

The Attorney General's

Guide to Retail Rights

Commonwealth of Massachusetts
**Office of Attorney General
Martha Coakley**



October 2007

Dear Consumer,

Massachusetts residents interact with retailers every day. Whether shopping for food for our families, or making a major purchase, we often rely on advertising or other representations that the retailer makes regarding what is in stock, advertised price and what to do if the goods do not suit our purposes or are defective and must be returned. There are many laws in Massachusetts that govern consumer rights.



This brochure is designed to help you understand a few of them, especially when it comes to your every day purchases. If you have other questions about your consumer rights, please contact the Attorney General's Consumer Complaint and Information Hotline at (617) 727-8400.

Cordially,

A handwritten signature in black ink that reads "Martha Coakley". The signature is written in a cursive, flowing style.

Martha Coakley
Massachusetts Attorney General

Contents

- I.** Definitions
- II.** Advertising
- III.** Warranties
- IV.** Refund, Return, and Cancellation Policies
- V.** Repairs and Services, Including Warranties and Service Contracts
- VI.** Lay Away Plans
- VII.** Cooling-Off Periods, Right to Cancel a Sale
- VIII.** Gift Certificates and Merchandise Credit Slips
- IX.** Unsolicited Merchandise
- X.** Mail Order Rule
- XI.** Consumer Privacy When Purchasing By Credit Card or Check
- XII.** Shopping Tips
- XIII.** Resources

I. Definitions

A **consumer** is generally someone who is purchasing or leasing a product or service for personal, family, or household use. A **merchant** is generally someone who engages in retail sales or rental transactions of goods or services. “Merchant” does not mean an individual or **private party** who is making an isolated sale of real or personal property. Private parties are generally exempted from specific consumer laws, although there may be other laws that apply to them.



II. Advertising

Businesses are responsible for the truth of their advertisements. A representation may be false or misleading; a merchant’s failure to disclose an important fact may also be unfair or deceptive. Businesses therefore must disclose sale end-dates, may not base price comparisons on inflated prices, and may not advertise products they do not intend to sell as advertised. If mistakes are made in advertising, it is the businesses’ obligation to make corrections, and until the corrections are made, to honor the price offered, unless a reasonable consumer would recognize the mistake.

Sellers are required to have enough supply of advertised items available to meet reasonably anticipated demand.

It is not false advertising if a store runs out of an advertised item and any one of the following is true:

- ❖ It had a reasonable quantity, but demand was extraordinary.
- ❖ The ad stated that quantities were limited and no rain checks were available.

- ❖ The seller offered a rain check.
- ❖ The seller offered a comparable substitute item.
- ❖ The seller can prove shipping delays.

If a store runs out of an advertised item, ask for a **rain check**, if one is offered, so you can buy the item at the advertised price at a later date. The store must notify you when the item is back in stock if it sells for \$25 or more. The rain check must be honored within 60 days.



III. Warranties

In addition to any **express warranties** that a merchant makes about the goods it sells, **implied warranties** also protect consumers. Massachusetts law creates two implied warranties that no business may limit.

The **implied warranty of merchantability** means that a product must work as intended for a reasonable time. For example, the microwave will heat food.

The **implied warranty of fitness for a particular purpose** means that the seller has reason to know of the particular purpose for which the consumer wants to use the goods, and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods. Under this rule, the goods must be fit for that purpose. For example, the bicycle you tell the business that you want for off-road biking will be suitable for riding over rough terrain.

If the product is defective at purchase, or becomes defective during the period of the implied warranty, both the seller and the manufacturer are responsible for making it right.

Under Massachusetts law, a merchant cannot sell a product “as is.” A store’s regular return policy does not apply in the case of defective goods.



IV. Refund, Return, and Cancellation Policies

Massachusetts law requires merchants to disclose their refund, return, and cancellation policies prior to the consummation of a transaction. A seller can have any type of return policy it wants - “all sales final,” “merchandise credit only,” “full cash refunds within 30 days,” and so on. A seller’s refund, return, or cancellation policy must be disclosed to the buyer clearly and conspicuously before the transaction is completed. Usually, this is done by means of a sign at the point of purchase. Printing the store’s return policy only on a cash register sales slip does not comply.

You may return goods within a reasonable period of time if no return policy was disclosed.

A seller cannot misrepresent its refund, return, or cancellation policy, or fail to honor any promises about it. Specially-ordered merchandise may have additional restrictions.



V. Repairs and Services, Including Warranties and Service Contracts

It is an unfair or deceptive act or practice for a business to fail to provide in advance, upon the customer’s request, a written estimate of

the cost of anticipated repairs, or the basis upon which the charge will be made, and the reasonably expected time to accomplish the repairs. It is also unfair or deceptive to misrepresent the need for repairs, to make or to charge for unauthorized repairs, or to state that repairs have been made if they have not, and to fail to disclose that there will be a service charge, even if no repairs are made for an in-home service call, if such is the case.

VI. Lay Away Plans

It is an unfair or deceptive act or practice for a store to fail to disclose or to misrepresent its **lay away** plan to those consumers seeking lay away, or for a store to represent that particular goods chosen by the buyer or an exact duplicate is being “laid away” if that is not true, or to fail to disclose any time limits on the setting aside of merchandise. It is also unfair or deceptive to increase the price of lay away goods, either by increasing payments or substituting lesser quality goods, or to fail to deliver the goods laid away or an exact substitute, when payments have been made, unless the buyer has previously agreed to changes in writing. The store is also required to give the buyer a receipt for payments made as they are made, and, if requested, to give a list of the balance of payments made to that date. Finally, it is unfair or deceptive to fail to disclose or to misrepresent in any way the policy concerning cancellations and repayments or non-repayment of payments already made, and if payments are not refunded, to fail to disclose that fact in writing.

VII. Cooling-Off Periods, Right to Cancel a Sale

There is no general three-day right to cancel a sale in Massachusetts.

There are certain limited situations in which a consumer has a right to cancel a contract and receive a refund for the return of the purchased item. The Attorney General's Regulations and the Federal Trade Commission's Cooling-Off Rule for door-to-door sales apply to sales of certain goods. **Door-to-door sales** are sales made away from the usual business place of the merchant (the main office or branch office); however, the rule does not apply to sales made entirely over the telephone or by mail.

At the time you agree to the door-to-door sale, you must be given notice of the right to cancel, two copies of the cancellation form, and a copy of your contract or receipt. The contract or receipt must be in writing, and list the name and address of the seller, the date of sale, an explanation of your right to cancel, and how you may assert that right.

To cancel, you must notify the seller in writing at the address given in the contract, by regular mail posted, by telegram sent, or by delivery, no later than midnight of the third business day following the signing of the contract. A **business day** under this law includes any calendar day except Sunday or holidays. Within 10 days of receiving your cancellation notice, the seller must return your payment. You must allow the seller to pick up the goods at your address, or if the seller requests, and you agree, you may ship them back at the seller's expense and risk. If the seller does not pick up the goods within 20



A seller cannot misrepresent its refund, return, or cancellation policy, or fail to honor any promises about it.

days of the date of the notice of cancellation, they are yours to do with as you wish.

The FTC's three-day cooling-off period applies to sales of goods priced at \$25 or more. It does not apply to sales of real estate, insurance, securities, or emergency home repairs.

In Massachusetts, there are similar three-day rights for door-to-door sales. There are also statutes providing a three-day right to rescind for second mortgages, timeshares, health club contracts, and home improvement contracts.

VIII. Gift Certificates and Merchandise Credit Slips

Under Massachusetts law, a **gift certificate** must be redeemable for a minimum of seven years from the date of issuance. A **merchandise credit slip** (given for returned merchandise) must also be good for seven years from its date of issuance.

IX. Unsolicited Merchandise

In Massachusetts, you are entitled to keep, without further obligation, merchandise delivered to you which you did not order. This rule applies whether the merchandise was mailed to you, or delivered by some other method.

X. Mail Order Rule

The **Federal Trade Commission Mail Order Rule**, applicable to items ordered by phone, fax, mail, television, or computer, states that a company must ship your order within the time limits it advertises. If no limit is advertised, the company must ship within 30 days after it receives your order, unless the company contacts you and you agree to a delay. If you apply for credit to pay for the purchase (opening or extending a line of credit with the company), the time limit for shipping is extended to 50 days. This limit is not applicable to C.O.D. (cash-on-delivery) orders or orders for which your account is not charged until the order is shipped, or for orders for seeds and plants, photo-finishing, or magazine subscriptions (other than the first issue). Note that there is no rule that provides you cannot be charged for goods as soon as you order them, even if they will not be shipped right away.



XI. Consumer Privacy When Purchasing by Credit Card or Check

Massachusetts has specific limitations on what information can be required when you use a credit card or check to buy something. When you make a purchase with a credit card, the merchant may not write or require you to write your address or telephone number on the slip, although the business may ask you this information if needed to ship or deliver your purchase to you.

If a business accepts a personal check as payment, it may not require you to provide a credit card number, or any personal information other than a name, address, driver's license or state I.D. number, and daytime telephone number. A business may verify the name, signature, and expiration date on a credit card; it may not use this

information to verify whether the check writer has a line of credit to cover the check, unless this is agreed upon in the business contract with the card issuer.

However, a business, like a video rental store, may request and record a credit card number and expiration date as a deposit to secure payment in the event of default, loss, or damage.

XII. Shopping Tips

Remember to read all advertisements carefully. If you have questions about the ad, ask the seller. This applies to sales in person, or by mail or other means.

Comparison shop before you make any major purchase. Since a seller is not required by law to give you a later sale price if the item you buy goes on sale after you buy it, feel free to ask if an item is going on sale soon, or if you do not need it right away, ask if there is a special season to buy items on sale. Sales of linens tend to be in January; new motor vehicles often go on sale in the late summer or early fall, when the “model year” changes. Seasonal items often go on sale mid-way through the season — after July 4th, summer clothing items are often marked down substantially, for example.



**Comparison shop
before you make any
major purchases.**

Fill out order forms clearly. If you do not want the merchant to substitute another item for one that is out of stock, let the seller know.

Do not give your credit card number or checking account number to a seller unless you are certain you know who the seller is, what the seller's return, cancellation and refund policies are, and where you can contact the seller if you have problems or complaints.

When you use a credit card, you have additional rights to contest payment for defective or misrepresented goods, if the dispute involves a purchase over \$50, made within your state or within 100 miles of your home.

Remember, paying for something with a debit card subtracts money from your account immediately. It is more difficult to dispute such transactions than it is to dispute credit card transactions.



XIII. Resources

General information and complaints:

**Office of the Attorney General
Consumer Protection Division**

www.mass.gov/ago

(617) 727-8400 Consumer Complaint and Information Hotline

(617) 727-2200

One Ashburton Place

Boston, MA 02108

Office of Consumer Affairs and Business Regulations

consumer@state.ma.us

10 Park Plaza, Suite 5170

Boston, MA 02116

(617) 973-8787

(888) 283-3757



**Office of Attorney General
Martha Coakley**

Consumer Protection Division

One Ashburton Place

Boston, MA 02108

(617) 727-2200

www.mass.gov/ago