AMD). PL 2001, c. 276, §1 (RPR). PL 2005, c. 65, §C17 (AMD).

§4669. Referral sales, rebate or discount violations

No seller, in any sale subject to this subchapter, shall 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. [PL 1971, c. 150, §2 (NEW).]

SECTION HISTORY

PL 1971, c. 150, §2 (NEW).

§4670. Violation as unfair trade practice

Any violation of this subchapter shall constitute a violation of Title 5, chapter 10, Unfair Trade Practices Act. [PL 1973, c. 249 (NEW).]

SECTION HISTORY

PL 1973, c. 249 (NEW).

§4671. Prohibited practices

A seller may not: [PL 1991, c. 524, §4 (NEW).]

1. Misrepresentations. Misrepresent any material fact relating to the terms or conditions of sale; [PL 1991, c. 524, §4 (NEW).]

2. False impressions. Create an impression that is false or the seller does not believe to be true; and [PL 1991, c. 524, §4 (NEW).]

3. False promises. Promise performance that the seller does not intend to perform or knows will not be performed. [PL 1991, c. 524, §4 (NEW).]

SECTION HISTORY

PL 1991, c. 524, §4 (NEW).

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