

CHAPTER 481C
DOOR-TO-DOOR SALE

Section

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Cross References

Water treatment units, see §481H-6.

Case Notes

Trial court correctly applied the discretionary language of §481C-1 in ruling that plaintiff roofing contractor did not "solicit" homeowner to purchase new roof, so as to bring the transaction under the provisions of this chapter where homeowner approached contractor at a home show and requested a home visit to discuss the suitability and cost of a new roof, contacted the contractor on another occasion and visited the company's warehouse prior to the start of work, and contractor visited home several times to discuss the project with homeowner. 110 H. 248, 131 P.3d 1230.

" **§481C-1 Definitions.** In this chapter, unless the context or subject matter otherwise requires:

"Business day" means any calendar day, except Saturday, Sunday, or any state or federal holiday.

"Cash sale price" means the cash sale price stated in a contract for which the seller would sell to the buyer, and the buyer would buy from the seller, the goods which are the subject matter of the contract if the sale were a sale for cash instead of by payments made in installments over a period of time. The cash sale price may include taxes, registration, license, and other fees and charges for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

"Contract" means any agreement, including a conditional sales contract or any other form of instrument, evidencing an obligation to pay the purchase price, or moneys advanced in payment of the purchase price of goods, by payment thereof in one payment, or more than one payment made in installments over a period of time, whether or not the contract contains a title retention provision.

"Door-to-door sale":

(1) Means:

- (A) A sale of goods or services solicited in person and signed by the buyer at a place other than the seller's business address shown on the contract;
- (B) A sale of goods or services solicited in person or by mail or telephone; or
- (C) A public or private notice or advertisement if the solicitation includes an offer of a gift, prize, premiums, stamps, coupons, tickets, or

other redeemable devices as an inducement for the person solicited or a member of the person's immediate family to go to the seller's place of business, whether the buyer signs at the seller's place of business or elsewhere; and

- (2) Does not include a transaction:
- (A) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis;
 - (B) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days;
 - (C) Conducted and consummated entirely by mail or telephone and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or
 - (D) In which the buyer has initiated the contact and specifically requested the seller to visit the buyer's home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion.

"Goods" means all chattels personal, other than money and things in action, except as herein provided, and includes emblements, growing crops, and things which attach to or form a part of land which are agreed to be severed before sale under the contract and things which at the time of sale or subsequently are to be so affixed to real property as to become a part thereof, whether or not severable therefrom. The term includes merchandise certificates or coupons, issued by a seller, to be used in their face amount in lieu of cash in exchange for goods sold by such a seller. The term also includes services as herein defined.

"Sale" means any sale with a purchase price of \$5 or more, or \$25 if the merchandise is capable of being delivered at one time, other than for resale, of goods to a buyer pursuant to a contract. It does not include a sale to a business establishment.

"Seller" means any person, partnership, corporation, association, or other group, however organized, engaged in the door-to-door sale of goods or services.

"Services" means work, labor, or service of any kind whether purchased primarily for personal, family, or household use, and whether or not furnished in connection with the delivery, installation, servicing, repair, or improvement of goods, and includes repairs, alterations, or improvements upon or in connection with real property. [L 1976, c 32, pt of \$5; gen ch 1985; am L 2008, c 19, §18]

Revision Note

Definitions rearranged.

Case Notes

Trial court correctly applied the discretionary language of this section in ruling that plaintiff roofing contractor did not "solicit" homeowner to purchase new roof, so as to bring the transaction under the provisions of this chapter where homeowner approached contractor at a home show and requested a home visit to discuss the suitability and cost of a new roof, contacted the contractor on another occasion and visited the company's warehouse prior to the start of work, and contractor visited home several times to discuss the project with homeowner. 110 H. 248, 131 P.3d 1230.

" **§481C-2 Deceptive trade practice.** In connection with any door-to-door sale, it constitutes an unfair or deceptive act or practice for the seller to:

- (1) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and which gives a description of the goods, including make, model, and identification number or marks, if any, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a

contract is not used and in bold face type of a minimum size of ten points, 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 CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.
- (2) Fail to furnish each buyer, at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten-point bold face type the following information and statements in the same language as that used in the contract:

NOTICE OF CANCELLATION

.....
(Enter date of transaction)
.....
(Date)

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 PAYMENT MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER 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 SELLER 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 SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

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 seller), AT _____ (Address of seller's place of business) NOT LATER THAN MIDNIGHT OF _____ (Date).

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

- (3) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.
- (4) Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this chapter including specifically the buyer's right to cancel the sale in accordance with the provisions of this chapter.
- (5) Fail to inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the buyer's right to cancel.
- (6) Misrepresent in any manner the buyer's right to cancel.
- (7) Fail or refuse to honor any valid notice of cancellation by a buyer and within ten business days after the receipt of such notice, to (A) refund all payments made under the contract or sale; (B) return any goods or property traded in, in substantially as good condition as when received by the seller; (C) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to

terminate promptly any security interest created in the transaction.

- (8) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.
- (9) Fail, within ten business days of receipt of the buyer's notice of cancellation, to notify the buyer whether the seller intends to repossess or to abandon any shipped or delivered goods.
- (10) Fail, if the seller's services result in the alteration of the property of the buyer, to restore the property to substantially as good condition as it was prior to the time the services were rendered. [L 1976, c 32, pt of §5; gen ch 1985]

" **§481C-2.5 Unlicensed contracting.** If the contract referred to in section 481C-1 is for activities subject to chapter 444 and the seller does not possess the license required by that chapter, the cancellation period to be provided in section 481C-2 shall be extended to thirty calendar days. [L 1992, c 269, §1]

" **§481C-3 Balloon payments.** With respect to any sale of goods purchased primarily for a personal, family or household purpose, which is subject to the provisions of this chapter, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the buyer has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the buyer than the terms of the original sale. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the buyer. [L 1976, c 32, pt of §5]

" **§481C-4 Penalties.** (a) Any seller who engages in an unfair or deceptive act or practice in violation of this chapter, shall be fined by a sum of not less than \$500 nor more than \$2,500 for each unfair or deceptive act or practice, which sum shall be collected in a civil suit brought by the office of consumer protection.

(b) If a seller engages in an unfair or deceptive act in violation of this chapter, the contract referred to in section 481C-1 shall be unenforceable by the seller. [L 1976, c 32, pt of §5]

" **§481C-5 Inconsistencies with federal laws.** No contract shall be required by this chapter to contain provisions which are directly inconsistent with the federal laws relating to door-to-door sales. A provision under this chapter is not directly inconsistent with the federal laws relating to door-to-door sales, if it provides greater protection to the consumer. [L 1976, c 32, pt of §5]

" **§481C-6 Compliance with credit sale contract law.** If the contract referred to in section 481C-1 is a credit sale contract, the seller must also comply with the requirements of chapter 476. [L 1976, c 32, pt of §5; am L 1985, c 68, §16]