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BUSINESS & COMMERCE CODE

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§ 39.001. DEFINITIONS. In this chapter:

(1) "Consumer" means an individual who seeks or acquires real or personal property, services, money, or credit for personal, family, or household purposes.

(2) "Consumer transaction" means a transaction in which one or more of the parties is a consumer.

(3) "Merchant" means a party to a consumer transaction other than a consumer.

(4) "Merchant's place of business" means a merchant's main or permanent branch office or local address. For a state or national bank or savings and loan association, the term includes any approved branch and any registered loan production office.

Added by Acts 1997, 75th Leg., ch. 1008, § 3, eff. Sept. 1, 1997.

§ 39.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a consumer transaction in which the merchant or the merchant's agent engages in a personal solicitation of a sale to the consumer at a place other than the merchant's place of business, and the consumer's agreement or offer to purchase is given to the merchant or the merchant's agent at a place other than the merchant's place of business:

(1) for the purchase of goods or services for consideration that exceeds \$25 payable in installments or in cash; or

(2) for the purchase of real property for consideration that exceeds \$100 payable in installments or in cash.

(b) Notwithstanding Subsection (a), this chapter does not apply to:

(1) a purchase of farm equipment;

(2) an insurance sale regulated by the Texas Department of Insurance;

(3) a sale of goods or services made:

(A) under a preexisting revolving charge account or retail charge agreement; or

(B) after negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale; or

(4) a sale of real property if:

(A) the purchaser is represented by a licensed attorney;

(B) the transaction is negotiated by a licensed real estate broker; or

(C) the transaction is negotiated at a place other than the consumer's residence by the person who owns the property.

Added by Acts 1997, 75th Leg., ch. 1008, § 3, eff. Sept. 1, 1997.

§ 39.003. CONSUMER'S RIGHT TO CANCEL. In addition to any other rights or remedies available, a consumer may cancel a consumer transaction to which this chapter applies not later than midnight of the third business day after the date the consumer signs an agreement or offer to purchase.

Added by Acts 1997, 75th Leg., ch. 1008, § 3, eff. Sept. 1, 1997.

§ 39.004. NOTICE BY MERCHANT. (a) A merchant must provide a consumer with a complete receipt or copy of any contract pertaining to the consumer transaction at the time of its execution.

(b) The document provided under Subsection (a) must:

(1) be in the same language as that principally used in the oral sales presentation;

(2) show the date of the transaction;

(3) contain the name and address of the merchant; and

(4) contain in immediate proximity to the space reserved in the contract for the signature of the consumer, or on the front page of the receipt if a contract is not used, a statement in bold-faced type of a minimum size of 10 points 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 CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

(c) The merchant must attach to the document provided under Subsection (a) a completed notice of cancellation form in duplicate. The form must:

- (1) be easily detachable;
- (2) be in the same language as the document provided under Subsection (a); and
- (3) contain the following information and statements in 10-point bold-faced type:

"NOTICE OF CANCELLATION

(enter date of transaction)

"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 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE MERCHANT 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 MERCHANT 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 MERCHANT REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE MERCHANT'S EXPENSE AND RISK.

"IF YOU DO NOT AGREE TO RETURN THE GOODS TO THE MERCHANT OR IF THE MERCHANT DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION.

"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 (name of merchant), AT (address of merchant's place of business) NOT LATER THAN MIDNIGHT OF (date).

I HEREBY CANCEL THIS TRANSACTION.

(date)

(buyer's signature)"

(d) The use of the forms and notices of the right to cancel prescribed by the Federal Trade Commission's trade-regulation rule providing a cooling-off period for door-to-door sales constitutes compliance with this section.

(e) A consumer transaction in which the contract price does not exceed \$200 complies with the notice requirements of this

section if:

(1) the consumer may at any time cancel the order, refuse to accept delivery of the goods without incurring any obligation to pay for them, or return the goods to the merchant and receive a full refund of the amount the consumer has paid; and

(2) the consumer's right to cancel the order, refuse delivery, or return the goods without obligation or charge at any time is clearly and conspicuously set forth on the face or reverse side of the sales ticket.

Added by Acts 1997, 75th Leg., ch. 1008, § 3, eff. Sept. 1, 1997.

§ 39.005. MERCHANT'S COMPENSATION. A merchant is not entitled to compensation for services performed under a consumer transaction if the consumer cancels the transaction under this chapter.

Added by Acts 1997, 75th Leg., ch. 1008, § 3, eff. Sept. 1, 1997.

§ 39.006. RETENTION OF GOODS OR REAL PROPERTY. Until a merchant has complied with this chapter, a consumer with possession of goods or right or title to real property delivered by the merchant:

(1) may retain possession of the goods or right or title to the real property; and

(2) has a lien on the goods or real property to the extent of any recovery to which the consumer is entitled.

Added by Acts 1997, 75th Leg., ch. 1008, § 3, eff. Sept. 1, 1997.

§ 39.007. DUTY OF CONSUMER. (a) Within a reasonable time after a cancellation under this chapter, the consumer on demand must tender to the merchant any goods or right or title to real property delivered by the merchant under the consumer transaction.

(b) The consumer is not obligated to tender goods at a place other than the consumer's residence.

(c) If the merchant fails to demand possession of the goods or the right or title to real property within a reasonable time after cancellation, the goods or real property become the property of the consumer without obligation to pay.

(d) Goods or real property in possession of the consumer are at the risk of the merchant, except that the consumer shall take reasonable care of the goods or the real property both before and for a reasonable time after cancellation.

(e) For purposes of this section, 20 days is presumed to be a reasonable time.

Added by Acts 1997, 75th Leg., ch. 1008, § 3, eff. Sept. 1, 1997.

§ 39.008. VIOLATIONS. (a) A merchant may not:

(1) fail to include on both copies of the form described by Section 39.004(c):

- (A) the name of the merchant;
- (B) the address of the merchant's place of

business;

- (C) the date of the transaction; and
- (D) a date not earlier than the third business

day after the date of the transaction by which the consumer must give notice of cancellation;

(2) include in a contract or receipt pertaining to a consumer transaction a confession of judgment or a waiver of any of the rights to which the consumer is entitled under this chapter;

(3) at the time the consumer signs the contract or purchases the goods, services, or real property, fail to inform the consumer orally of the right to cancel the transaction;

(4) misrepresent in any manner the consumer's right to cancel;

(5) negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party before midnight of the fifth business day after the date the contract was signed or the goods or services were purchased;

(6) fail to notify the consumer before the end of the 10th business day after the date the merchant receives the notice of cancellation whether the merchant intends to repossess or to abandon any shipped or delivered goods; or

(7) fail or refuse to honor a valid cancellation under this chapter by a consumer and fail before the end of the 10th business day after the date the merchant receives the notice of cancellation to:

(A) refund all payments made under the contract or sale;

(B) return any goods or property traded in to the merchant in substantially the same condition as when received by the merchant;

(C) cancel and return any negotiable instrument executed by the consumer in connection with the contract of sale;

(D) take any action appropriate to terminate promptly any security interest created in the transaction; or

(E) restore improvements on real property to the same condition as when the merchant took title to or possession of the real property unless the consumer requests otherwise.

(b) A sale or contract entered into under a consumer transaction in violation of Subsection (a) is void.

(c) A merchant who violates a provision of this chapter is liable to the consumer for:

- (1) any actual damages suffered by the consumer as a

result of the violation;

(2) reasonable attorney's fees; and

(3) court costs.

(d) If the merchant fails to tender goods or property traded to the merchant in substantially the same condition as when received by the merchant, the consumer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(e) A violation of this chapter is a false, misleading, or deceptive act or practice as defined by Section 17.46(b). In addition to any remedy under this chapter, a remedy under Subchapter E, Chapter 17, is also available for a violation of this chapter.

Added by Acts 1997, 75th Leg., ch. 1008, § 3, eff. Sept. 1, 1997.

§ 39.009. INJUNCTION. If the attorney general believes that a person is violating or about to violate this chapter, the attorney general may bring an action in the name of the state to restrain or enjoin the person from violating this chapter.

Added by Acts 1997, 75th Leg., ch. 1008, § 3, eff. Sept. 1, 1997.

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