

MAIL, INTERNET & TELEPHONE ORDER MERCHANDISE RULE

You found the perfect gift online for your nephew's birthday present and you placed the order! The seller took your credit card information and informed you that you would be receiving your order within ten days. Three weeks later and the birthday now past, and still no order—but your credit card statement has arrived, and you have been charged for the missing item. What to do now!

Fortunately, the federal Fair Credit Billing Act (FCBA) comes to the rescue, so you don't end up having to pay for this merchandise. In addition, the credit card company may also have a policy against merchant charging a credit card account before shipment. Additionally, whether you ordered by mail, phone, computer or fax, you would be protected by the Federal Trade Commission (FTC)'s Mail, Internet, or Telephone Order Merchandise Rule.

Here's what the FCBA requires you to do if you are disputing a billing error on your credit card:

- Write to the credit-card issuer at the address for billing inquiries. See the sample letter below. Your letter must reach the card issuer within 60 days after the first bill containing the error was mailed to you.
- Send your letter by certified mail, return receipt requested, with copies of sales slips or other supporting documents. Keep a copy of the letter.
- Make sure you send the letter to the correct company (in the case of Visa or MasterCard, to the bank that issued the card).

The credit-card issuer must acknowledge your unresolved complaint in writing within 30 days after receipt and must resolve the dispute within two billing cycles (not more than 90 days from receipt of your complaint). You may withhold payment on the disputed charges while they are under investigation, but you must pay any unquestioned parts of the bill and all finance charges. The credit-card company may not attempt to collect the disputed amount or related charges and may not close or restrict your account during the investigation, although your credit limit may be affected.

SOUTH DAKOTA OFFICE OF ATTORNEY GENERAL

**CONSUMER
PROTECTION**

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1-800-300-1986

This handout is for informational purposes and should not be construed as legal advice or as a policy of the South Dakota Attorney General. If you need advice on a particular issue, you should consult a private attorney or other experts.

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Now, let's say you place an order through a catalog. They charge your credit card right away, then call you in two weeks to inform you your shipment will be delayed 60 days. Although you agree to this delay, your merchandise doesn't arrive by the agreed-upon later date. What should you do?

In your dispute letter, tell the credit-card issuer if the premature charge was unexpected and when you expected delivery. Did the merchant fail to tell you about the company's billing practice at the time of the sale? And since some credit-card companies start counting from the *expected date of delivery* (rather than the *charge date*) when computing the time limit for you to dispute the charges, your dispute is likely to be honored if you submit your complaint within a reasonable time after the expected delivery date. Just keep good documentation of the promised and actual shipping dates in your records.

If you used a debit card to pay for the merchandise, contact the card-issuer to find out about company policies and your rights under the Electronic Fund Transfer Act. With some credit-card companies, you may not be able to dispute a debit or get a refund for non-delivery or late delivery.

If you financed your purchase directly through the merchant, check your credit contract for this sentence, which may allow your claim of non-delivery:

Notice: Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained with the proceeds hereof.

The Mail or Telephone Order Merchandise Rule requires that merchants have a reasonable basis for claiming they can ship an order within a certain time. The law requires that your order be shipped within the time stated in company advertising or by phone. If no specific time is promised, you should expect your order to be shipped within 30 days from the merchant's receiving a "properly completed order" with your name, address and payment by check, money order or authorization to charge an existing credit account. If you are simultaneously applying for credit and no ship time is promised, a total of 50 days is allowed.

A merchant who is unable to ship within the promised time must notify you by mail, telephone or e-mail of the revised shipping date. You must be given the option either to cancel for a full refund (incurring no charges for postage or a phone call) or to accept the new shipping date. If you don't respond and the delay is not more than 30 days, you are assumed to have agreed to wait for your order.

If the shipper cannot comply by the revised date, another delay notice is required. Your order will be canceled and a refund issued unless you respond promptly to the second notice. If you authorized a charge to your credit card, the merchant must credit the account within one billing cycle and not offer a merchandise credit. If you paid by cash, check or money order, your refund must be mailed within seven business days.

Complaints about this process that you have not been able to resolve with the seller should be directed to the Federal Trade Commission for their information. You can also contact the SD Office of Attorney General, Division of Consumer Protection office at www.consumer.sd.gov or 605-773-4400.