

PREPAID ENTERTAINMENT CONTRACTS ACT

OHIO REVISED CODE, CHAPTER 1345.41-1345.50

§ 1345.41 Definitions.

As used in sections 1345.41 to 1345.50 of the Revised Code:

(A) "Prepaid entertainment contract" means a contract under which the buyer of a service pays for or becomes obligated to pay for service prior to the buyer's receipt of or enjoyment of any or all of the service and that is a contract for:

- (1) Dance studio lessons, which include related services and instruction in ballroom or other types of dancing, and lessons whether given to students individually or in groups;
- (2) Social referral service, which includes any service that, for a fee, provides matching of members of the opposite sex, by any means for purposes of introduction, dating, or general social contacts;
- (3) Martial arts training, whether or not the training will lead to a specific degree of expertise;
- (4) Health spa service, which includes contracts for instruction, training, or assistance in physical culture, bodybuilding, exercising, reducing, figure development, or any other similar activity or for the use of the facilities of a health spa, gymnasium, or other facility used for any purpose described in this division or for membership in any group, club, association, or organization formed for any purpose described in this division. "Prepaid entertainment contracts" do not include contracts for services rendered by any public or private nonprofit school, college, or university; by the state or any of its political subdivisions; or by any nonprofit religious, ethnic, or community organization.

(B) "Purchase price" means the total cumulative price of a prepaid entertainment service, whether under single or multiple contracts, including all interest and service charges.

(C) "Business day" means any calendar day except Sunday, or a legal holiday as defined in section 1.14 of the Revised Code.

(D) "First service" means the first service rendered to the buyer under a prepaid entertainment contract that is typical of the type of service rendered throughout the course of the contract and that is not a special or an introductory service. HISTORY: 136 v S 157. Eff 9-22-76.

§ 1345.42 Provisions of contract.

(A) All prepaid entertainment contracts between the same seller and the same buyer that are in effect at the same time, or the terms of which overlap for any period, shall be considered as one contract for the purpose of sections 1345.43 and 1345.44 of the Revised Code.

(B) Prepaid entertainment contracts shall:

- (1) Be in writing and be signed by the buyer and the seller, and a copy shall be provided to the buyer at the time he signs the contract;
- (2) Not be measured by the life of the buyer;
- (3) Not have a duration of service other than a duration that is a precisely measured period of years or any definite part of a year and shall not have a duration of service for a period in excess of three years;
- (4) Provide that all information and material of a personal or private nature that is acquired directly or indirectly from a buyer including but not limited to, answers to tests or questionnaires, photographs, or background information, shall be returned by the seller to the buyer by regular mail within thirty days after the expiration of the contract or after the expiration for any reason of the service to be rendered by the seller;
- (5) Provide that if by reason of death or disability, the buyer is unable to receive benefits from the seller's services, the contract shall be proportionally divided by all of the days in which the facility was made available to the buyer as part of the contract offering, and the buyer shall be liable for payments only for that portion of the contract that can be attributed to the period prior to the buyer's actual death or disability, exclusive of any period of time in which the facility was made available to the buyer free of charge as part of the contract offering, and the seller, within thirty days after receiving notice of the

death or disability, shall return to the buyer or his representative the amount paid in excess of the proportional amount;

(6) Provide that performance of the contract will begin no later than one hundred eighty days from the date the contract is entered into;

(7) Provide that if the buyer relocates twenty-five miles or more from the facility operated by the seller or a substantially similar facility that would accept the seller's obligation under the contract and if the buyer gives the seller written notice that he intends to relocate and requests that the contract be terminated, the contract shall be proportionally divided by all of the days in which the facility was made available to the buyer as part of the contract offering, and the buyer shall be liable for payments for only that portion of the contract that can be attributed to the period prior to the buyer's actual relocation, exclusive of any period of time in which the facility was made available to the buyer free of charge as part of the contract offering, provided, that the seller may require and verify reasonable evidence of relocation, and the seller shall return to the buyer the amount paid in excess of the proportional amount;

(8) Provide that if the seller relocates the facility twenty-five miles or more from the buyer's residence or closes the facility and a substantially similar facility that would accept the seller's obligation under the contract is not within twenty-five miles of the buyer's residence, the contract shall be proportionally divided by all of the days in which the facility was made available to the buyer as part of the contract offering, and the buyer shall be liable for payments for only that portion of the contract that can be attributed to the period prior to the seller's actual relocation or closing of the facility, exclusive of any period of time in which the facility was made available to the buyer free of charge as part of the contract offering, and the seller shall return to the buyer the amount paid in excess of the proportional amount;

(9) Not require the buyer to pay more than fifty dollars or ten per cent of the total contract price, whichever is the lesser amount, prior to the date on which the facility or service that is the subject of the contract is available for use by the buyer. HISTORY: 136 v S 157 (Eff 9-22-76); 140 v H 198. Eff 7-26-84.

[§1345.42.1] § 1345.421 Surety bond where facility is under construction and unavailable for service.

If the facility that is the subject of the contract is under construction, and is not available for service at the time the buyer signs the contract, the seller shall maintain a surety bond issued by a surety company authorized to do business in this state the principal sum of which shall be a minimum of ten thousand dollars. The seller is relieved from the obligation to maintain the bond twenty-four months after completion of the facility and commencement of service. The bond shall be in favor of the state of Ohio for the benefit of any person injured by having paid moneys for the use of a facility which fails to open within one hundred eighty days after the date upon which the buyer and seller entered into a contract, or closes within twenty-four months after completion of a facility and commencement of service. However, the aggregate liability of the surety to all persons for all breaches of the conditions of the bond provided herein shall in no event exceed the amount of the bond. Evidence of the bond shall be available for inspection upon request by the office of the attorney general, current contract holders, or prospective buyers. HISTORY: 140 v H 198. Eff 7-26-84.

§ 1345.43 Buyer's right to cancel; time limit.

(A) In addition to any right otherwise to revoke an offer or to terminate or cancel a sale or contract, the buyer has the right to cancel a prepaid entertainment contract until midnight of the third business day after the date on which the first service under the contract is available, and if the facility or service that is the subject of the contract is not available at the time that the buyer signs the contract, the buyer has until midnight of the seventh business day after the date on which the first service under the contract is available to cancel the contract. Cancellation is evidenced by the buyer giving written notice of cancellation to the seller at the address of any facility available for use by the buyer under the contract. The buyer shall deliver the notice by telegram, manual delivery, personal delivery, or by certified mail delivery, return receipt requested. Notice of cancellation by certified mail delivery shall be effective upon the date of post marking. Telegram delivery is effective when the telegram is ordered. Manual delivery or personal delivery is effective when delivered to the seller or to the seller's address, whichever comes first. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the buyer not to be bound by the contract. Notice of the buyer's right to cancel must appear on all notes or other evidence of indebtedness given pursuant to any prepaid entertainment contract. HISTORY: 136 v 157 (Eff 9-22-76); 140 v H 198. Eff 7-26-84.

§ 1345.44 Form of contract.

(A) Every prepaid entertainment contract shall state the date on which the buyer actually signs. The seller shall give the buyer a copy of the contract that has been signed by the seller and complies with division (B) of this section.

(B) All of the following apply to any prepaid entertainment contract:

(1) A completed form, in duplicate, captioned "notice of cancellation," shall be attached to the contract signed by the buyer and be easily detachable and shall contain in ten-point boldface type, the following statement:

**"NOTICE OF CANCELLATION
(Enter date of contract)**

(Date)

You may cancel this contract for any reason at any time prior to midnight of the third business day after the date on which the first service under the contract is available, and if the facility or services that is the subject of the contract is not available when you sign the contract, you may cancel the contract at any time prior to midnight of the seventh business day after the date on which you receive your first service under the contract. If you cancel within this period, the seller must send you a full refund of any money you have paid, except that a reasonable expense fee not to exceed ten dollars may be charged if you have received your first service under the contract. The seller must also cancel and return to you within twenty business days any papers that you have signed. To cancel this contract you must deliver in person, manually, or by certified mail, return receipt requested, the signed and dated copy of this cancellation notice or any other written notice of cancellation, or send a telegram, to (name of seller), at the address of any facility available for use by you not later than midnight of the third business day after the date on which the first service under the contract is available, and if the facility or service that is the subject of the contract is not available when the contract was signed, not later than midnight of the seventh business day after the date on which the first service under the contract is available.

I hereby cancel this contract.

(Date)

(Buyer's signature)"

(2) Before furnishing copies of the notice of cancellation to the buyer, the seller shall complete both copies by entering the name of the seller, the address of the seller's place of business, and the date of the contract.

(C) Until the seller has complied with this section, the buyer may cancel the contract by delivering to the seller by certified mail, personal or manual delivery, or telegraphing written notice of his intention to cancel. The period within which the buyer may cancel the contract prescribed by this section begins to run from the time of * the seller complies with divisions (A) and (B) of this section.

(D) In any prepaid entertainment contract no seller shall:

(1) Include in any contract, any confession of judgment or any waiver of any rights to which the buyer is entitled under this section, including specifically his right to cancel the contract in accordance with this section;

(2) Fail to inform each buyer orally, at the time he signs the contract, of his right to cancel;

(3) Misrepresent in any manner the buyer's right to cancel;

(4) Fail or refuse to honor any valid notice of cancellation by a buyer and within ten business days after receipt of the notice to:

(a) Refund all payments made under the contract, except that if the buyer has received his first service under the contract the seller may retain or bill the buyer for ten dollars;

- (b) Cancel and return any note, negotiable instrument, or other evidence of indebtedness executed by the buyer in connection with the contract and take any action necessary to reflect the termination of any security interest or lien created under the contract;
- (c) Notify the buyer if the seller intends to repossess or abandon any evidence of membership or other goods provided to the buyer by the seller pursuant to the contract.

(E) If there is in effect an earlier prepaid entertainment contract, this section and section 1345.43 of the Revised Code apply to a transaction in which the seller and the buyer enter into a new prepaid entertainment contract, or a modification of the earlier contract. HISTORY: 136 v S 157 (Eff 9-22-76); 140 v H 198. Eff 7-26-84.

So in enrolled bill, division (C). Should the word "of" be deleted?

§ 1345.45 Seller to retain notice of cancellation.

If a buyer cancels a prepaid entertainment contract pursuant to sections 1345.41 to 1345.50 of the Revised Code, the seller shall retain for the period in which an action to enforce the contract could be commenced, the notice of cancellation made pursuant to section 1345.43 of the Revised Code. If the date of delivery is not indicated or recorded on the notice of cancellation, the seller shall record the date of delivery on the notice of cancellation. HISTORY: 136 v S 157 (Eff 9-22-76); 140 v H 198. Eff 7-26-84.

§ 1345.46 Buyer to deliver goods to seller after cancellation.

Within twenty days after a prepaid entertainment contract has been canceled pursuant to sections 1345.41 to 1345.50 of the Revised Code, the buyer upon demand must deliver to the seller any evidence of membership or other goods provided to the buyer by the seller pursuant to the contract. The buyer may deliver evidence of membership or other goods provided under the contract by certified mail, manual delivery, or other personal delivery. The goods shall not be diminished in quantity nor subjected to unreasonable wear or use. If the seller fails to demand possession of the goods within twenty days of the buyer's notice of cancellation, the goods become the property of the buyer without obligation to pay for them. The buyer has the duty to take reasonable care of the goods in his possession before cancellation and twenty days thereafter, during which time the goods are otherwise at the seller's risk. HISTORY: 136 v S 157 (Eff 9-22-76); 140 v H 198. Eff 7-26-84.

§ 1345.47 Buyer's defenses against holder in due course.

Notwithstanding section 1303.35 of the Revised Code, a buyer who executes a prepaid entertainment contract or a note in connection with such a contract may assert as a defense to a claim by a holder in due course, as defined in section 1303.32 of the Revised Code, any defense that the buyer may assert against the seller of the prepaid entertainment contract. HISTORY: 136 v S 157 (Eff 9-22-76); 145 v S 147. Eff 8-19-94.

§ 1345.48 Deceptive act; recover damages.

(A) Failure to comply with sections 1345.41 to 1345.50 of the Revised Code constitutes a deceptive act or practice in connection with a consumer transaction in violation of section 1345.02 of the Revised Code.

(B) If the seller of a prepaid entertainment contract fails to comply with division (D)(4)(a) of section 1345.44 of the Revised Code, the buyer may recover the amount of money due to him under that section and, in addition, may recover damages in an amount equal to the amount of money due to him and reasonable attorney's fees. HISTORY: 136 v S 157. Eff 9-22-76.

§ 1345.49 Waiver void.

Any waiver by the buyer of the provisions of sections 1345.41 to 1345.50 of the Revised Code is contrary to public policy and is void. HISTORY: 136 v S 157. Eff 9-22-76.

§ 1345.50 Remedies.

The remedies provided in sections 1345.41 to 1345.50 of the Revised Code are in addition to remedies otherwise available under state or local law. HISTORY: 136 v S 157. Eff 9-22-76.