

REFERENCE TITLE: Reg. lating Home Sales

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State of Arizona
Senate
Thirtieth Legislature
Second Regular Session

S. B. 1011

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Introduced by

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AN ACT

RELATING TO TRADE AND COMMERCE; PROVIDING FOR REGULATING HOME SOLICITATION AND REFERRAL SALES, AND AMENDING SECTIONS 44-5001 TO 44-5004, INCLUSIVE, AND 44-5006 TO 44-5008, INCLUSIVE, ARIZONA REVISED STATUTES.

- 1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 44-5001, Arizona Revised Statutes, is amended
3 to read:
4 44-5001. Definitions
5 In this chapter, unless the context otherwise requires:
6 1. "Home solicitation sale" means a sale of goods or services,
7 OTHER THAN THE SALE OF INSURANCE, in which the seller or his represen-
8 tative personally solicits the sale and the buyer's agreement or offer
9 to purchase is made at a home other than that of the person soliciting
10 the same and that agreement or offer to purchase is there given to the
11 seller or his representative and all or any part of the purchase price
12 is payable in installments, or a debt incurred for payment of the pur-
13 chase price is payable in installments. "PERSONALLY SOLICITS" MEANS
14 THAT THE BUYER AND SELLER ENGAGE IN A FACE-TO-FACE CONFRONTATION, WITH-
15 OUT REGARD TO WHETHER IT IS THE INITIAL SOLICITATION. THE PURCHASE PRICE
16 IS PAYABLE IN INSTALLMENTS IF THE OBLIGATION TO PAY IS TO BE SATISFIED
17 BY MORE THAN ONE PAYMENT. A sale which otherwise meets the definition
18 of a home solicitation sale, except that it is a cash sale, shall be

1 deemed to be a home solicitation sale if the seller makes or provides a
2 loan to the buyer or obtains or assists in obtaining a loan for the buyer
3 to pay the purchase price. A sale is not a "home solicitation sale" if
4 it is pursuant to a preexisting account with a seller whose primary busi-
5 ness is that of selling goods or services at a fixed location or if it is
6 a sale made pursuant to prior negotiations between the parties at a busi-
7 ness establishment at a fixed location where goods or services are offered
8 or exhibited for sale.

9 2. "Person" includes a corporation, company, partnership, firm,
10 association or society, as well as a natural person. When the word
11 "person" is used to designate the party whose property may be the subject
12 of a criminal or public offense, the term includes the United States, this
13 state, or any territory, state or country, or any political subdivision
14 of this state which may lawfully own any property, or a public or private
15 corporation, or partnership or association. When the word "person" is
16 used to designate the violator or offender of any law, it includes cor-
17 poration, partnership or any association of persons.

18 Sec. 2. Section 44-5002, Arizona Revised Statutes, is amended to
19 read:

20 44-5002. Cancellation period; method of cancellation; intent

21 A. In addition to any right otherwise AVAILABLE to revoke an offer,
22 the buyer may cancel a home solicitation sale until midnight of the second
23 THIRD calendar day after the day on which the buyer signs an agreement
24 subject to the provisions of this chapter, except that if the signing is
25 on a Friday, the notice of cancellation shall be posted not later than
26 midnight of the Monday TUESDAY immediately following.

27 B. Cancellation shall occur when the buyer gives written notice
28 of cancellation to the seller at the address specified for notice of
29 cancellation provided by the seller or when such written notice bearing
30 such address is ~~deposited-in-a-mail-box-by~~ SENT BY REGISTERED OR CERTI-
31 FIED MAIL, RETURN RECEIPT REQUESTED, OR WHEN THE SELLER OTHERWISE RECEIVES
32 ACTUAL NOTICE OF CANCELLATION.

33 ~~1.--Ordinary-mail-at-the-time-and-place-stamped-on-a-receipt-received~~

1 from-the-United-States-post-office-on-form-3817,

2 2.--Registered-mail,-return-receipt-requested,-at-the-time-and
3 place-stamped-on-a-receipt-received-from-the-United-States-post-office
4 on-form-3806-5,

5 C. Notice of cancellation given by the buyer shall be effective
6 if it indicates the intention on the part of the buyer not to be bound
7 by the home solicitation sale.

8 Sec. 3. Section 44-5003, Arizona Revised Statutes, is amended to
9 read:

10 44-5003. Referral sales, rebate or discount violations

11 No seller in a home solicitation sale shall offer to pay a commis-
12 sion or give a rebate or discount to the buyer in consideration of the
13 buyer's giving to the seller the names of prospective purchasers or other-
14 wise aiding the seller in making a sale to another person, if the earning
15 of the commission, rebate or discount is contingent upon an event that
16 is to happen subsequent to the time the buyer agrees to buy. Any sale
17 made in respect to which a commission, rebate or discount is offered in
18 violation of the provisions of this chapter shall be voidable at the op-
19 tion of the buyer AT ANY TIME.

20 Sec. 4. Section 44-5004, Arizona Revised Statutes, is amended to
21 read:

22 44-5004. Agreement requirement

23 A. No ANY agreement of the buyer in a home solicitation sale shall
24 be effective VOID unless it is dated, signed by the buyer and contains
25 a-conspicuous-notice-as-follows: THE FOLLOWING STATEMENT OF THE BUYER'S
26 RIGHTS:

27 NOTICE TO BUYER

28 1. Do not sign this agreement if any of the spaces intended for
29 the agreed terms to the extent of then available information are left
30 blank.

31 2. You are entitled to a copy of this agreement at the time you
32 sign it.

33 3. You may pay off the full unpaid balance due under this agreement

1 at any time, and in so doing you may receive a full rebate of the unearned
2 finance and insurance charges.

3 4. You may cancel this agreement if ~~it has been signed in your~~
4 ~~home without prior negotiations at the sellers place of business or~~
5 ~~without having made the sale pursuant to your preexisting account with~~
6 ~~the seller, provided you notify the seller, at his main office or branch~~
7 ~~office shown in the agreement, by ordinary mail using United States post~~
8 ~~office form 3817 or by registered mail, return receipt requested, which~~
9 ~~shall be posted~~ WRITTEN NOTICE OF YOUR INTENT TO CANCEL IS GIVEN TO
10 THE SELLER, OR MAILED BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT
11 REQUESTED, TO THE SELLER AT HIS MAIN OFFICE OR BRANCH OFFICE SHOWN IN THE
12 AGREEMENT, OR PROVIDED THE SELLER OTHERWISE RECEIVES ACTUAL NOTICE OF
13 YOUR INTENT TO CANCEL, not later than midnight of the ~~second~~ THIRD calendar
14 day after the day on which ~~the buyer signs~~ YOU SIGN the agreement. ~~except~~
15 ~~that~~ If it is signed on a Friday, the notice of cancellation shall be
16 ~~posted~~ GIVEN OR MAILED not later than midnight of the ~~Monday~~ TUESDAY
17 immediately following.

18 5. TO CANCEL BY SENDING WRITTEN NOTICE CERTIFIED OR REGISTERED
19 MAIL, RETURN RECEIPT REQUESTED, YOU MUST GO TO A POST OFFICE TO REGISTER
20 OR CERTIFY THE LETTER AND YOU MUST REQUEST AND RETAIN THE RETURN RECEIPT.

21 6. IF YOU CANCEL THIS AGREEMENT, THE SELLER MUST RETURN ANY PAY-
22 MENTS YOU HAVE MADE OR ANY GOODS YOU HAVE TRADED IN PURSUANT TO THE
23 AGREEMENT SUBJECT TO THE SELLER'S RIGHT TO RETAIN A CANCELLATION FEE OF
24 FIVE PER CENT OF THE CASH PRICE, FIFTEEN DOLLARS, OR THE AMOUNT OF THE
25 CASH DOWN PAYMENT, WHICHEVER IS LESS, PROVIDED, THAT THE SELLER, DOES, IN
26 FACT, PERFORM SERVICES PURSUANT TO THE SALE BEFORE CANCELLATION. IF THE
27 SELLER REFUSES TO RETURN THEM, YOU MAY RETAIN POSSESSION OF ANY GOODS DE-
28 LIVERED TO YOU UNDER THIS AGREEMENT UNTIL THEY ARE RETURNED.

29 7. YOU MAY CANCEL THIS AGREEMENT AT ANY TIME IF IT INVOLVES A
30 REFERRAL AGREEMENT. A REFERRAL AGREEMENT IS ONE IN WHICH THE SELLER OFFERS
31 TO REDUCE THE PURCHASE PRICE IF YOU SUPPLY HIM WITH THE NAMES OF PERSONS
32 TO WHOM HE MAY SUCCESSFULLY SELL.

33 8. ~~It shall~~ IS not be legal for the seller to enter your

1 premises unlawfully or commit any breach of the peace to repossess goods
2 purchased under this agreement.

3 B. THE NOTICE TO THE BUYER SHALL BE VOID IF IT DOES NOT SATISFY
4 THE FOLLOWING REQUIREMENTS:

5 1. THE HEADING "NOTICE TO BUYER" CONTAINED IN THE AGREEMENT OF
6 SALE SHALL BE IN AT LEAST TEN POINT TYPE AND IN A COLOR DIFFERENT THAN
7 THE REST OF THE AGREEMENT.

8 2. THE NOTICE CONTAINED IN THE AGREEMENT OF SALE SHALL APPEAR IN
9 BOTH THE ENGLISH AND SPANISH LANGUAGES.

10 3. THE SELLER SHALL ALSO PROVIDE THE BUYER WITH A CANCELLATION
11 FORM, ADDRESSED TO THE SELLER, WHICH THE BUYER MAY USE IN CANCELLING. A
12 FORM SUBSTANTIALLY AS FOLLOWS IS SUFFICIENT TO COMPLY WITH THIS SUBSECTION:

13 NOTICE OF CANCELLATION

14 TO _____ (INSERT NAME AND ADDRESS OF SELLER)

15 I HEREBY CANCEL THE RETAIL INSTALLMENT CONTRACT SIGNED BY ME ON _____

16 _____ (INSERT THE DATE BUYER SIGNED AGREEMENT) _____

17 WHEREBY I AGREED TO PURCHASE THE FOLLOWING GOODS OR SERVICES _____

18 _____ (CONCISE DESCRIPTION OF GOODS OR SERVICES) _____

19 DATE _____

20 SIGNATURE OF BUYER _____

21 Sec. 5. Section 44-5006, Arizona Revised Statutes, is amended to
22 read:

23 44-5006. Time limitation; disposition of goods

24 A. Except as provided in this section, within ten days after a home
25 solicitation sale has been canceled, the seller shall tender to the buyer
26 any payments made by the buyer and any note or other evidence of indebted-
27 ness.

28 B. If the down payment includes goods traded in, the goods shall
29 be tendered in substantially as good condition as when received. If the
30 seller fails to tender the goods as provided by this section, the buyer
31 may elect to recover an amount equal to the trade-in allowance stated in
32 the agreement.

33 C. The buyer may retain possession of goods delivered to him by

1 the seller and has a lien on the goods for any recovery to which he is
2 entitled until the seller has complied with the obligations imposed by
3 this section.

4 D. IF THE SELLER HAS PERFORMED ANY SERVICES PURSUANT TO A HOME
5 SOLICITATION SALE PRIOR TO ITS CANCELLATION, AND HAS SATISFIED ALL OBLI-
6 GATIONS IMPOSED BY THIS CHAPTER, THE SELLER IS ENTITLED TO A CANCELLATION
7 FEE OF FIVE PER CENT OF THE CASH PRICE, FIFTEEN DOLLARS, OR THE AMOUNT OF
8 THE CASH DOWN PAYMENT, WHICHEVER IS LESS. IF THE SELLER'S SERVICES RESULT
9 IN THE ALTERATION OF PROPERTY OF THE BUYER, THE SELLER SHALL RESTORE THE
10 PROPERTY TO SUBSTANTIALLY AS GOOD CONDITION AS IT WAS IN AT THE TIME THE
11 SERVICES WERE RENDERED.

12 Sec. 6. Section 44-5007, Arizona Revised Statutes, is amended to
13 read:

14 44-5007. Buyer responsibility; services

15 A. Except as provided in subsection C of section 44-5006, within
16 twenty days after a home solicitation sale has been canceled, the buyer
17 upon demand shall tender to the seller any goods delivered by the seller
18 pursuant to the sale, but he is not obligated to tender at any place other
19 than his own address. If the seller fails to MAKE A REASONABLE EFFORT
20 TO take possession of such goods within twenty days after cancellation
21 the goods shall become the property of the buyer without obligation to
22 pay for them.

23 B. THE GOODS ARE AT THE SELLER'S RISK AT ALL TIMES BOTH PRIOR
24 TO AND AFTER CANCELLATION, EXCEPT THAT the buyer shall take reasonable
25 care of the goods in his possession both prior to cancellation and during
26 the following twenty-day period. ~~During the twenty-day period after can-~~
27 ~~cancellation, except for the buyer's duty of care, the goods are at the sell-~~
28 ~~er's risk.~~

29 ~~C. If the seller has performed any services pursuant to a home~~
30 ~~solicitation sale prior to its cancellation, the seller is entitled to~~
31 ~~a cancellation fee of five per cent of the cash price, fifteen dollars,~~
32 ~~or the amount of the cash down payment, whichever is less. If the seller's~~
33 ~~services result in the alteration of property of the buyer, the seller~~

1 ~~shall restore the property to substantially as good condition as it was~~
2 ~~in at the time the services were rendered.~~

3 D. C. The buyer may not cancel a home solicitation sale if he
4 requests the seller to provide goods or services without delay because of
5 an emergency and the seller in good faith makes a substantial beginning
6 of performance before notice of cancellation, and the goods cannot be
7 returned to the seller in substantially as good condition as when the
8 buyer received them.

9 Sec. 7. Section 44-5008, Arizona Revised Statutes, is amended to
10 read:

11 44-5008. Penalty

12 ~~Any person who violates any provision of this chapter shall be guilty~~
13 ~~of a misdemeanor punishable~~ SELLER ENTERING INTO A HOME SOLICITATION SALE
14 WHO FAILS TO INCLUDE IN THE AGREEMENT OF SALE THE NOTICE REQUIRED BY SEC-
15 TION 44-5004, OR ANY SELLER WHO TRANSFERS A NOTE ISSUED PURSUANT TO A HOME
16 SOLICITATION SALE NOT CONTAINING THE WARNING OF NONNEGOTIABILITY REQUIRED
17 BY SECTION 44-5005 SHALL BE PUNISHED by a fine of not more than three hun-
18 dred dollars or imprisonment not to exceed ninety days, or both. ANY SELLER
19 WHO FAILS TO TENDER TO THE BUYER ANY PAYMENTS, NOTES OR EVIDENCE OF INDEBT-
20 EDNESS OR GOODS TRADED IN WITHIN TEN DAYS OF THE BUYER'S VALID CANCELLATION
21 PURSUANT TO SECTION 44-502 SHALL BE REQUIRED TO PAY TO THE BUYER, AS PUNI-
22 TIVE DAMAGES, TWICE THE VALUE OF THE CONSIDERATION WRONGLY HELD BY THE
23 SELLER.