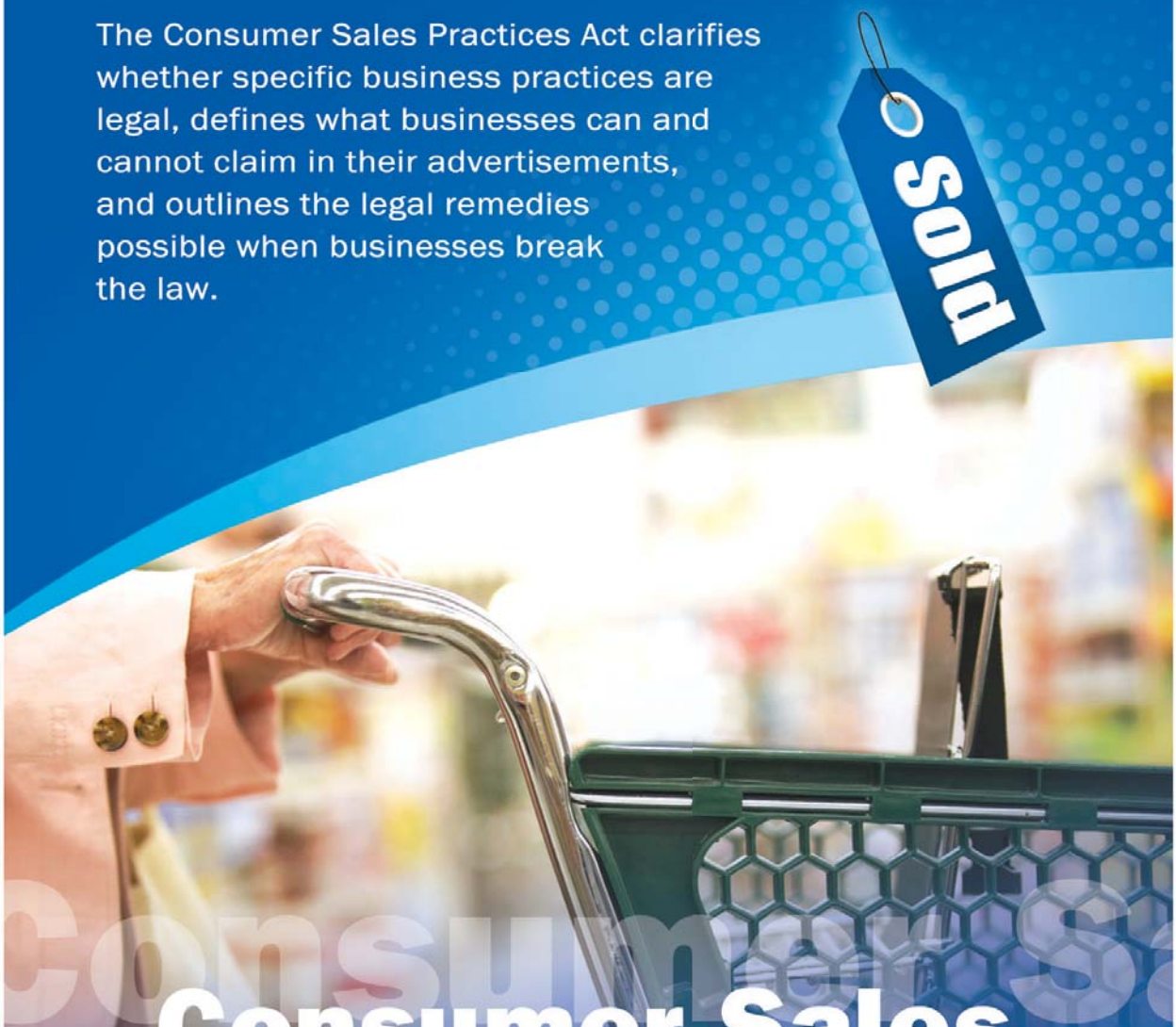
Protecting Ohio's Families

Ensuring Consumers Are Protected

The Consumer Sales Practices Act clarifies whether specific business practices are legal, defines what businesses can and cannot claim in their advertisements, and outlines the legal remedies possible when businesses break the law.



Consumer Sales Practices Act

MIKE DEWINE
OHIO ATTORNEY GENERAL

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★ OHIO ATTORNEY GENERAL ★

Dear Ohioan:

As individuals or as members of families and communities, Ohio's 11.5 million citizens are affected directly and even daily by the consumer protection provisions which the Ohio Attorney General's Office oversees.

Our office receives more than 30,000 consumer complaints every year. We frequently facilitate financial recoveries or adjustments and, because citizens alert us to wrongdoing, we help bring businesses into compliance with the law or shut down predatory practices.

My priority as Ohio's Attorney General is protecting our state's families and children. And part of meeting that priority is making sure both consumers and businesses are informed about Ohio's consumer protection laws, the most important of which is the Consumer Sales Practices Act outlined in this booklet.

The Consumer Sales Practices Act clarifies whether specific business practices are legal, defines what businesses can and cannot claim in their advertisements, and outlines the legal remedies our office can pursue when businesses break the law. As Ohio's Attorney General, I intend to ensure commerce in Ohio is conducted safely and fairly in a marketplace where businesses know and abide by the rules.

To file a complaint or report a violation, consumers, small businesses, and nonprofit organizations can call our Help Center toll-free at 800-282-0515 or click on www.OhioAttorneyGeneral.gov.

Very respectfully yours,

Mike DeWine

CONTENTS

OHIO REVISED CODE

SUBSTANTIVE RULES

OHIO REVISED CODE

1345.01 Definitions

As used in sections 1345.01 to 1345.13 of the Revised Code:

(A) "Consumer transaction" means a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things. "Consumer transaction" does not include transactions between persons, defined in sections 4905.03 and 5725.01 of the Revised Code, and their customers, except for transactions involving a loan made pursuant to sections 1321.35 to 1321.48 of the Revised Code and transactions in connection with residential mortgages between loan officers, mortgage brokers, or nonbank mortgage lenders and their customers; transactions between certified public accountants or public accountants and their clients; transactions between attorneys, physicians, or dentists and their clients or patients; and transactions between veterinarians and their patients that pertain to medical treatment but not ancillary services.

(B) "Person" includes an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or other legal entity.

(C) "Supplier" means a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer. If the consumer transaction is in connection with a residential mortgage, "supplier" does not include an assignee or purchaser of the loan for value, except as otherwise provided in section 1345.091 of the Revised Code. For purposes of this division, in a consumer transaction in connection with a residential mortgage, "seller" means a loan officer, mortgage broker, or nonbank mortgage lender.

(D) "Consumer" means a person who engages in a consumer transaction with a supplier.

(E) "Knowledge" means actual awareness, but such actual awareness may be inferred where objective manifestations indicate that the individual involved acted with such awareness.

(F) "Natural gas service" means the sale of natural gas, exclusive of any distribution or ancillary service.

(G) "Public telecommunications service" means the transmission by electromagnetic or other means, other than by a telephone company as defined in section 4927.01 of the Revised Code, of signs, signals, writings, images, sounds, messages, or data originating in this state regardless of actual call routing. "Public telecommunications service" excludes a system, including its construction, maintenance, or operation, for the provision of telecommunications service, or any portion of such service, by any entity for the sole and exclusive use of that entity, its parent, a subsidiary, or an affiliated entity, and not for resale, directly or indirectly; the provision of terminal equipment used to originate telecommunications service; broadcast transmission by radio, television, or satellite broadcast stations regulated by the federal government; or cable television service.
(H)(1) "Loan officer" means an individual who for compensation or gain, or in anticipation of compensation or gain, takes or offers to take a residential mortgage loan application; assists or

offers to assist a buyer in obtaining or applying to obtain a residential mortgage loan by, among other things, advising on loan terms, including rates, fees, and other costs; offers or negotiates terms of a residential mortgage loan; or issues or offers to issue a commitment for a residential mortgage loan. "Loan officer" also includes a loan originator as defined in division (E)(1) of section 1322.01 of the Revised Code. (2) "Loan officer" does not include an employee of a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; an employee of a subsidiary of such a bank, savings bank, savings and loan association, or credit union; or an employee of an affiliate that (a) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration.

(I) "Residential mortgage" or "mortgage" means an obligation to pay a sum of money evidenced by a note and secured by a lien upon real property located within this state containing two or fewer residential units or on which two or fewer residential units are to be constructed and includes such an obligation on a residential condominium or cooperative unit.

(J)(1) "Mortgage broker" means any of the following:

> (a) A person that holds that person out as being able to assist a buyer in obtaining a mortgage and charges or receives from either the buyer or lender money or other valuable consideration readily convertible into money for providing this assistance;
>
> (b) A person that solicits financial and mortgage information from the public, provides that information to a mortgage broker or a person that makes residential mortgage loans, and charges or receives from either of them money or other valuable consideration readily convertible into money for providing the information;
>
> (c) A person engaged in table-funding or warehouse-lending mortgage loans that are residential mortgage loans.

(2) "Mortgage broker" does not include a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; a subsidiary of such a bank, savings bank, savings and loan association, or credit union; an affiliate that (a) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration; or an employee of any such entity.

(K) "Nonbank mortgage lender" means any person that engages in a consumer transaction in connection with a residential mortgage, except for a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; a subsidiary of such a bank, savings bank, savings and loan association, or credit union; or an affiliate that (1) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and

(2) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration.

(L) For purposes of divisions (H), (J), and (K) of this section:

(1) "Control" of another entity means ownership, control, or power to vote twenty-five per cent or more of the outstanding shares of any class of voting securities of the other entity, directly or indirectly or acting through one or more other persons.

(2) "Credit union service organization" means a CUSO as defined in 12 C.F.R. 702.2.

HISTORY: 134 v H 103 (Eff 7-14-72); 138 v S 212 (Eff 7-18-80); 138 v H 1078 (Eff 4-9-81); 142 v S 264 (Eff 7-26-88); 148 v H 177 (Eff 5-17-00); 151 v S 185, §1 (Eff. 1-1-07); 152 v H 545, §1 (Eff 9-1-08); 153 v H 1 §101.1 (Eff 10-16-09); 153 v S 124 §1 (Eff 12-28-09).

1345.02 Unfair or deceptive consumer sales practices prohibited

(A) No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) Without limiting the scope of division (A) of this section, the act or practice of a supplier in representing any of the following is deceptive:

(1) That the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have;

(2) That the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not;

(3) That the subject of a consumer transaction is new, or unused, if it is not;

(4) That the subject of a consumer transaction is available to the consumer for a reason that does not exist;

(5) That the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not, except that the act of a supplier in furnishing similar merchandise of equal or greater value as a good faith substitute does not violate this section;

(6) That the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;

(7) That replacement or repair is needed, if it is not;

(8) That a specific price advantage exists, if it does not;

(9) That the supplier has a sponsorship, approval, or affiliation that the supplier does not have;

(10) That a consumer transaction involves or does not involve a warranty, a disclaimer of warranties or other rights, remedies, or obligations if the representation is false.

(C) In construing division (A) of this section, the court shall give due consideration and great weight to federal trade commission orders, trade regulation rules and guides, and the federal courts' interpretations of subsection 45 (a)(1) of the "Federal Trade Commission Act," 38 Stat. 717 (1914), 15 U.S.C.A. 41, as amended.

(D) No supplier shall offer to a consumer or represent that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers, or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit is contingent upon an event occurring after the consumer enters into the transaction.

(E)

(1) No supplier, in connection with a consumer transaction involving natural gas service or public telecommunications service to a consumer in this state, shall request or submit, or cause to be requested or submitted, a change in the consumer's provider of natural gas service or public telecommunications service, without first obtaining, or causing to be obtained, the verified consent of the consumer. For the purpose of this division and with respect to public telecommunications service only, the procedures necessary for verifying the consent of a consumer shall be those prescribed by rule by the public utilities commission for public telecommunications service under division (D) of section 4905.72 of the Revised Code. Also, for the purpose of this division, the act, omission, or failure of any officer, agent, or other individual, acting for or employed by another person, while acting within the scope of that authority or employment, is the act or failure of that other person.

(2) Consistent with the exclusion, under 47 C.F.R. 64.1100(a)(3), of commercial mobile radio service providers from the verification requirements adopted in 47 C.F.R. 64.1100, 64.1150, 64.1160, 64.1170, 64.1180, and 64.1190 by the federal communications com mission, division (E)(1) of this section does not apply to a provider of commercial mobile radio service insofar as such provider is engaged in the provision of commercial mobile radio service. However, when that exclusion no longer is in effect, division (E)(1) of this section shall apply to such a provider.

(3) The attorney general may initiate criminal proceedings for a prosecution under division (C) of section 1345.99 of the Revised Code by presenting evidence of criminal violations to the prosecuting attorney of any county in which the offense may be prosecuted. If the prosecuting attorney does not prosecute the violations, or at the request of the prosecuting attorney, the attorney general may proceed in the prosecution with all the rights, privileges, and powers conferred by law on prosecuting attorneys, including the power to appear before grand juries and to interrogate witnesses before grand juries.

(F) Concerning a consumer transaction in connection with a residential mortgage, and without limiting the scope of division (A) or (B) of this section, the act of a supplier in doing either of the following is deceptive:

(1) Knowingly failing to provide disclosures required under state and federal law;

(2) Knowingly providing a disclosure that includes a material misrepresentation.

HISTORY: 134 v H 103 (Eff 7-14-72); 137 v H 681 (Eff 8-11-78); 148 v H 177 (Eff 5-17-00); 151 v S 185, §1 (Eff. 1-1-07).

1345.021 Blending of ethanol into gasoline

(A) As used in this section, "retail dealer" means a person who owns, operates, controls, or supervises an establishment at which gasoline is sold or offered for sale to the public.

(B) When ethanol is blended or mixed into gasoline that is sold or offered for sale to the public, it is not an unfair or deceptive act or practice in connection with a consumer transaction for a retail dealer to fail to disclose either of the following:

(1) The fact that the gasoline contains ethanol;

(2) The percentage of ethanol that is contained in the gasoline.

(C) If a retail dealer elects to disclose any of the information specified in division (B) of this section, the dealer may make that disclosure in any form, using any type of sign or label and any size or style of letters, at the retail dealer's discretion.

(D) A retail dealer shall not be required to disclose the fact that gasoline contains ethanol and shall not be required to disclose the percentage of ethanol in the gasoline by any law, rule, resolution, or ordinance of any agency or department of the state or any political subdivision of the state.

HISTORY: 149 v S 144 (Eff 3-21-02).

1345.03 Unconscionable consumer sales practices

(A) No supplier shall commit an unconscionable act or practice in connection with a consumer transaction. Such an unconscionable act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) In determining whether an act or practice is unconscionable, the following circumstances shall be taken into consideration:

(1) Whether the supplier has knowingly taken advantage of the inability of the consumer reasonably to protect the consumer's interests because of the consumer's physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement;

(2) Whether the supplier knew at the time the consumer transaction was entered into that the price was substantially in excess of the price at which similar property or services were readily obtained in similar consumer transactions by like consumers;

(3) Whether the supplier knew at the time the consumer transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction;

(4) Whether the supplier knew at the time the consumer transaction was entered into that there was no reasonable probability of payment of the obligation in full by the consumer;

(5) Whether the supplier required the consumer to enter into a consumer transaction on terms the supplier knew were substantially one-sided in favor of the supplier;

(6) Whether the supplier knowingly made a misleading statement of opinion on which the consumer was likely to rely to the consumer's detriment;

(7) Whether the supplier has, without justification, refused to make a refund in cash or by check for a returned item that was purchased with cash or by check, unless the supplier had conspicuously posted in the establishment at the time of the sale a sign stating the supplier's refund policy.

(C) This section does not apply to a consumer transaction in connection with a residential mortgage.

HISTORY: 134 v H 103 (Eff 7-14-72); 137 v H 301 (Eff 9-23-77); 151 v S 185, §1 (Eff. 1-1-07).

1345.031 Unconscionable acts or practices concerning residential mortgages

(A) No supplier shall commit an unconscionable act or practice concerning a consumer transaction in connection with a residential mortgage. Such an unconscionable act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) For purposes of division (A) of this section, the following acts or practices of a supplier in connection with such a transaction are unconscionable:

(1) Arranging for or making a mortgage loan that provides for an interest rate applicable after default that is higher than the interest rate that applies before default, excluding rates of interest for judgments applicable to the mortgage loan under section 1343.02 or 1343.03 of the Revised Code and also excluding interest rate changes in a variable rate loan transaction otherwise consistent with the provisions of the loan documents;

(2) Engaging in a pattern or practice of providing consumer transactions to consumers based predominantly on the supplier's realization of the foreclosure or liquidation value of the consumer's collateral without regard to the consumer's ability to repay the loan in accordance with its terms, provided that the supplier may use any reasonable method to determine a borrower's ability to repay;

(3) Making a consumer transaction that permits the creditor to demand repayment of the outstanding balance of a mortgage loan, in advance of the original maturity date unless the creditor does so in good faith due to the consumer's failure to abide by the material terms of the loan.

(4) Knowingly replacing, refinancing, or consolidating a zero interest rate or other low-rate mortgage loan made by a governmental or nonprofit lender with another loan unless the current holder of the loan consents in writing to the refinancing and the consumer presents written certification from a third- party nonprofit organization counselor approved by the United States department of housing and urban development or the superintendent of financial institutions that the consumer received counseling on the advisability of the loan transaction. For purposes of division (B)(4) of this section, a "low-rate mortgage loan" means a mortgage loan that carries a current

interest rate two percentage points or more below the current yield on United States treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped-up rate, as applicable, shall be used, in lieu of the current rate, to determine whether a loan is a low-rate mortgage loan.

(5) Instructing the consumer to ignore the supplier's written information regarding the interest rate and dollar value of points because they would be lower for the consumer's consumer transaction;

(6) Recommending or encouraging a consumer to default on a mortgage or any consumer transaction or revolving credit loan agreement;

(7) Charging a late fee more than once with respect to a single late payment. If a late payment fee is deducted from a payment made on the loan and such deduction causes a subsequent default on a subsequent payment, no late payment fee may be imposed for such default. If a late payment fee has been imposed once with respect to a particular late payment, no such fee may be imposed with respect to any future payment that would have been timely and sufficient but for the previous default.

(8) Failing to disclose to the consumer at the closing of the consumer transaction that a consumer is not required to complete a consumer transaction merely because the con sumer has received prior estimates of closing costs or has signed an application and should not close a loan transaction that contains different terms and conditions than those the consumer was promised;

(9) Arranging for or making a consumer transaction that includes terms under which more than two periodic payments required under the consumer transaction are consoli dated and paid in advance from the loan proceeds provided to the consumer;

(10) Knowingly compensating, instructing, inducing, coercing, or intimidating, or attempting to compensate, instruct, induce, coerce, or intimidate, a person licensed or certified under Chapter 4763. of the Revised Code for the purpose of corrupting or improperly influencing the independent judgment of the person with respect to the value of the dwelling offered as security for repayment of a mortgage loan;

(11) Financing, directly or indirectly, any credit, life, disability, or unemployment insurance premiums, any other life or health insurance premiums, or any debt collection agreement. Insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender.

(12) Knowingly or intentionally engaging in the act or practice of "flipping" a mortgage loan. "Flipping" a mortgage loan is making a mortgage loan that refinances an existing mortgage loan when the new loan does not have reasonable, tangible net benefit to the consumer considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the consumer's circumstances. This provision applies regardless of whether the interest rate, points, fees, and charges paid or payable by the consumer in connection with the refinancing exceed any thresholds specified in any section of the Revised Code.

(13) Knowingly taking advantage of the inability of the consumer to reasonably protect

the consumer's interests because of the consumer's known physical or mental infirmities or illiteracy;

(14) Entering into the consumer transaction knowing there was no reasonable probability of payment of the obligation by the consumer;

(15) Attempting to enforce, by means not limited to a court action, a prepayment penalty in violation of division (C)(2) of section 1343.011 of the Revised Code;

(16) Engaging in an act or practice deemed unconscionable by rules adopted by the attorney general pursuant to division (B)(2) of section 1345.05 of the Revised Code.

(C)

(1) Any unconscionable arbitration clause, unconscionable clause requiring the consumer to pay the supplier's attorney's fees, or unconscionable liquidated damages clause included in a mortgage loan contract is unenforceable.

(2) No supplier shall do either of the following:

(a) Attempt to enforce, by means not limited to a court action, any clause described in division (C)(1) of this section;

(b) By referring to such a clause, attempt to induce the consumer to take any action desired by the supplier.

HISTORY: 151 v S 185, §1 (Eff. 1-1-07).

1345.04 Jurisdiction

The courts of common pleas, and municipal or county courts within their respective monetary jurisdiction, have jurisdiction over any supplier with respect to any act or practice in this state covered by sections 1345.01 to 1345.13 of the Revised Code, or with respect to any claim arising from a consumer transaction subject to such sections.

HISTORY: 134 v H 103 (Eff 7-14-72).

1345.05 Consumer protection powers and duties of the attorney general

(A) The attorney general shall:

(1) Adopt, amend, and repeal procedural rules;

(2) Adopt as a rule a description of the organization of the attorney general's office, stating the general courses and methods of operation of the section of the office of the attorney general, which is to administer Chapter 1345. of the Revised Code and methods whereby the public may obtain information or make submissions or requests, including a description of all forms and instructions used by that office;

(3) Make available for public inspection all rules and all other written statements of policy or interpretations adopted or used by the attorney general in the discharge of the attorney general's functions, together with all judgments, including supporting opinions,

by courts of this state that determine the rights of the parties and concerning which appellate remedies have been exhausted, or lost by the expiration of the time for appeal, determining that specific acts or practices violate section 1345.02, 1345.03, or 1345.031 of the Revised Code;

(4) Inform consumers and suppliers on a continuing basis of acts or practices that violate Chapter 1345. of the Revised Code by, among other things, publishing an informational document describing acts and practices in connection with residential mortgages that are unfair, deceptive, or unconscionable, and by making that information available on the attorney general's official web site;

(5) Cooperate with state and local officials, officials of other states, and officials of the federal government in the administration of comparable statutes;

(6) Report annually on or before the first day of January to the governor and the general assembly on the operations of the attorney general in respect to Chapter 1345. of the Revised Code, and on the acts or practices occurring in this state that violate such chapter. The report shall include a statement of investigatory and enforcement procedures and policies, of the number of investigations and enforcement proceedings instituted and of their disposition, and of other activities of the state and of other persons to promote the purposes of Chapter 1345. of the Revised Code.

(7) In carrying out official duties, the attorney general shall not disclose publicly the identity of suppliers investigated or the facts developed in investigations unless these matters have become a matter of public record in enforcement proceedings, in public hearings conducted pursuant to division (B)(1) of this section, or the suppliers investigated have consented in writing to public disclosure.

(B) The attorney general may:

(1) Conduct research, make inquiries, hold public hearings, and publish studies relating to consumer transactions;

(2) Adopt, amend, and repeal substantive rules defining with reasonable specificity acts or practices that violate sections 1345.02, 1345.03, and 1345.031 of the Revised Code.

In adopting, amending, or repealing substantive rules defining acts or practices that violate section 1345.02 of the Revised Code, due consideration and great weight shall be given to federal trade commission orders, trade regulation rules and guides, and the federal courts' interpretations of subsection 45(a)(1) of the "Federal Trade Commission Act," 38 Stat. 717 (1914), 15 U.S.C. 41, as amended. In adopting, amending, or repealing such rules concerning a consumer transaction in connection with a residential mortgage, the attorney general shall consult with the superintendent of financial institutions and shall give due consideration to state and federal statutes, regulations, administrative agency interpretations, and case law.

(C) In the conduct of public hearings authorized by this section, the attorney general may administer oaths, subpoena witnesses, adduce evidence, and require the production of relevant material. Upon failure of a person without lawful excuse to obey a subpoena or to produce relevant matter, the attorney general may apply to a court of common pleas for an order compelling compliance.

(D) The attorney general may request that an individual who refuses to testify or to produce relevant material on the ground that the testimony or matter may incriminate the individual be ordered by the court to provide the testimony or matter. With the exception of a prosecution for perjury and an action for damages under section 1345.07 or 1345.09 of the Revised Code, an individual who complies with a court order to provide testimony or matter, after asserting a privilege against self incrimination to which the individual is entitled by law, shall not be subjected to a criminal proceeding on the basis of the testimony or matter discovered through that testimony or matter.

(E) Any person may petition the attorney general requesting the adoption, amendment, or repeal of a rule. The attorney general shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition. Within sixty days of submission of a petition, the attorney general shall either deny the petition in writing, stating the reasons for the denial, or initiate rule-making proceedings. There is no right to appeal from such denial of a petition.

(F) All rules shall be adopted subject to Chapter 119. of the Revised Code.

(G) The informational document published in accordance with division (A)(4) of this section shall be made available for distribution to consumers who are applying for a mortgage loan. An acknowledgement of receipt shall be retained by the lender, mortgage broker, and loan officer, as applicable, subject to review by the attorney general and the department of commerce.

HISTORY: 134 v H 103 (Eff 7-14-72); 137 v H 681 (Eff 8-11-78); 140 v H 291 (Eff 7-1-83); 151 v S 185, §1 (Eff. 1-1-07); 153 v H 1 §101.01 (Eff 10-16-09); 153 v S 124 §1 (Eff 12-28-09).

1345.06 Investigatory powers of attorney general

(A) If, by his own inquiries or as a result of complaints, the attorney general has reasonable cause to believe that a person has engaged or is engaging in an act or practice that violates Chapter 1345. of the Revised Code, he may investigate.

(B) For this purpose, the attorney general may administer oaths, subpoena witnesses, adduce evidence, and require the production of relevant matter.

If matter that the attorney general requires to be produced is located outside the state, he may designate representatives, including officials of the state in which the matter is located, to inspect the matter on his behalf, and he may respond to similar requests from officials of other states. The person subpoenaed may make the matter available to the attorney general at a convenient location within the state or pay the reasonable and necessary expenses for the attorney general or his representative to examine the matter at the place where it is located, provided that expenses shall not be charged to a party not subsequently found to have engaged in an act or practice violative of Chapter 1345. of the Revised Code.

(C) Within twenty days after a subpoena has been served, a motion to extend the return day, or to modify or quash the subpoena, stating good cause, may be filed in the court of common pleas of Franklin county or the county in which the person served resides or has his principal place of business.

(D) A person subpoenaed under this section shall comply with the terms of the subpoena, unless the parties agree to modify the terms of the subpoena or unless the court has modified or quashed the subpoena, extended the return day of the subpoena, or issued any other order with

respect to the subpoena prior to its return day.

If a person fails without lawful excuse to obey a subpoena or to produce relevant matter, the attorney general may apply to the court of common pleas of the county in which the person subpoenaed resides or has his principal place of business for an order compelling compliance.

(E) The attorney general may request that an individual who refuses to testify or to produce relevant matter on the ground that the testimony or matter may incriminate him be ordered by the court to provide the testimony or matter. With the exception of a prosecution for perjury and an action for damages under section 1345.07 or 1345.09 of the Revised Code, an individual who complies with a court order to provide testimony or matter, after asserting a privilege against self-incrimination to which he is entitled by law, shall not be subjected to a criminal proceeding or to a civil penalty or forfeiture on the basis of the testimony or matter required to be disclosed or testimony or matter discovered through that testimony or matter.

(F) The attorney general may:

> (1) During an investigation under this section, afford, in a manner considered appropriate to him, a supplier an opportunity to cease and desist from any suspected violation. He may suspend his investigation during the time period that he permits the supplier to cease and desist; however, the suspension of the investigation or the affording of an opportunity to cease and desist shall not prejudice or prohibit any further investigation by the attorney general under this section.
>
> (2) Terminate an investigation under this section upon acceptance of a written assurance of voluntary compliance from a supplier who is suspected of a violation of this chapter.
>
> Acceptance of an assurance may be conditioned upon an undertaking to reimburse or to take other appropriate corrective action with respect to identifiable consumers damaged by an alleged violation of this chapter. An assurance of compliance given by a supplier is not evidence of violation of this chapter. The attorney general may, at any time, reopen an investigation terminated by the acceptance of an assurance of voluntary compliance, if he believes that further proceedings are in the public interest. Evidence of a violation of an assurance of voluntary compliance is prima-facie evidence of an act or practice in violation of this chapter, if presented after the violation in an action brought under this chapter. An assurance of voluntary compliance may be filed with the court and if approved by the court, entered as a consent judgment.

(G) The procedures available to the attorney general under this section are cumulative and concurrent, and the exercise of one procedure by the attorney general does not preclude or require the exercise of any other procedure.

HISTORY: 134 v H 103 (Eff 7-14-72); 137 v H 681 (Eff 8-11-78); 140 v H 291 (Eff 7-1-83).

1345.07 Remedies available to the attorney general upon violation

(A) If the attorney general, by the attorney general's own inquiries or as a result of complaints, has reasonable cause to believe that a supplier has engaged or is engaging in an act or practice that violates this chapter, and that the action would be in the public interest, the attorney general may bring any of the following:

(1) An action to obtain a declaratory judgment that the act or practice violates section 1345.02, 1345.03, or 1345.031 of the Revised Code;

(2) An action, with notice as required by Civil Rule 65, to obtain a temporary restraining order, preliminary injunction, or permanent injunction to restrain the act or practice. If the attorney general shows by a preponderance of the evidence that the supplier has violated or is violating section 1345.02, 1345.03, or 1345.031 of the Revised Code, the court may issue a temporary restraining order, preliminary injunction, or permanent injunction to restrain and prevent the act or practice. On motion of the attorney general, or on its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under this section, if the supplier received notice of the action. The civil penalties shall be paid as provided in division (G) of this section. Upon the commencement of an action under division (A)(2) of this section against a supplier who operates under a license, permit, certificate, commission, or other authorization issued by the supreme court or by a board, commission, department, division, or other agency of this state, the attorney general shall immediately notify the supreme court or agency that such an action has been commenced against the supplier.

(3) A class action under Civil Rule 23, as amended, on behalf of consumers who have engaged in consumer transactions in this state for damage caused by:

(a) An act or practice enumerated in division (B) or (D) of section 1345.02 of the Revised Code;

(b) Violation of a rule adopted under division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based;

(c) An act or practice determined by a court of this state to violate section 1345.02, 1345.03, or 1345.031 of the Revised Code and committed after the decision containing the determination has been made available for public inspection under division (A)(3) of section 1345.05 of the Revised Code.

(B) On motion of the attorney general and without bond, in the attorney general's action under this section, the court may make appropriate orders, including appointment of a referee or a receiver, for sequestration of assets, to reimburse consumers found to have been damaged, to carry out a transaction in accordance with a consumer's reasonable expectations, to strike or limit the application of unconscionable clauses of contracts so as to avoid an unconscionable result, or to grant other appropriate relief. The court may assess the expenses of a referee or receiver against the supplier.

(C) Any moneys or property recovered by the attorney general in an action under this section that cannot with due diligence within five years be restored by a referee to consumers shall be unclaimed funds reportable under Chapter 169. of the revised Code.

(D) In addition to the other remedies provided in this section, if the violation is an act or practice that was declared to be unfair, deceptive, or unconscionable by a rule adopted pursuant to division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based occurred or an act or practice that was determined by a court of this state to violate

section 1345.02, 1345.03, or 1345.031 of the Revised Code and committed after the decision containing the court's determination was made available for public inspection pursuant to division (A)(3) of section 1345.05 of the Revised Code, the attorney general may request and the court may impose a civil penalty of not more than twenty-five thousand dollars against the supplier. The civil penalties shall be paid as provided in division (G) of this section.

(E) No action may be brought by the attorney general under this section to recover for a transaction more than two years after the occurrence of a violation.

(F) If a court determines that provision has been made for reimbursement or other appropriate corrective action, insofar as practicable, with respect to all consumers damaged by a violation, or in any other appropriate case, the attorney general, with court approval, may terminate enforcement proceedings brought by the attorney general upon acceptance of an assurance from the supplier of voluntary compliance with Chapter 1345. of the Revised Code, with respect to the alleged violation. The assurance shall be filed with the court and entered as a consent judgment. Except as provided in division (A) of section 1345.10 of the Revised Code, a consent judgment is not evidence of prior violation of such chapter. Disregard of the terms of a consent judgment entered upon an assurance shall be treated as a violation of an injunction issued under this section.

(G) Civil penalties ordered pursuant to divisions (A) and (D) of this section shall be paid as follows: one-fourth of the amount to the treasurer of the county in which the action is brought and three-fourths to the consumer protection enforcement fund created by section 1345.51 of the Revised Code.

(H) The remedies available to the attorney general under this section are cumulative and concurrent, and the exercise of one remedy by the attorney general does not preclude or require the exercise of any other remedy. The attorney general is not required to use any procedure set forth in section 1345.06 of the Revised Code prior to the exercise of any remedy set forth in this section.

HISTORY: 134 v H 103 (Eff 7-14-72); 137 v H 681 (Eff 8-11-78); 140 v H 291 (Eff 7-1-83); 141 v H 382 (Eff 3-18-87); 151 v S 185, §1 (Eff. 1-1-07).

1345.08 Coordination with other administrative supervision

If the attorney general receives a complaint or other information concerning noncompliance with Chapter 1345. of the Revised Code, by a supplier subject to other administrative supervision in this state, he shall immediately give written notice of the substance of the complaint or other information to the official or agency having supervisory authority over the supplier. The attorney general may request information about suppliers subject to other administrative supervision from the agencies or official supervising them.

HISTORY: 134 v H 103 (Eff 7-14-72); 137 v H 681 (Eff 8-11-78); 140 v H 291 (Eff 7-1-83).

1345.09 Private Remedies

For a violation of Chapter 1345. of the Revised Code, a consumer has a cause of action and is entitled to relief as follows:

(A) Where the violation was an act prohibited by section 1345.02, 1345.03, or 1345.031 of the Revised Code, the consumer may, in an individual action, rescind the transaction or recover the

consumer's actual economic damages plus an amount not exceeding five thousand dollars in noneconomic damages.

(B) Where the violation was an act or practice declared to be deceptive or unconscionable by rule adopted under division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based, or an act or practice determined by a court of this state to violate section 1345.02, 1345.03, or 1345.031 of the Revised Code and committed after the decision containing the determination has been made available for public inspection under division (A)(3) of section 1345.05 of the Revised Code, the consumer may rescind the transaction or recover, but not in a class action, three times the amount of the consumer's actual economic damages or two hundred dollars, whichever is greater, plus an amount not exceeding five thousand dollars in noneconomic damages or recover damages or other appropriate relief in a class action under Civil Rule 23, as amended.

(C)

(1) Except as otherwise provided in division (C) (2) of this section, in any action for rescission, revocation of the consumer transaction must occur within a reasonable time after the consumer discovers or should have discovered the ground for it and before any substantial change in condition of the subject of the consumer transaction.

(2) If a consumer transaction between a loan officer, mortgage broker, or nonbank mortgage lender and a customer is in connection with a residential mortgage, revocation of the consumer transaction in an action for rescission is only available to a consumer in an individual action, and shall occur for no reason other than one or more of the reasons set forth in the "Truth in Lending Act," 82 Stat. 146 (1968), 15 U.S.C. 1635, not later than the time limit within which the right of rescission under section 125(f) of the "Truth in Lending Act" expires.

(D) Any consumer may seek a declaratory judgment, an injunction, or other appropriate relief against an act or practice that violates this chapter.

(E) When a consumer commences an individual action for a declaratory judgment or an injunction or a class action under this section, the clerk of court shall immediately mail a copy of the complaint to the attorney general. Upon timely application, the attorney general may be permitted to intervene in any private action or appeal pending under this section. When a judgment under this section becomes final, the clerk of court shall mail a copy of the judgment including supporting opinions to the attorney general for inclusion in the public file maintained under division (A) (3) of section 1345.05 of the Revised Code.

(F) The court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed, if either of the following apply:

(1) The consumer complaining of the act or practice that violated this chapter has brought or maintained an action that is groundless, and the consumer filed or maintained the action in bad faith;

(2) The supplier has knowingly committed an act or practice that violates this chapter.

(G) As used in this section, "actual economic damages" means damages for direct, incidental, or

consequential pecuniary losses resulting from a violation of Chapter 1345. of the Revised Code and does not include damages for noneconomic loss as defined in section 2315.18 of the Revised Code.

(H) Nothing in this section shall preclude a consumer from also proceeding with a cause of action under any other theory of law.

HISTORY: 134 v H 103 (Eff 7-14-72); 137 v H 681 (Eff 8-11-78); 151 v S 185 (Eff 1-1-07); 151 v S 117 (Eff 10-31-07); 153 v H 1 (Eff 10-16-09); 153 v S 124 (Eff 12-28-09).

1345.091 Liability of assignee or purchaser of mortgage loan for value

No claim or defense under this chapter may be asserted by the attorney general or any consumer against an assignee or purchaser of a mortgage loan for value unless any one of the following applies:

(A) The violation was committed by the assignee or purchaser.

(B) The assignee or purchaser is affiliated by common control with the seller of the loan at the time of such assignment or purchase.

HISTORY: 151 v S 185, §1 (Eff. 1-1-07).

1345.10 Final judgments admissible in subsequent proceedings; statute of limitations

(A) With the exception of consent judgments entered before any testimony is taken, a final judgment against a supplier under section 1345.07 of the Revised Code is admissible as prima-facie evidence of the facts on which it is based in subsequent proceedings under section 1345.09 of the Revised Code against the same supplier, or his successors or assigns.

(B) An action by or on behalf of a consumer pursuant to section 1345.09 of the Revised Code precludes that consumer from being included in a later class action by the attorney general with respect to the same transaction, but intervention by the attorney general in a pending action is authorized. If the attorney general brings a class action on behalf of consumers, a consumer may withdraw from the class action prior to trial, or, with the permission of the court, at any time.

(C) An action under sections 1345.01 to 1345.13 of the Revised Code may not be brought more than two years after the occurrence of the violation which is the subject of suit, or more than one year after the termination of proceedings by the attorney general with respect to the violation, whichever is later. However, an action under sections 1345.01 to 1345.13 of the Revised Code arising out of the same consumer transaction can be used as a counterclaim whenever a supplier sues a consumer on an obligation arising from the consumer transaction.

HISTORY: 134 v H 103 (Eff 7-14-72).

1345.11 Effect of good faith error; receiver for supplier; suspension or revocation of license

(A) In any case arising under Chapter 1345 of the Revised Code, if a supplier shows by a preponderance of the evidence that a violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed

against the supplier under division (D) of section 1345.07 of the Revised Code, no party shall be awarded attorney's fees, and monetary recovery shall not exceed the amount of actual damages resulting from the violation.

(B) If a supplier shows by a preponderance of the evidence that a violation was an act or practice required or specifically permitted by federal trade commission orders, trade regulation rules and guides, or the federal courts' interpretations of subsection 45(a)(1) of the "Federal Trade Commission Act," 38 Stat. 717 (1914), 15 U.S.C. 41, as amended, and that the act or practice was not otherwise declared to be unfair, deceptive, of unconscionable by a rule adopted pursuant to division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based, and:

> (1) If the case arises under section 1345.07 of the Revised Code, the attorney general is limited to injunctive relief as the only remedy against the supplier for that violation; or
>
> (2) If the case arises under section 1345.09 of the Revised Code, the supplier is not subject to any liability or penalty for the violation.

(C) A receiver may be appointed by the court in an action under section 1345.07 of the Revised Code, if it is shown that the assets of the supplier are in danger of being lost, removed, injured, or dissipated. A receiver may, under the direction of the court, do all of the following:

> (1) Sue for, collect, receive, and take into his possession all the goods, chattels, rights, credits, moneys, effects, lands, tenements, books, records documents, papers, choses in action, bills, notes, and other property and assets of every kind and description acquired by any act or practice prohibited by this chapter, including property with which such property has been commingled if it cannot be identified in kind because of commingling;
>
> (2) Sell, convey, and assign all property taken into his possession, and hold and dispose of the proceeds;
>
> (3) Perform any other acts respecting the property that the court authorizes.

Any person who has suffered damages as a result of the use of any act or practice prohibited by this chapter and who submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses.

(D) If a court determines after a hearing in any action brought pursuant to section 1345.07 of the Revised Code that a supplier in the course of performing activity under any license or permit issued by the state or a political subdivision or agency of the state, engaged in a practice that violates this chapter, the attorney general may, within sixty days after the time for appealing has expired, send a certified copy of the court's final judgment and supporting opinion to the issuing authority. Upon receipt of the court's judgment and opinion, the issuing authority shall promptly investigate to determine whether to institute proceedings to revoke or suspend the supplier's license or permit. The court's judgment, findings of fact, and conclusions of law shall be binding upon the issuing authority when it conducts its investigation. The issuing authority shall report its decision or action to the attorney general within twenty days of the conclusion of the issuing authority's investigation. If the issuing authority institutes proceedings to revoke or suspend the supplier's license or permit, it shall report its decision to the attorney general within twenty days of the conclusion of the issuing authority's proceedings.

HISTORY: 134 v H 103 (Eff 7-14-72); 137 v H 681 (Eff 8-11-78).

1345.12 Exceptions to application of chapter

Sections 1345.01 to 1345.13 of the Revised Code do not apply to:

(A) An act or practice required or specifically permitted by or under federal law, or by or under other sections of the Revised Code, except as provided in division (B) of section 1345.11 of the Revised Code;

(B) A publisher, broadcaster, printer, or other person engaged in the dissemination of information or the reproduction of printed or pictorial matter insofar as the information or matter has been disseminated or reproduced on behalf of others without knowledge that it violated sections 1345.01 to 1345.13 of the Revised Code;

(C) Claims for personal injury or death.

HISTORY: 134 v H 103 (Eff 7-14-72); 137 v H 681 (Eff 8-11-78).

1345.13 Effect on other remedies

The remedies in sections 1345.01 to 1345.13 of the Revised Code, are in addition to remedies otherwise available for the same conduct under state or local law.

HISTORY: 134 v H 103 (Eff 7-14-72).

1345.18 Consumer's prior, verified consent required to switch natural gas or public telecommunications service provider

(A) As used in this section:

(1) "Consumer," "person," and "supplier" have the same meanings as in section 1345.01 of the Revised Code.

(2) "Consumer transaction" has the same meaning as in section 1345.01 of the Revised Code except that the sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, or solicitation to supply any of those things, to an individual is for purposes that are primarily other than personal, family, or household.

(3) "Natural gas service" means the sale of natural gas, exclusive of any distribution or ancillary service.

(4) "Public telecommunications service" means the transmission by electromagnetic or other means, other than by a telephone company as defined in section 4927.01 of the Revised Code, of signs, signals, writings, images, sounds, messages, or data originating in this state regardless of actual call routing. "Public telecommunications service" excludes a system, including its construction, maintenance, or operation, for the provision of telecommunications service, or any portion of such service, by any entity for the sole and exclusive use of that entity, its parent, a subsidiary, or an affiliated entity, and not for

resale, directly or indirectly; the provision of terminal equipment used to originate tele communications service; broadcast transmission by radio, television, or satellite broad cast stations regulated by the federal government; or cable television service.

(B)

(1) No supplier, in connection with a consumer transaction involving natural gas service or public telecommunications service to a consumer in this state, shall request or submit, or cause to be requested or submitted, a change in the consumer's provider of natural gas service or public telecommunications service, without first obtaining, or causing to be obtained, the verified consent of the consumer. For the purpose of this division and with respect to public telecommunications service only, the procedures necessary for verifying the consent of a consumer shall be those prescribed by rule by the public utilities commission for public telecommunications service under division (D) of section 4905.72 of the Revised Code. Also, for the purpose of this division, the act, omission, or failure of any officer, agent, or other individual, acting for or employed by another person, while acting within the scope of that authority or employment, is the act or failure of that other person.

(2) Consistent with the exclusion, under 47 C.F.R. 64.1100(a)(3), of commercial mobile radio service providers from the verification requirements adopted in 47 C.F.R. 64.1100, 64.1150, 64.1160, 64.1170, 64.1180, and 64.1190 by the federal communications com mission, division (B)(1) of this section does not apply to a provider of commercial mobile radio service insofar as such provider is engaged in the provision of commercial mobile radio service. However, when that exclusion no longer is in effect, division (B)(1) of this section shall apply to such a provider.

HISTORY: 148 v H 177 (Eff 5-17-00).

1345.19 Jurisdiction; provisions are additional

(A) The courts of common pleas, and municipal or county courts within their respective jurisdictions, have jurisdiction over any supplier with respect to a violation of section 1345.18 of the Revised Code or any claim arising from a consumer transaction subject to that section.

(B) The power, remedies, forfeitures, and penalties provided by sections 1345.18 to 1345.20 and division (C) of section 1345.99 of the Revised Code are in addition to any other power, remedy, forfeiture, or penalty provided by law.

HISTORY: 148 v H 177 (Eff 5-17-00).

1345.20 Action by aggrieved consumer

(A) An aggrieved consumer may bring an action for a declaratory judgment, an injunction, or other appropriate relief against a supplier that is violating or has violated section 1345.18 of the Revised Code. The court may issue any order or enter a judgment as necessary to ensure compliance with section 1345.18 of the Revised Code or prevent any act or practice that violates that section. In addition, upon a preponderance of the evidence, the court:

(1) Shall issue an order providing for all of the following:

(a) Rescinding the aggrieved consumer's change in service provider;

(b) Requiring the supplier to absolve the aggrieved consumer of any liability for any charges assessed the consumer, or refund to the aggrieved consumer any charges collected from the consumer, by the supplier during such period, after the violation occurred, that is determined reasonable by the court;

(c) Requiring the supplier to refund or pay to the aggrieved consumer any fees paid or costs incurred by the consumer resulting from the change of the consumer's service provider or providers, or from the resumption of the consumer's service with the service provider or providers from which the consumer was switched;

(d) Requiring the supplier to make the consumer whole regarding any bonuses or benefits, such as airline mileage or product discounts, to which the consumer is entitled, by restoring bonuses or benefits the consumer lost as a result of the violation and providing bonuses or benefits the consumer would have earned if not for the violation, or by providing something of equal value.

(2) May issue an order providing for any of the following:

(a) Requiring the supplier to comply or undertake any necessary corrective action;

(b) Assessing upon the supplier forfeitures of not more than one thousand dollars for each day of each violation. However, if the preponderance of the evidence shows that the supplier has engaged or is engaging in a pattern or practice of committing any such violations, the court may assess upon the supplier forfeitures of not more than five thousand dollars for each day of each violation. Upon collection, one-half of any such forfeiture assessed under this division shall be paid to the treasurer of the county in which the action was brought and one-half shall be paid into the state treasury to the credit of the general revenue fund.

(B) Upon a finding in an action under division (A) of this section that a supplier is violating or has violated section 1345.18 of the Revised Code, a service provider or providers of natural gas service or public telecommunications service from whom the aggrieved consumer was switched may bring an action seeking the relief authorized by this division. Upon the filing of such action, the court may issue an order providing for either of the following:

(1) Requiring the supplier to compensate the service provider or providers from which the aggrieved consumer was switched in the amount of all charges the consumer would have paid that particular service provider for the same or comparable service had the violation or failure to comply not occurred;

(2) Requiring the supplier to compensate the service provider or providers from which the aggrieved consumer was switched for any costs that the particular service provider incurs as a result of making the consumer whole as provided in division (A)(1)(d) of this section or of effecting the resumption of the consumer's service.

(C) No action may be brought under division (A) of this section to recover for a transaction more

than two years after the occurrence of a violation. No action may be brought under division (B) of this section more than one year after the date on which a ruling in an action brought under division (A) of this section was rendered.

HISTORY: 148 v H 177. (Eff 5-17-2000).

1345.51 Consumer protection enforcement fund

There is hereby created in the state treasury the consumer protection enforcement fund. The fund shall include civil penalties ordered pursuant to divisions (A) and (D) of section 1345.07 of the Revised Code and paid as provided in division (G) of that section, all civil penalties assessed under division (A) of section 1349.192 or division (D) of section 1349.82 of the Revised Code, all costs awarded to the attorney general and all penalties imposed under section 4549.48 of the Revised Code, and all money unclaimed under section 4549.50 of the Revised Code. The money in the consumer protection enforcement fund shall be used for the sole purpose of paying expenses incurred by the consumer protection section of the office of the attorney general.

HISTORY: 141 v H 382 (Eff 3-18-87); 146 v S 214 (Eff 12-5-96); 151 v H 104, §1 (Eff. 2-17-06); 152 v S 269 §1 (Eff 4-7-09).

1345.99 Penalties

(A) Whoever violates section 1345.23 or 1345.24 of the Revised Code is guilty of a minor misdemeanor.

(B) Whoever violates division (D) of section 1345.76 of the Revised Code shall be fined not more than one thousand dollars.

(C) Whoever knowingly violates division (E) of section 1345.02 or knowingly violates section 1345.18 of the Revised Code is guilty of a misdemeanor of the third degree for a first offense and a misdemeanor of the second degree for any subsequent offense.

HISTORY: 134 v S 24 (Eff 1-1-73); 135 v H 241 (Eff 9-30-74); 148 v H 21 (Eff 9-15-99); 148 v H 177 (Eff 5-17-00).

SUBSTANTIVE RULES

109:4-3-01 Construction and purpose of rules; severability; definitions

(A) Purposes, rules of construction

(1) These substantive rules (rule 109:4-3-01 of the Administrative Code, etc.) are adopted by the office of the attorney general pursuant to division (B) of section 1345.05 and Chapter 119. of the Revised Code. Without limiting the scope of any section of the Revised Code or any other rule, these rules shall be liberally construed and applied to promote their purposes and policies.

(2) The purposes and policies of these rules are to:

(a) Define with reasonable specificity acts and practices which violate section 1345.02 or 1345.03, or 1345.031 of the Revised Code;

(b) Protect consumers from suppliers who engage in referral selling, commit deceptive acts or practices, or commit unconscionable acts or practices;

(c) Encourage the development of fair consumer sales practices.

(3) Any substantive rules adopted by the office of the attorney general pursuant to division (B) of section 1345.05 and Chapter 119. of the Revised Code are subject to all remaining provisions of Chapter 1345. of the Revised Code, including, without limitation, the bona fide error provisions of division (A) of section 1345.11 of the Revised Code.

(B) Severability

Each substantive rule and every part of each substantive rule is an independent rule and section of a rule, and the holding of any rule or paragraph of a rule to be unconstitutional, void, or ineffective for any cause does not affect the validity or constitutionality of any other rule or paragraph of a rule.

(C) Definitions

(1) "Goods" means all things (including specially manufactured goods) which are mov able at time of identification to the contract for sale other than the money in which the price is to be paid, securities (as they are defined in Chapter 1707. of the Revised Code), and things in action.

(2) "Services" means performance of labor for the benefit of another. Services include, but are in no way limited to, the construction of a single-family dwelling unit by a supplier on the real property of a consumer.

(3) "Offer" means any attempt to effect, or solicitation of an offer to enter into a consumer transaction by agent, advertisement, or otherwise.

(4) "Sale" includes sale, lease, assignment, award by chance or other transfer of an item of goods, a service, franchise, or an intangible.

(5) "Advertisement" means any electronic, written, visual, or oral communication made to a consumer by means of personal representation, newspaper, magazine, circular, bill board, direct mailing, sign, radio, television, telephone or otherwise, which identifies or represents the terms of any item of goods, service, franchise, or intangible which may be transferred in a consumer transaction.

(6) "Knowledge," "knowingly," "knowing," or "known" means that there is actual awareness, but such actual awareness may be inferred where objective manifestations indicate that the individual acted with such awareness.

(7) "Instruct" or "instructing" means to in any way direct, order, or inform.

(8) "Inducing" or "induce" means to persuade or influence in any way.

(9) "Coercing" or "coerce" means to force or pressure to act.

(10) "Compensate" means to promise or provide anything of value, and includes, without limitation, money, goods, services or the promise of continuing or future employment.

History: Eff (Amended) 6-5-73; Eff. 1-26-80; 3-14-05; 1-7-07

109:4-3-02 Exclusions and limitations in advertisements

(A)

(1) It is a deceptive act or practice in connection with a consumer transaction for a supplier, in the sale or offering for sale of goods or services, to make any offer in written or printed advertising or promotional literature without stating clearly and con spicuously in close proximity to the words stating the offer any material exclusions, reservations, limitations, modifications, or conditions. Disclosure shall be easily legible to anyone reading the advertising or promotional literature and shall be sufficiently specific so as to leave no reasonable probability that the terms of the offer might be misunderstood.

(2) The following are examples of the types of material exclusions, reservations, limitations, modifications, or conditions of offers which must be clearly stated:

(a) An advertisement for any motor vehicle must disclose the amount of any additional charge for any of the features displayed in the advertisement.

(b) An advertisement for an article of clothing must state that there is an additional charge for sizes above or below a certain size if such is the case.

(c) An advertisement which offers floor covering with an additional charge for room sizes above or below a certain size must disclose the nature and amount of any additional charge.

(d) (i) An advertisement for a service or item of goods sold from more than one outlet under the direct control of the supplier causing the advertisement to be made must state:

(a) Which outlets within the area served by the publication in which the advertisement appears either have or do not have certain features mentioned in the advertisement;

(b) Which outlets within the area served by the publication in which the advertisement appears charge rates higher than the rate mentioned in the advertisement. For example: "Car Rental-seven dollars a day at the Main Street office-all other locations are more."

(ii) An advertisement for a service or item of goods sold from outlets not under the direct control of the supplier causing the advertisement to be made does not violate divisions (A)(2)(d)(i)(a) or (A)(2)(d)(i)(b) of this rule if it states that the service or item of goods is available only at participating independent dealers.

(e) If the advertised price is available only during certain hours of the day or certain days of the week, that fact must be stated along with the hours and days the price is available.

(f) If the advertisement involves or pictures more than one item of goods (for example: a table and chairs) and the advertised price applies only if the complete set is purchased, that fact must be stated.

(g) If there is a minimum amount (or maximum amount) that must be purchased for the advertised price to apply, that fact must be stated.

(h) If an advertisement specifies a price for an item of goods which includes a trade-in, that fact must be stated. For example: "four tires for fifty dollars plus four tires off your car."

(i) If there is an additional charge for delivery or mail orders, that fact must be disclosed.

(j) If an advertisement offers a rebate that requires repeat purchases by a consumer, that information must be disclosed, including, but not limited to, the required number of purchases, the amount of each of the purchases, the time frame over which the purchases need to be made, and any other actions required by the consumer to redeem the rebate.

(3) These examples are intended to be illustrative only and do not limit the scope of any section of the Revised Code or of this or any other rule or regulation.

(B) Offers made through radio or television advertising must be preceded or immediately followed by a conspicuously clear and oral statement of any exclusions, reservations, limitations, modifications, or conditions.

(C) A statement of exclusions, reservations, limitations, modifications, or conditions which appears in a footnote to an advertisement to which reference is made in the advertisement by an asterisk or other symbol placed next to the offer being limited is not in close proximity to the words stating the offer.

(D) It is a deceptive act or practice in connection with an offer made on the internet, to make any offer without stating clearly and conspicuously, in close proximity to the words stating the offer, any material exclusions, reservations, limitations, modifications, or conditions. Disclosures should be as near to, and if possible on the same screen, as the triggering offer. If scrolling or a hyperlink is necessary to view the disclosure, the advertisement should guide consumers with obvious terms or instructions to scroll down or click on the hyperlink. Hyperlinked disclosures should lead directly to the disclosed information and not require scrolling or clicking on any additional hyperlinks.

History: Eff. 5-1-75; 5-15-09

109:4-3-03 Bait advertising/unavailability of goods

(A) Definitions: For the purposes of this rule, the following definitions shall apply:

(1) "Raincheck" means a written document evidencing a consumer's entitlement to purchase advertised items at an advertised price within the time limits set forth in paragraph (C) of this rule. Rainchecks shall be executed in duplicate, one copy being given to the consumer and one copy being kept by the issuing supplier, and shall contain at least the following information:

(a) The name and address of the supplier;

(b) The name, address and phone number of the consumer;

(c) A description of the item to be purchased, including the model, make and year, if relevant;

(d) The quantity entitled to be purchased by the consumer;

(e) The advertised price of the item;

(f) The date of issuance.

(2) "Salesperson" means the supplier or the supplier's agent or employee who interacts personally or directly with a consumer in negotiating or effecting a consumer transaction.

(3) "Special purchase items" means items which are not currently or normally carried by a supplier in its regular stock of goods and that will not be re-offered for sale as a special-purchase item by the supplier for at least six months after the advertised promotion.

(4) "Clearance items" means items which have been carried by a supplier in its regular stock of goods, which have been discontinued as regular stock, and which will not be re-offered for sale for at least six months after the advertised promotion.

(5) "Seasonal items" means items which are carried by a supplier as regular stock only at certain periods during a calendar year, and which will not be re-offered for sale until the beginning of the next season in which the supplier regularly carries such items.

(B) Bait advertising

It shall be a deceptive and unfair act or practice for a supplier to make an offer of sale of any goods or services when such offer is not a bona fide effort to sell such goods or services. An offer is not bona fide if:

(1) A supplier uses a statement or illustration or makes a representation in any advertisement which would create in the mind of a reasonable consumer, a false impression as to the grade, quality, quantity, make, model, year, price, value, size, color, utility, origin or any other material aspect of the offered goods or services in such a manner that, upon subsequent disclosure or discovery of the facts, the consumer may be induced to purchase goods or services other than those offered;

(2) The first contact or interview with the consumer is secured by the supplier through deception, even if the relevant facts of the offer are disclosed to the consumer before the consumer views the offered goods or services;

(3) A supplier discourages the purchase or sale of the offered goods or services by any means, including but not limited to the following:

(a) The refusal to show, demonstrate or sell the offered goods or services in accordance with the terms of the offer;

(b) Disparagement by the supplier of the offered goods or services;

(c) The showing or demonstrating of offered goods or services which are unusable or impractical for the purposes represented, or materially different from the offered goods or services;

(d) The use of a sales plan or method of compensation of sales personnel which is designed to penalize or prevent a salesperson from selling the advertised goods or services;

(e) The failure of a supplier to have on hand at each of its outlets or available for immediate delivery a sufficient quantity of the offered goods or services to meet reasonably anticipated consumer demand, unless the supplier complies with the provisions of paragraph (C)(1)(b) or (C)(1)(c) of this rule concerning unavailability of goods.

(4) A supplier, in the event of a sale to the consumer of the offered goods or services, attempts to persuade a consumer to repudiate the purchase of the offered goods or services and purchase other goods or services in their stead, by any means, including but not limited to the following:

(a) Accepting a consideration for the offered goods or services, then switching the consumer to other goods or services;

(b) Failing to make delivery of the offered goods or services (or, with the consent of the consumer, substituting goods or services of equal or greater value) within a reasonable time, or to make a refund;

(c) Delivering offered goods or services which are unusable or impractical for the purposes represented or materially different from the offered goods or services. The purchase on the part of some consumers of the offered goods or services is not in itself prima facie evidence that the offer is bona fide.

(C) Unavailability of goods

It shall be a deceptive and unfair act or practice for a supplier, in connection with an advertised offer for sale of goods or services, to:

(1) Fail to give a raincheck to any consumer after the original quantity of goods or services represented for sale by an out-of-store advertisement is exhausted unless:

(a) For any item whose advertised price exceeds one hundred dollars the supplier at the time of the advertised offer had a sufficient supply of the advertised goods or services to meet the reasonably expected consumer demand, and the supplier shall document upon request that the supplier's estimate of reasonably expected consumer demand was based upon the following factors:

(i) Previous recent offers of same or similar goods or services on sale by such supplier at similar savings or prices;

(ii) Scope, manner and frequency of advertising employed to promote the sale of such item;

(iii) The existence of any significant current circumstances or events which causes or could be expected to cause an increased or decreased consumer response for the offered items of goods and services, or;

(b) The minimum quantity of the advertised goods or services available to each of the supplier's outlets is clearly and conspicuously disclosed in the advertisement, i.e., "at least ten in stock", or;

(c) The advertisement clearly and conspicuously discloses that the offered goods or services are "special purchase", "seasonal" or "clearance" items and that no rainchecks will be given, or;

(d) The supplier permits the consumer, in lieu of a raincheck, at the consumer's option, to purchase another similar or comparable item of equal or greater value in stock at a savings equal to the greater of the net difference in dollars between the former and advertised prices of the item, or the percentage of savings on the advertised price of the item compared to its former price.

(2) Fail to honor a raincheck within sixty days of the day of its issuance to a consumer or within the specific time extension agreed to by the consumer pursuant to paragraph (C)(5) of this rule.

(3) Fail to notify the consumer holding a raincheck pursuant to paragraph (C)(1) of this rule of the availability of the out-of-stock item within fourteen days of its re-availability by the method most reasonably designed to inform the consumer of the availability, except a supplier may be exempt from such notification if a specific availability date is clearly and conspicuously disclosed on the raincheck and such date of availability does not exceed twenty-one days from the date of issuance of the raincheck. In the event that such raincheck item does not in fact become available to the consumer within twenty-one days, the supplier shall permit the consumer, at the consumer's option, to substitute another similar or comparable in-stock item.

(4) Re-advertise the out-of-stock item prior to notification to consumers holding rain checks for the item, pursuant to paragraph (C)(3) above. However, after the advertisement has been placed with the media by the supplier and is no longer within the control of the supplier, repetition of the previously placed advertisement by the media shall not constitute re-advertisement within the meaning of this rule.

(5) Fail, in the event an out-of-stock item is not available within sixty days of issuance of a raincheck, to notify the consumer holding the raincheck and permit the consumer, at the option of the consumer, to either purchase another similar or comparable in-stock item pursuant to paragraph (A)(3) above or consent to a specific time extension within which the raincheck item will be provided.

(6) Fail, in the event a supplier notifies a consumer of the re-availability of an item, and the consumer attempts to redeem their raincheck within the period prescribed by this rule, but the item is again unavailable at the time of the attempted redemption, to permit the consumer, at the consumer's option, to purchase another similar or comparable in-stock item pursuant to paragraph (A)(3) above.

(7) Fail to document upon request the specific factors relied upon to arrive at a sufficient supply of the advertised goods or service to meet the reasonably expected consumer demand when a raincheck is not given to a consumer for such item of goods or service.

(8) Fail to redeem or otherwise honor a raincheck presented by a consumer within fourteen days of either notification of availability or the specific availability date pursuant to paragraph (C)(3).

(D) The provisions of this rule shall have no application to consumer transactions involving the advertisement or sale of a motor vehicle as that term is defined in division (B) of section 4501.01 of the Revised Code and to any advertisement which solicits orders of goods or services through a catalogue or similar device for subsequent consumer delivery from a catalogue merchandise distribution center or similar facility which is not utilized primarily as a retail store.

History: Am. 11-23-77; Eff. 6-5-73; 1-26-80; 3-14-05

109:4-3-04 Use of word "free" etc.

(A) It shall be a deceptive act or practice in connection with a consumer transaction for a supplier

to use the word "free" or other words of similar import or meaning, except in conformity with this rule. It is the express intent of this rule to prohibit the practice of advertising or offering goods or services as "free" when in fact the cost of the "free" offer is passed on to the consumer by raising the regular (base) price of the goods or services that must be purchased in connection with the "free" offer. In the absence of such a base price a "free" offer is in reality a single price for the combination of goods or services offered, and the fiction that any portion of the offer is "free" is inherently deceptive.

(B) For the purposes of this rule, all references to the word "free" shall include within that term all other words of similar import and meaning. Representative of the word or words to which this rule is applicable would be the following: "Free;" "Buy 1, Get 1 Free;" "2 for 1 Sale;" "50% Off with Purchase of 2." Offers of "free" items of goods or services which may be deceptive for failure to meet the provisions of this rule may not be corrected by the substitution, for the word "free," of such similar words and terms as "gift," "given without charge," "bonus," or other words and terms which tend to convey to the consuming public the impression that an item of goods or services is "free."

(C) When using the word "free" in a consumer transaction, all the terms, conditions, and obligations upon which receipt and retention of the "free" goods or services are contingent shall be set forth clearly and conspicuously at the outset of the offer. Terms, conditions, and obligations of the offer must be printed in a type size half as large as the word "free," and all of the terms, conditions, and obligations should appear in close proximity with the offer of "free" goods or services. Disclosure of the terms of the offer set forth in a footnote of an advertisement to which reference is made by an asterisk or other symbol placed next to the offer is not regarded as making disclosure at the outset.

(D) In a consumer transaction in which goods or services are offered as "free" upon the purchase of other goods or services the supplier must insure:

(1) That the unit regular price charged for the other goods or services is not increased, or if there is no unit regular price, the unit price charged for the other goods or services is continued for a reasonable period of time;

(2) That the regular quality of the other goods or services is not reduced, or if there is no regular quality, the quality level of the other goods and services is continued for a reasonable period of time;

(3) That no other conditions are attached to the offer except for the basic condition that the other goods or services must be purchased in order for the consumer to be entitled to the "free" goods or services.

(E) Only the supplier's regular price for the goods or services to be purchased may be used as the basis for a "free" offer. It is, therefore, a deceptive act or practice for a supplier to offer "free" goods or services based on a price which exceeds the supplier's regular price for other goods or services required to be purchased. Likewise, it is a deceptive act or practice for a supplier to make a "free" offer when the price of other goods or services required to be purchased is based on a price being charged by others in the supplier's trade area for the same or similar goods or services when, in fact, such price is in excess of the supplier's regular price.

(F) (1) "Regular price" means the price at which the goods or services are openly and actively sold by a supplier to the public on a continuing basis for a substantial period of

time. A price is not a regular price if:

(a) It is not the supplier's actual selling price;

(b) It is a price which has not been used in the recent past; or

(c) It is a price which has been used only for a short period of time.

(2) "Regular quality" means the quality level at which the goods and services are openly and actively sold by the supplier to the public on a continuing basis for a substantial period of time. A quality level is not a regular quality if:

(a) It is not the supplier's actual quality level;

(b) It is a quality level that has not been used in the recent past; or

(c) It is a quality level which has been used only for a short period of time.

(G) It is recognized that some goods and services are almost never sold at a single regular price, but are instead sold by means of individual negotiated transactions. A supplier of goods or services sold in negotiated transactions is not precluded by this rule from making a "free" offer provided the supplier is able to establish a mean average price immediately prior to the "free" offer, the goods or services are fungible, and the mean average price during the "free" offer does not exceed the mean average price immediately prior thereto.

(H) Continuous or repeated "free" offers are deceptive acts or practices since the supplier's regular price for goods to be purchased by consumers in order to avail themselves of the "free" goods will, by lapse of time, become the regular price for the "free" goods or services together with the other goods or services required to be purchased. Under such circumstances, therefore, an offer of "free" goods or services is merely illusory and deceptive.

(I) This rule does not preclude the use of nondeceptive, "combination" offers in which two or more items of goods and/or services such as toothpaste and a toothbrush, or soap and deodorant, or clothing and alterations are offered for sale as a single unit at a single stated price, and in which no representation is made that the price is being paid for one item and the other is "free." Similarly, suppliers are not precluded from setting a price for an item of goods or services which also includes furnishing the consumer with a second, distinct item of goods or services at one inclusive price if no representation is made that the latter is free.

History: Eff. 6-5-73; 3-14-05

109:4-3-05 Repairs or services

(A) It shall be a deceptive act or practice in connection with a consumer transaction involving the performance of either repairs or any service where the anticipated cost exceeds twenty-five dollars and there has been face to face contact between the consumer or the consumer's representative and the supplier or the supplier's representative, prior to the commencement of the repair or service for a supplier to:

(1) Fail, at the time of the initial face to face contact and prior to the commencement of any repair or service, to provide the consumer with a form which indicates the date, the

identity of the supplier, the consumer's name and telephone number, the reasonably anticipated completion date and, if requested by the consumer, the anticipated cost of the repair or service. The form shall also clearly and conspicuously contain the following disclosures in substantially the following language:

"ESTIMATE
YOU HAVE THE RIGHT TO AN ESTIMATE IF THE EXPECTED COST OF REPAIRS OR SERVICES WILL BE MORE THAN TWENTY-FIVE DOLLARS. INITIAL YOUR CHOICE:
_____ Written estimate
_____ Oral estimate
_____ No estimate"

(2) Fail, where no portion of a repair or service is to be performed at the consumer's residence, to post a sign in a conspicuous place within that area of the supplier's place of business to which consumers requesting any repair or service are directed by the supplier or to give the consumer a separate form at the time of the initial face to face contact and prior to the commencement of any repair or service which clearly and conspicuously contains the following language:

"NOTICE
IF THE EXPECTED COST OF A REPAIR OR SERVICE IS MORE THAN TWENTY-FIVE DOLLARS, YOU HAVE THE RIGHT TO RECEIVE A WRITTEN ESTIMATE, ORAL ESTIMATE, OR YOU CAN CHOOSE TO RECEIVE NO ESTIMATE BEFORE WE BEGIN WORK. YOUR BILL WILL NOT BE HIGHER THAN THE ESTIMATE BY MORE THAN FIVE DOLLARS OR TEN PER CENT, WHICHEVER IS GREATER, UNLESS YOU APPROVE A LARGER AMOUNT BEFORE REPAIRS ARE FINISHED. OHIO LAW REQUIRES US TO GIVE YOU A FORM SO THAT YOU CAN CHOOSE EITHER A WRITTEN, ORAL, OR NO ESTIMATE."

(3) Fail, where a consumer requests a written estimate of the anticipated cost of repairs or services, to make a bona fide effort during the initial face to face contact to provide the written estimate on the form required by paragraph (A)(1) of this rule;

(4) Fail, where a consumer requests a written or oral estimate, to give the estimate to the consumer before commencing the repair or service.

(B) It shall be a deceptive act or practice in connection with a consumer transaction involving the performance of either a repair or a service where the anticipated cost exceeds twenty-five dollars and where any portion of the repair or service is to be performed at the consumer's residence, for a supplier to fail to orally inform the consumer at the time of the initial face to face contact and prior to the commencement of any repair or service, of the consumer's right to receive a written or oral estimate and to provide the consumer with a form which conforms to the requirements of paragraph (A)(1) of this rule. For purposes of this paragraph, where a supplier performs any part of a repair or service at a consumer's residence, the repair or service shall not be deemed to have been commenced until the supplier arrives at the consumer's residence.

(C) It shall be a deceptive act or practice in connection with a consumer transaction involving the performance of either a repair or a service where there has not been face to face contact between the consumer or the consumer's representative and the supplier or the supplier's representative prior to the commencement of the repair or service for a supplier to:

(1) Fail, upon the first contact with the consumer, to inform the consumer orally, of the consumer's right to receive an oral or written estimate of the anticipated cost of the repair or service;

(2) Fail, where the consumer requests an oral estimate, to give the oral estimate to the consumer before commencing the repair or service;

(3) Fail, where the consumer requests a written estimate, to prepare a written estimate, inform the consumer that the estimate is available, and upon the consumer's request, give the estimate to the consumer before commencing the repair or service.

(D) In any consumer transaction involving the performance of any repair or service it shall be a deceptive act or practice for a supplier to:

(1) Make the performance of any repair or service contingent upon a consumer's waiver of any rights provided for in this rule;

(2) Fail, in those cases where an estimate has been requested by a consumer, and the anticipated cost of the repair is fifty dollars, or less, to obtain oral or written authorization for the anticipated cost of any additional, unforeseen, but necessary repairs when the cost of those repairs exceeds five dollars (excluding tax);

(3) Fail, in those cases where an estimate has been requested by a consumer, and the anticipated cost of the repair or service exceeds fifty dollars, to obtain oral or written authorization from the consumer for the anticipated cost of any additional, unforeseen, but necessary repairs when the cost of those repairs amounts to ten per cent or more (excluding tax) of the original estimate;

(4) Fail, where the anticipated cost of a repair or service is less than twenty-five dollars and an estimate has not been given to the consumer, to obtain oral or written authorization from the consumer for the anticipated cost of any additional, unforeseen, but necessary repairs or services when the total cost of the repairs or services, if per formed, will exceed twenty-five dollars;

(5) Fail to disclose prior to acceptance of any item of goods for inspection, repair, or service, that in the event the consumer authorizes commencement but does not authorize completion of a repair or service, that a charge will be imposed for disassembly, reassembly, or partially completed work. Any charge so imposed must be directly related to the actual amount of labor or parts involved in the inspection, repair or service;

(6) Charge for any repair or service which has not been authorized by the consumer;

(7) Fail to disclose upon the first contact with the consumer that any charge not directly related to the actual performance of the repair or service will be imposed by the supplier, including but not limited to service charges, charges imposed by the supplier for traveling to the consumer's residence, or charges for diagnosis, whether or not repairs or services are performed;

(8) Represent that repairs or services are necessary when such is not the fact;

(9) Represent that repairs have been made or services have been performed when such is not the fact;

(10) Represent that an item of goods or any part thereof which is being inspected or diagnosed for a repair or service is in a dangerous condition, or that the consumer's continued use of it may be harmful, when such is not the fact;

(11) Materially understate or misstate the estimated cost of the repair or service;

(12) Fail to provide the consumer with a written itemized list of repairs performed or services rendered, including a list of parts or materials and a statement of whether they are used, remanufactured, or rebuilt, if not new, and the cost thereof to the consumer, the amount charged for labor, and the identity of the individual performing the repair or service;

(13) Fail to tender to the consumer any replaced parts, unless the parts are to be rebuilt or sold by the supplier, or returned to the manufacturer in connection with a warranted repair or service, and such intended reuse or return is made known to the consumer prior to commencing any repair or service;

(14) Fail to provide to the consumer upon the consumer's request a written, itemized receipt for any item of goods that is left with, or turned over to, the supplier for repair or service. Such receipt shall include:

(a) The identity of the supplier which will perform the repair or service;

(b) The name and signature of the supplier or a representative who actually accepts the goods;

(c) A description including make and model number or such other features as will reasonably identify the goods to be repaired or serviced;

(d) The date on which the goods were left with or turned over to the supplier.

(15) Fail, at the time of the signing or initialing of any document by a consumer, to provide the consumer with a copy of the document;

(16) Fail to disclose to the consumer prior to the commencement of any repair or service, that any part of the repair or service will be performed by a person other than the supplier or his employees if the supplier disclaims any warranty of the repair or service performed by that person, the nature of the repair or service which that person will perform, and if requested by the consumer, the identity of that person;

(17) Represent that repairs or services must be performed away from the consumer's residence when such is not the fact.

(E) The sign or form required by paragraph (A)(2) of this rule shall be printed in such a size and manner so that the notice is easily legible. Additional disclosures required by this rule may be incorporated into the sign or form so long as the language required by paragraph (A)(2) of this rule prominently appears as the first listed disclosure. Where a supplier gives written estimates to

consumers prior to the commencement of any repair or service regardless of the anticipated cost of repairs or services, the language in the form required by paragraph (A)(1) and the sign or form required by paragraph (A)(2) of this rule may be modified to disclose that fact.

(F) The form required by paragraph (A)(1) of this rule may be separate or may be incorporated into another form used by the supplier as long as the required disclosures are easily legible and clearly and conspicuously appear on the form. Nothing in this rule shall preclude a supplier from incorporating into the same form additional disclosures required by this rule.

(G) In lieu of complying with the requirements of paragraphs (A), (B), and (C) of this rule, a supplier may provide a consumer, prior to the commencement of any repair or service, with a written quotation of the price at which the repair or service will be performed, which shall indicate that the quotation shall be binding upon the supplier for a period of five days, provided that the subject of the consumer transaction is made available to the supplier for the repair or service within that period.

(H) The provisions of this rule shall have no application to consumer transactions involving the repair or service of a "motor vehicle" as that term is defined in division (B) of section 4501.01 of the Revised Code.

History: Am. 11-23-77; Eff. 9-28-78; 3-14-05

109:4-3-06 Prizes

(A) It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to in any way notify any consumer or prospective consumer that the consumer has

(1) Won a prize or will receive anything of value, or

(2) Been selected, or is eligible, to win a prize or receive anything of value, if the receipt of the prize or thing of value is conditioned upon the consumer's listening to or observing a sales promotional effort or entering into a consumer transaction, unless the supplier clearly and conspicuously discloses, at the time of notification of the prize, that an attempt will be made to induce the consumer or prospective consumer to undertake a monetary obligation irrespective of whether that obligation constitutes a consumer transaction. The supplier must further disclose the market value of the prize or thing of value, that the prize or thing of value could not benefit the consumer or prospective consumer without the expenditure of the consumer's or prospective consumer's time or transportation expense, or that a salesperson will be visiting the consumer's or prospective consumer's residence, if such is the case.

(B) A statement to the effect that the consumer or prospective consumer must observe or listen to a "demonstration" or promotional effort in connection with a consumer transaction does not satisfy the requirements of this rule, unless the consumer or prospective consumer is told that the purpose of the demonstration is to induce the consumer or prospective consumer to undertake a monetary obligation irrespective of whether that obligation constitutes a consumer transaction.

(C) The following example illustrates a violation of this rule as a result of a lack of disclosure relative to a promotional presentation which is not a consumer transaction:

A free vacation is offered in connection with the purchase of a set of encyclopedias. All disclo-

sures required by this rule are made except that during the vacation the consumer is required to observe a sales presentation for real estate. An offer to sell real estate is not a consumer transaction, but it is an attempt to induce the consumer to undertake a monetary obligation, and such attempt was initiated in connection with a consumer transaction (the sale of encyclopedias).

(D) It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to in any way notify any consumer or prospective consumer that the consumer has:

(1) Won a prize or will receive anything of value, if such is not the case; or

(2) Been selected, or is eligible, to win a prize or receive anything of value, if the receipt of the prize or thing of value is conditioned upon the payment of a service charge, handling charge, mailing charge, or other similar charge; or

(3) Been selected, or is eligible, to win a prize or receive anything of value unless the supplier clearly and conspicuously discloses to the consumer any and all conditions necessary to win the prize or receive anything of value.

History: Eff. 6-5-73; 3-14-05

109:4-3-07 Deposits

It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to accept a deposit unless the following conditions are met:

(A) The deposit obligates the supplier to refrain for a specified period of time from offering for sale to any other person the goods in relation to which the deposit has been made by the consumer if such goods are unique; provided that a supplier may continue to sell or offer to sell goods on which a deposit has been made if he has available sufficient goods to satisfy all consumers who have made deposits;

(B) At the time of the initial deposit the supplier must provide to the consumer a dated written receipt stating clearly and conspicuously the following information:

(1) Description of the goods and/or services to which the deposit applies, (including model, model year, when appropriate, make, and color);

(2) The cash selling price and the amount of the deposit.; "Cash selling price", for purpose of this rule, as it relates to motor vehicle transactions, includes all discounts, rebates and incentives;

(3) Allowance on the goods to be traded in or other discount, if any;

(4) Time during which any option given is binding;

(5) Whether the deposit is refundable and under what conditions, provided that no limitation on refunds in a layaway arrangement may be made except as provided by sections 1317.21 to 1317.23 of the Revised Code; and

(6) Any additional costs such as storage, assembly or delivery charges.

(C) A written receipt stating the date and amount paid shall be provided to the consumer for each and every subsequent deposit made, which receipt shall also state the remaining amount due. A deposit made where the terms set forth in division (B) of this rule are altered or modified by agreement of the supplier and consumer shall not be considered as a subsequent deposit, but rather as an initial deposit.

(D) For the purposes of this rule "deposits" means any amount of money tendered or obligation to pay money incurred by a consumer for a refundable or non-refundable option, or as partial payment for goods or services.

(E) The provisions of division (B) of this rule shall not apply to deposits accepted in connection with a written contract for a layaway arrangement governed by section 1317.22 of the Revised Code.

History: Eff. 6-5-73; 3-14-05

109:4-3-08 New for used

(A) Except as provided for in divisions (C) and (D) of this rule, it shall be a deceptive act or practice in connection with a consumer transaction for a supplier to represent, directly or indirectly, that an item of goods, or that any part of an item of goods, is new or unused when such is not the fact, to misrepresent the extent of previous use thereof, or to fail to make clear and conspicuous disclosure, prior to time of offer, to the consumer or prospective consumer that an item of goods has been used.

(B) For the purposes of this rule, "used" shall include used, rebuilt, remanufactured, or reconditioned goods or parts of an item of goods.

(C) For the purposes of this rule, returned goods, which have not been used by a previous purchaser, shall be considered new or unused.

(D) It shall be a deceptive act or practice in connection with a consumer transaction for a supplier of motor vehicles who has legally operated a motor vehicle as a demonstrator, without titling it to the supplier's name, to sell the motor vehicle unless prior, clear and conspicuous disclosure is made in writing on the final document evidencing the sale to the consumer or prospective consumer that the motor vehicle has been operated as a demonstrator.

(E) The disclosure that an item of goods has been used or contains used parts as required by division (A) may be made by use of words such as, but not limited to, "used," "second hand," "repaired," "remanufactured," "reconditioned," "rebuilt," or "relined," whichever is applicable to the item of goods involved.

History: Eff. 6-5-73; 3-14-05

109:4-3-09 Failure to deliver; substitution of goods or services

(A) It shall be a deceptive act or practice in connection with a consumer transaction for a supplier:

(1) To advertise or promise prompt delivery unless, at the time of the advertisement, the supplier has taken reasonable action to insure prompt delivery;

(2) To accept money from a consumer for goods or services ordered by mail, telephone, or otherwise and then permit eight weeks to elapse without:

(a) Making shipment or delivery of the goods or services ordered;

(b) Making a full refund;

(c) Advising the consumer of the duration of an extended delay and offering to send the consumer a refund within two weeks if the consumer so requests; or

(d) Furnishing similar goods or services of equal or greater value as a good faith substitute if the consumer agrees.

(B) When a consumer transaction involves goods it shall be a deceptive act or practice for a supplier to furnish similar goods of equal or greater value when there was no intention to ship, deliver, or install the original goods ordered. The act of a supplier in furnishing similar merchandise of equal or greater value as a good faith substitute does not violate this rule.

(C) For the purposes of this rule, goods or services may not be considered of "equal or greater value" if they are not substantially similar to the goods or services ordered, or are not fit for the purposes intended, or if the supplier normally offers the substituted goods or services at a lower price than the "regular price" (as defined in 109:4-3-12 of the Administrative Code) of the goods ordered.

HISTORY: Am. 11-23-77; Eff. 6-5-73; 8-28-81; 3-14-05

109:4-3-10 Substantiation of claims in advertising

It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to:

(A) Make any representations, claims, or assertions of fact, whether orally or in writing, which would cause a reasonable consumer to believe such statements are true, unless, at the time such representations, claims, or assertions are made, the supplier possesses or relies upon a reasonable basis in fact such as factual, objective, quantifiable, clinical or scientific data or other competent and reliable evidence which substantiates such representations, claims, or assertions of fact or,

(B) Fail, upon the written request of the attorney general or the attorney general's representative, to produce within a reasonable time period specified, written substantiating documentation, tests, studies, reports, or other data in the possession of the supplier at or prior to the time that representation, claims, or assertions are made about the supplier or the supplier's goods or services.

HISTORY: Eff. 9-17-88; 3-14-05

109:4-3-11 Direct solicitations

(A) It shall be a deceptive act or practice in connection with a consumer transaction involving any direct solicitation sale for a supplier to do any of the following:

(1) Solicit a sale without clearly, affirmatively, and expressly revealing at the time the supplier initially contacts the consumer or prospective consumer, and before making any other statement, asking any question, or entering the residence of the consumer or prospective consumer, that the purpose of the contact is to effect a sale, stating in

general terms the goods or services the supplier has to offer, provided that this para graph shall not apply to solicitations by mail;
(2) Represent that the consumer or prospective consumer will receive a discount, rebate, or other benefit for permitting his home or other property, real or personal, to be used as a so-called "model home" or "model property" for demonstration or advertising purposes when such in fact is not true;

(3) Represent that the consumer or prospective consumer has been specially selected to receive a bargain, discount, or other advantage when such in fact is not true;

(4) Represent that the consumer or prospective consumer is a winner of a contest when such in fact is not true;

(5) Fail to conform to the requirements of sections 1345.21 to 1345.27, and 1345.99 of the Revised Code relative to home solicitation sales or misrepresent in any manner, the consumer's or prospective consumer's right to cancel provided for under such sections, when such sections are applicable;

(6) Represent that the goods that are being offered for sale cannot be purchased in any place of business, but only through direct solicitation, when such in fact is not true;

(7) Represent that the salesperson, representative, or agent has authority to negotiate the final terms of a consumer transaction when such in fact is not true;

(8) Send a consumer a communication that the supplier proposes to send goods to, or provide services for, the consumer, which communication, goods or services the consumer has not expressly agreed in advance to receive, and the consumer will be required to pay for those goods or services unless the consumer communicates a refusal of the offered goods or services;

(9) Send unordered goods to a consumer accompanied by a communication that requires, or purports to require, payment for the goods unless the consumer communicates a refusal to accept the goods and/or returns the goods;

(10) Send unordered goods to, or perform unordered services for, a consumer and then request payment for the provided goods or services;

(11) Interrupt, terminate, cancel, or deny delivery or provision of goods or services previously contracted for to a consumer solely on the basis that the consumer has not paid for or returned to the supplier goods or services which the consumer has not ordered, requested or authorized from the supplier;

(12) Make any attempt to collect upon, assign or convey to any other person or entity, or report to any credit reporting agency any claimed consumer debt related to unordered goods or services provided to the consumer in violation of this rule.

(B) "Direct solicitation" means solicitation of a consumer transaction initiated by a supplier, at the residence of any consumer, or at a place other than the normal place of business of the supplier or by a supplier who has no normal place of business, and includes a transaction initiated by the supplier by mail or telephone solicitation at the residence of any consumer or at a place other than the normal place of business of the supplier. The term "mail" shall include e-mail and facsimile.

(C) The provisions of subdivisions (A)(8), (A)(9), and (A)(10) of this rule shall have no application to goods or services sent pursuant to an agreement that is in compliance with the federal trade commission rule on the use of negative option plans by sellers in commerce (16 C.F.R. Section 425.)

HISTORY: Eff. 6-5-73; 11-12-04; 9-29-10

109:4-3-12 Price comparisons

(A) Declaration of policy

This rule is designed to define with reasonable specificity certain circumstances in which a supplier's acts or practices in advertising price comparisons are deceptive and therefore illegal. For purposes of this rule, price comparisons involve a comparison of the present or future price of the subject of a consumer transaction to a reference price, usually as an incentive for consumers to purchase. This rule deals only with out-of-store advertisements as defined in section (B)(3), infra. The rule stems from the general principle, codified in section 1345.02(B) of the Revised Code, that it is deceptive for any claimed savings, discount, bargain, or sale not to be genuine, for the prices which are the basis of such comparisons not to be bona fide, genuine prices, and for out-of-store advertisements which indicate price comparisons to create false expectations in the minds of consumers.

(B) Definitions

(1) "Goods and services" means, for the purposes of this rule, all items which may be the subject of consumer transactions as defined in section 1345.01(A) of the Revised Code.

(2) "Meaningful reduction" means a reduction from a reference price, which reduction is reasonably significant when compared to the reference price as a percentage, or when otherwise compared when the reference price is greater than one hundred dollars.

(3) "Out-of-store advertising" means any advertisement, message, or representation made by a supplier outside of its interior premises. It includes but is not limited to communications made via newspaper, television, radio, printed brochures, leaflets, fliers, billboards or signs painted on or posted in windows.

(4) "Price comparison" or "comparison" means any representation, however expressed, that a savings, reduction or discount exists or will exist; provided, however, that language which does not reasonably imply a comparison to identifiable prices or items does not express a price comparison.

(5) "Reference price" means a higher price to which a supplier compares another, lower price for the purpose of indicating that a reduction in price exists or will exist.

(6) "Regular price" has the same meaning as in 109:4-3-04.

(7) "Trading area" means the geographical area in which a supplier in the regular course of its business solicits substantial numbers of customers. A trading area can be local,

regional, or national. In the case of a supplier which does business through branch outlets, any branch outlet or group of outlets may have a trading area distinct from that of the supplier as a whole or from other of the supplier's branch outlets. The geographical reach of the out-of-store advertising of a supplier or of any of its branches can serve as evidence of the extent of its trading area.

(C) Character of supplier

(1) It is deceptive for a supplier to use in its out-of-store advertising words which identify or characterize its business or a section or department thereof in terms such as "discount," "bargain," "outlet," "wholesale," "factory prices," or other terms which indicate that substantially all or most goods and services sold are available at a meaningful reduction in price unless the supplier's business or section or department thereof is, in fact, of such a character.

(2) Where an advertisement which characterizes a supplier's business or a section or department thereof in a manner mentioned in section (C)(1) of this rule does not indicate a particular number, amount, or percentage of goods or services available at a meaningful reduction, it is deceptive if less than a reasonably large and substantial number of all types, brands, and models of items offered for sale by the supplier are available at a meaningful reduction.

(3) Where an advertisement which characterizes a supplier's business or a section or department thereof in a manner mentioned in section (C)(1) of this rule does indicate a particular number, amount, or percentage of goods and services available at a meaningful reduction, it is deceptive if fewer than the advertised number, amount, or percentage of goods and services are in fact available at a meaningful reduction.

(D) Reduction for special circumstances

(1) It is deceptive for a supplier in its out-of-store advertising to indicate or to imply that a "sale," "bargain," or other offering of a reduction in price will terminate within a given or anticipated period of time unless it does in fact terminate within the period indicated or implied. But, if circumstances which in good faith were unforeseen at the time the reduction was advertised necessitate an extension of the time within which the reduction is to terminate, a supplier does not violate this rule if it:

(a) Extends the time of termination of the reduction; and

(b) Clearly and conspicuously discloses in its further advertising the fact of such an extension.

(2) It is deceptive for a supplier in its out-of-store advertising to indicate in any way that a reduction in price exists for reasons which are not true.

(E) Comparison with supplier's own price

(1) It is deceptive for a supplier in its out-of-store advertising to make any price com parison by the use of such terms as "regularly ____, now ____," "____ per cent off," "reduced from ____to ____," "save $ ___," unless:

(a) The comparison is to the supplier's regular price, or

(b) If the reference price is the regular price of a previous season, the season and year are clearly and conspicuously disclosed; or

(c) There is language in the advertisement which clearly and conspicuously discloses that the comparison is to another price and which discloses the nature of the reference price.

(2) If a supplier, in its out-of-store advertising, uses language indicating a range of savings or reduction, it is deceptive if the goods and services offered at the savings do not contain a reasonable number of items priced at the maximum reduction. Where the offering does not contain such reasonable number of items, a supplier does not violate this rule if it clearly and conspicuously discloses this fact in its out-of-store advertising.

(3) It is recognized that some goods and services are almost never sold at a "regular price" but instead are sold by means of individually negotiated transactions. A supplier of goods and services, identical in all material aspects, sold in negotiated transactions is permitted to advertise using an "average price" as a reference price as long as the advertised "average price" is the mean average selling price of all such goods or services openly and actively sold by the supplier to consumers for a substantial period of time in the recent past and the fact that the reference price is an "average price" is clearly and conspicuously disclosed in close proximity to the advertised reference price.

(F) Comparison with prices which are not the supplier's own

(1) It is deceptive for a supplier in its out-of-store advertising to use as a reference price in making a price comparison any "list," "catalogue," "manufacturer's suggested," "competitor's," or any other price which is not its own unless:

(a) Such a reference price is genuine; and

(b) The advertisement clearly and conspicuously indicates that the reference price is not the supplier's own price.

(2) For a reference price which is not a supplier's own to be genuine, it must correspond to prices at which substantial offers for sales recently been made at retail outlets in the trading area in which the goods or services are offered at the reference price, and it must not be an isolated price.

(3) It is prima facie evidence of compliance with sections (F)(1) and (F)(2) of this rule if the supplier:

(a) Has no knowledge that the reference price is not genuine; and

(b) Has made reasonable, bona fide efforts to determine whether the reference price is genuine.

(G) Comparison with non-identical goods

It is deceptive for a supplier in its out-of-store advertising to make a comparison between the prices of similar, but non-identical goods or services unless:

(1) The non-identical goods or services are of essentially similar quality to the advertised goods or services or the dissimilar aspects are clearly and conspicuously disclosed in the advertisements; and

(2) The advertisement clearly and conspicuously discloses that non-identical goods or services are being compared; and

(3) Either:

(a) The price comparison is to the regular price of the reference goods or services; or

(b) The nature of the reference price is clearly and conspicuously disclosed; and

(4) Either:

(a) The reference goods or services are available in the supplier's trading area; or

(b) The fact that they are not available is clearly and conspicuously disclosed.

(H) Advance or introductory sales

(1) It is deceptive for a supplier in its out-of-store advertising to use terms such as "advance sale," "introductory offer," or other language which makes a comparison to a reference price which is a future price unless the reference price becomes the regular price within the period reasonably implied by the advertisement.

(2) A supplier will not be in violation of section (H)(1) of this rule if circumstances which in good faith were unforeseen at the time that the reference price was advertised as a future regular price necessitate the reference price not becoming or remaining the regular price.

(I) Significant reduction

It is deceptive for a supplier in its out-of-store advertising to use such terms as "sale," "discount," "bargain," or any other terms indicating a savings or reduction in prices unless:

(1) The savings or reduction is a meaningful reduction; or

(2) The actual amount of percentage of savings is clearly and conspicuously indicated in the advertisement.

HISTORY: Eff. 8-1-75; 3-14-05

109:4-3-13 Motor vehicle repairs or services

(A) It shall be a deceptive act or practice in connection with a consumer transaction involving the performance of either repairs or any service upon a motor vehicle where the anticipated cost exceeds twenty-five dollars and there has been face to face contact at the supplier's place of business during the hours such repairs or services are offered, between the consumer or his representative and the supplier or his representative, prior to the commencement of the repair or service for a supplier to:

(1) Fail, at the time of the initial face to face contact and prior to the commencement of any repair or service, to provide the consumer with a form which indicates the date, the identity of the supplier, the consumer's name and telephone number, the reasonably anticipated completion date and, if requested by the consumer, the anticipated cost of the repair or service. The form shall also clearly and conspicuously contain the following disclosures in substantially the following language:

"ESTIMATE
YOU HAVE THE RIGHT TO AN ESTIMATE IF THE EXPECTED COST OF REPAIRS OR SERVICE WILL BE MORE THAN TWENTY-FIVE DOLLARS. INITIAL YOUR CHOICE:
_____ Written Estimate
_____ Oral Estimate
_____ No Estimate"

(2) Fail to post a sign in a conspicuous place within that area of the supplier's place of business to which consumers requesting any repair or service are directed by the supplier or to give the consumer a separate form at the time of the initial face to face contact and prior to the commencement of any repair or service which clearly and conspicuously contains the following language:

"NOTICE
IF THE EXPECTED COST OF A REPAIR OR SERVICE IS MORE THAN TWENTY-FIVE DOLLARS, YOU HAVE THE RIGHT TO RECEIVE A WRITTEN ESTIMATE, ORAL ESTIMATE, OR YOU CAN CHOOSE TO RECEIVE NO ESTIMATE BEFORE WE BEGIN WORK. YOUR BILL WILL NOT BE HIGHER THAN THE ESTIMATE BY MORE THAN TEN PER CENT UNLESS YOU APPROVE A LARGER AMOUNT BEFORE REPAIRS ARE FINISHED. OHIO LAW REQUIRES US TO GIVE YOU A FORM SO THAT YOU CAN CHOOSE EITHER A WRITTEN, ORAL, OR NO ESTIMATE."

(3) Fail, where the consumer requests a written estimate, of the anticipated cost of repairs or services; to make a bona fide effort during the initial face to face contact to provide the written estimate on the form required by paragraph (A)(1) of this rule;

(4) Fail, where a consumer requests a written or oral estimate, to give the estimate to the consumer before commencing the repair or service.

(B) It shall be a deceptive act or practice in connection with a consumer transaction involving the performance of either repairs or any service upon a motor vehicle where there has not been face to face contact between the consumer or his representative and the supplier or his representative prior to the commencement of the repair or service for a supplier to:

(1) Fail to make available to the consumer who makes a supplier-authorized delivery of a motor vehicle for repair or service at the supplier's place of business during non-business hours of the repair or service facility, a form in duplicate, with instructions directing the consumer to retain a copy, which indicates the identity of the supplier and contains the following disclosures in substantially the following language:

"ESTIMATE
YOU HAVE THE RIGHT TO AN ESTIMATE OF THE COST OF REPAIRS OR SERVICES WHICH YOU ARE REQUESTING. YOUR BILL WILL NOT BE HIGHER THAT THE

ESTIMATE BY MORE THAN TEN PERCENT UNLESS YOU APPROVE A LARGER AMOUNT BEFORE REPAIRS ARE FINISHED. YOU CAN CHOOSE THE KIND OF ESTIMATE YOU WANT TO RECEIVE BY SIGNING YOUR NAME UNDER ONE OF THE FOLLOWING CHOICES AND INDICATING A TELEPHONE NUMBER WHERE YOU CAN BE REACHED IF NECESSARY:

(a) written estimate

_____

(Customer Signature)

(b) oral estimate

_____

(Customer Signature)

(c) no estimate

_____

(Customer Signature)

Customer name _____

Customer Telephone Number _____

Date: _____

(2) Fail in all other instances, upon the first contact with the consumer, to inform the consumer of the right to receive a written or oral estimate of the anticipated cost of the repair or service;

(3) Fail, where the consumer requests an oral estimate, to give the oral estimate to the consumer before commencing the repair or service;

(4) Fail, where the consumer requests a written estimate, to prepare a written estimate, inform the consumer that the estimate is available and upon the consumer's request, give the estimate to the consumer before commencing the repair or service.

(C) In any consumer transaction involving the performance of any repair or service upon a motor vehicle it shall be a deceptive act or practice for a supplier to:

(1) Make the performance of any repair or service contingent upon a consumer's waiver of any rights provided for in this rule;

(2) Fail, where an estimate has been requested by a consumer, to obtain oral or written authorization from the consumer for the anticipated cost of any additional, unforeseen, but necessary repairs or services when the cost of those repairs or services amounts to ten per cent or more (excluding tax) of the original estimate;

(3) Fail, where the anticipated cost of a repair or service is less than twenty-five dollars and an estimate has not been given to the consumer, to obtain oral or written authorization from the consumer for the anticipated cost of any additional, unforeseen, but necessary repairs or services when the total cost of the repairs or services, if per formed, will exceed twenty-five dollars;

(4) Fail to disclose prior to acceptance of any motor vehicle for inspection, repair, or service, that in the event the consumer authorizes commencement but does not authorize completion of a repair or service, that a charge will be imposed for disassembly, reassembly, or partially completed work. Any charge so imposed must be directly related to the actual amount of labor or parts involved in the inspection, repair, or service;

(5) Charge for any repair or service which has not been authorized by the consumer;

(6) Fail to disclose upon the first contact with the consumer that any charge not directly related to the actual performance of the repair or service will be imposed by the supplier whether or not repairs or services are performed;

(7) Fail to disclose upon the first contact with a consumer the basis upon which a charge will be imposed for towing the motor vehicle if that service will be performed;

(8) Represent that repairs or services are necessary when such is not the fact;

(9) Represent that repairs have been made or services have been performed when such is not the fact;

(10) Represent that a motor vehicle or any part thereof which is being inspected or diagnosed for a repair or service is in a dangerous condition, or that the consumer's continued use of it may be harmful, when such is not the fact;

(11) Materially understate or mistake the estimated cost of the repair or service;

(12) Fail to provide the consumer with a written itemized list of repairs performed or services rendered, including a list of parts or materials and a statement of whether they are used, remanufactured or rebuilt, if not new, and the cost thereof to the consumer, the amount charged for labor, and the identity of the individual performing the repair or service;

(13) Fail to tender to the consumer any replaced parts, unless the parts are to be rebuilt or sold by the supplier, or returned to the manufacturer in connection with warranted repairs or services, and such intended reuse or return is made known to the consumer prior to commencing any repair or service;

(14) Fail to provide to the consumer upon his request a written, itemized receipt for any motor vehicle or part thereof that is left with, or turned over to, the supplier for repair or service.

Such receipt shall include:

(a) The identity of the supplier which will perform the repair or service;

(b) the name and signature of the supplier or a representative who actually accepts the motor vehicle or any part thereof;

(c) A description including make and model number or such other features as will reasonably identify the motor vehicle or any part thereof to be repaired or services;

(d) The date on which the motor vehicle or any part thereof was left with or turned over to the supplier;

(15) Fail, at the time of the signing or initialing of any document by a consumer, to provide the consumer with a copy of the document;

(16) Fail to disclose to the consumer prior to the commencement of any repair or service, that any part of the repair or service will be performed by a person other than the supplier or his employees, if the supplier disclaims any warranty of the repair or service performed by that person. In addition the supplier shall disclose the nature of the repair or service which that person will perform, and if requested by the consumer, the identity of that person.

(17) Fail to inform the consumer, prior to the performance of any repair or service, that part(s) to be used in effectuating the repair or service will be remanufactured, rebuilt, or used.

(D) The forms required by paragraphs (A)(1) and (B)(1) of this rule may be separate or may be incorporated into another form used by the supplier as long as the required disclosures are easily legible and clearly and conspicuously appear on the form. Nothing in this rule shall preclude a supplier from incorporating into the same form additional disclosures required by this rule.

(E) The sign or form required by paragraph (A)(2) of this rule shall be printed in such a size and manner so that the notice is easily legible. Additional disclosures required by this rule may be incorporated into the sign or form so long as the language required by paragraph (A)(2) of this rule prominently appears as the first listed disclosure. Where a supplier gives written estimates to consumers prior to the commencement of any repair or service regardless of the anticipated cost of repairs or services, the language in the form required by paragraph (A)(1) and the sign or form required by paragraph (A)(2) of this rule may be modified to disclose that fact.

(F) In lieu of complying with the requirements of paragraphs (A)(1) and (B)(1) to (B)(4) of this rule, a supplier may provide a consumer, prior to the commencement of any repair or service, with a written quotation of the price at which the repair or service will be performed, which shall indicate that the quotation shall be binding upon the supplier for a period of five days, provided that the subject of the consumer transaction is made available to the supplier for the repair or service within that period.

(G) For purposes of paragraph (B)(1) of this rule, a supplier has not authorized delivery of a motor vehicle during non-business hours of the repair or service facility where there has not been communication of that fact to the general public by the supplier or the supplier's representative.

(H) As used in this rule, "motor vehicle" shall have the same meaning as that term is defined in division (B) of section 4501.01 of the Revised Code.

(I) Any written disclosure required by this rule must be legible.

(J) The provisions of rule 109:4-3-05 of the Administrative Code shall have no application to consumer transactions involving the performance of either repairs or any service upon a motor vehicle.

HISTORY: Eff. 9-11-78; 3-14-05

109:4-3-14 Insulation

(A) Definitions

(1) "Insulation" means, for the purposes of this rule, any material used primarily to retard or to resist heat flow, whether mineral or organic, fibrous, cellular or reflective, or in rigid, semi-rigid, flexible or loose-fill form.

(2) "Manufacturer" means any supplier who processes any materials for the purpose of making insulation.

(3) "Installer" means any supplier who places or affixes, or contracts to place or affix, insulation by any means in connection with a consumer transaction.

(4) "R-value" means resistance to heat flow and is the reciprocal of thermal conductance.

(5) "ASTM" is the "American Society for Testing and Materials."

(6) "Label" means any information provided by a manufacturer either on or attached to a package of insulation.

(7) "Package" means a bag, drum, box, wrapping, or any container in which a manufacturer provides insulation.

(8) "Vapor barrier" means any material used to retard the migration of moisture vapor into building sections.

(B) It shall be an unfair or deceptive act or practice in connection with a consumer transaction involving insulation for any supplier to make a representation:

(1) Concerning R-value at any thickness for any type of insulation unless such representation is based upon the results of testing of the supplier's insulation, conducted in accordance with the latest existing ASTM testing standards, or comparable standards. Said testing shall have been performed not more than sixty days prior to the making of any such representation, provided, however, that such testing may be per formed on an annual basis so long as the supplier utilizes a quality control procedure which is sufficient to insure that the insulation has an R-value which is identical, within tolerances permitted by testing standards authorized by this rule, to that of the insulation which was tested for R-value. The R-value represented must equal the R-value of the insulation at the settled density or cured state;

(2) Concerning fire retardancy of any type of insulation unless such representation is based upon the results of testing of the supplier's insulation, conducted in accordance with the latest existing ASTM standards, or comparable standards for fire retardancy. Said testing shall have been performed not more than sixty days prior to the making of any such representation, provided, however, that such testing may be performed on an annual basis so long as the supplier utilizes a quality control procedure which is sufficient to insure that the insulation is fire retardant to the same extent as that insulation which was tested for fire retardancy;

(3) Concerning non-corrosiveness of any type of insulation unless such representation is based upon the results of testing of the supplier's insulation, conducted in accordance with the latest existing ASTM testing standards, or comparable standards, for corrosiveness. Said testing shall have been performed not more than sixty days prior to the making of any such representation, provided, however, that such testing may be performed on an annual basis so long as the supplier utilizes a quality control procedure which is sufficient to insure that the insulation is non-corrosive to the same extent as the insulation which was tested for noncorrosiveness;

(4) That any type of insulation is "fireproof";

(5) That specific amounts or percentages, including ranges of amounts or percentages, of money or fuel have been or may be saved as a result of the installation of insulation unless the supplier has a reasonable basis for making the representation at the time it is made. Such reasonable basis shall consist of information within the supplier's actual knowledge which is based upon scientific or engineering data of such reliability and validity which would cause a reasonable and prudent supplier to believe that the representation is truthful, complete and applicable to the insulation about which the representation is made. Whenever such a representation is made, it shall be accompanied by a statement in the following language:

"DON'T EXPECT TO IMMEDIATELY SAVE AS MUCH MONEY AS IT COSTS TO INSULATE. EXACT AMOUNTS OF SAVINGS CANNOT BE GUARANTEED. YOUR HEATING SYSTEM, THERMOSTAT SETTING, WEATHERPROOFING, LIVING HABITS AND OTHER UNPREDICTABLE FACTORS WILL AFFECT YOUR FUEL USAGE.";

(6) That tax benefits are available to a consumer who purchases insulation unless such benefits have been legally enacted, are in effect, and the consumer to whom the representation is made is eligible to receive the benefits.

(C) It shall be an unfair or deceptive act or practice in connection with a consumer transaction involving insulation for any manufacturer of insulation to:

(1) Fail to label each package of insulation with the following information:

(a) The name and address of the manufacturer and the brand name and type of insulation contained in the package;

(b) For batts, blankets or boardstock, the R-value, the thickness in inches necessary to obtain the stated R-value, and except for boardstock, the square footage covered by each package and the dimensions of the insulation;

(c) For all loose-fill insulation, the R-value, the thickness and weight per square foot necessary to obtain the stated R-value and the square feet covered by each package;

(d) For aluminum foil, the number of foil sheets, the number and thickness of the air spaces, and the R-value provided when the direction of heat flow is up, down and horizontal;

(e) For sprayed-in-place foam, the R-value, the thickness in inches necessary to obtain the stated R-value and the pounds per cubic foot at the stated R-value.

(2) Except for sales to installers, fail to provide the following statements clearly and conspicuously on the label of each package of insulation:

(a) "ASK FOR THE MANUFACTURER'S INSULATION FACT SHEET.";

(b) If insulation instructions are included with the package, "THIS INSULATION MUST BE INSTALLED PROPERLY TO GET THE MARKED R-VALUE. IF YOU INSTALL IT YOURSELF, FOLLOW INSTRUCTIONS CAREFULLY.";

(c) If no instructions are included with the package, "THIS INSULATION MUST BE INSTALLED PROPERLY TO GET THE MARKED R-VALUE. IF YOU INSTALL IT YOURSELF, GET INSTRUCTIONS AND FOLLOW THEM CAREFULLY. INSTRUCTIONS DO NOT COME WITH THE PACKAGE.";

(d) If a full warranty under the Magnuson-Moss Warranty Federal Trade Commission Improvements Act, 88 Stat. 2183, 15 U.S.C.A. 2301 et seq., is given, "THE MANUFACTURER WARRANTS THIS PRODUCT FULLY";

(e) If a limited warranty under the Magnuson-Moss Warranty Federal Trade Com mission Improvements Act, 88 Stat. 2183, 15 U.S.C.A. 2301 et seq., is given, "THIS PRODUCT HAS A LIMITED WARRANTY. THE MANUFACTURER WARRANTS THIS PRODUCT SUBJECT TO CERTAIN CONDITIONS AND EXCEPTIONS. ASK THE SELLER FOR A COPY OF THE WARRANTY.";

(3) Fail to provide to any supplier in sufficient quantity to insure distribution to each ultimate consumer who purchases the manufacturer's insulation a form designated "MANUFACTURER'S INSULATION FACT SHEET" which clearly and conspicuously provides the following information:

(a) The name and address of the manufacturer and the brand name and type of insulation contained in the package;

(b) In twelve-point type, the statement, "THIS FACT SHEET CONTAINS IMPORTANT DETAILS ABOUT____INSULATION, READ IT CAREFULLY." (Fill in the blank with the type of insulation covered by the fact sheet [for example, "loose-fill cellulose," "urea-formaldehyde foam"]);

(c) For batts, blankets, or boardstock, a chart showing the R-value of the insulation, the thickness in inches necessary to obtain the stated R-value, and except for boardstock, the square footage covered by each package, and the dimensions of the insulation;

(d) For all loose-fill insulation, a chart showing the R-value, the thickness and weight per square foot necessary to obtain the stated R-value and the square feet covered by each package;

(e) For aluminum foil, a chart showing the number of foil sheets, the number and thickness of the air spaces, and the R-value provided when the direction of heat flow is up, down and horizontal;

(f) For sprayed-in-place foam, a chart showing the R-value, the thickness in inches necessary to obtain the stated R-value and the pounds per cubic foot at the stated R-value;

(g) For batts, blankets, loose-fill mineral wool, cellulose or any other insulation the R-value of which is reduced by moisture build-up, after the charts required by paragraphs (C)(3)(c) or (C)(3)(d) of this rule, the statement, "THIS INSULATION MUST BE INSTALLED PROPERLY TO GET THE MARKED R-VALUE. READ AND FOLLOW INSTALLATION INSTRUCTIONS CAREFULLY IF YOU PLAN TO INSTALL THE INSULATION YOURSELF. FOLLOW THE CHART ON THIS FACT SHEET TO OBTAIN THE RIGHT THICKNESS FOR THE MARKED R-VALUE, THEN FOLLOW INSTALLATION INSTRUCTIONS CAREFULLY. MOISTURE BUILD-UP IN THIS PRODUCT WILL REDUCE THE MARKED R-VALUE. YOU MAY NEED A VAPOR BARRIER TO PREVENT MOISTURE BUILD-UP.";

(h) For aluminum foil or boardstock, after the charts required by paragraphs (C)(3)(c) or (C)(3)(e) of this rule, the statement, "THIS INSULATION MUST BE INSTALLED PROPERLY TO GET THE MARKED R-VALUE. OBTAIN AND FOLLOW INSTALLATION INSTRUCTIONS CAREFULLY IF YOU PLAN TO INSTALL THE INSULATION YOURSELF.";

(i) For sprayed-in-place foam, after the chart required by paragraphs (C)(3)(f) of this rule, the statement, "THIS INSULATION MUST BE INSTALLED PROPERLY. BOTH CHEMICAL MIX AND APPLICATION SHOULD BE DONE BY A TRAINED, QUALIFIED INSTALLER. PROPER VENTILATION IS NECESSARY TO REDUCE FUMES AND ODORS WHICH MAY RESULT FROM INSTALLATION. THIS INSULATION SHRINKS AFTER INSTALLATION. EXCESS SHRINKAGE WILL RESULT IN A LOWER R-VALUE THAN SHOWN ON THE CHART ABOVE. TEMPERATURE, HUMIDITY AND OTHER FACTORS AT THE TIME OF INSTALLATION ARE IMPORTANT IN THE PREVENTION OF SHRINKAGE. THIS INSULATION IS NOT RECOMMENDED FOR IN STALLATION IN ANY ATTIC OR ANY OTHER OPEN AREA.";

(j) After the statements required by paragraphs (C)(3)(g) to (C)(3)(i) of this rule, the statement, "READ THIS CAREFULLY BEFORE BUYING. THE CHART ON THIS FACT SHEET SHOWS THE R-VALUE OF THIS INSULATION. A HIGHER R-VALUE NUMBER MEANS A GREATER RESISTANCE TO HEAT FLOW. THE AMOUNT OF INSULATION YOU NEED DEPENDS UPON THE CLIMATE IN WHICH YOU LIVE, YOUR LIVING HABITS, YOUR HEATING SYSTEM, YOUR THERMOSTAT SETTING, HOW WELL YOUR HOUSE IS WEATHERPROOFED, AND OTHER FACTORS. INSULATION PLACED TOO NEAR ELECTRICAL HEAT SOURCES MAY CAUSE FIRE. FOLLOW INSTALLATION INSTRUCTIONS CAREFULLY. TO AVOID EXCESS MOISTURE BUILD-UP, PROPER VENTILATION OF A HOME IS IMPORTANT FOLLOWING INSTALLATION OF THIS PRODUCT."

(k) After the information required by paragraphs (C)(3)(a) to (C)(3)(j) of this rule, the following information:

(i) If a full warranty under the Magnuson-Moss Warranty Federal Trade Com mission Improvements Act, 88 Stat. 2183, 15 U.S.C.A. 2301 et seq., is given, "THE MANUFACTURER WARRANTS THIS PRODUCT FULLY.";

(ii) If a limited warranty under the Magnuson-Moss Warranty Federal Trade Commission Improvements Act, 88 Stat. 2183, 15 U.S.C.A., 2301 et seq., is given, the statement, "THIS PRODUCT HAS A LIMITED WARRANTY. THE MANUFACTURER WARRANTS THIS PRODUCT SUBJECT TO CERTAIN CONDITIONS AND EXCEPTIONS. READ THE WARRANTY CAREFULLY.";

(l) After the information required by paragraphs (C)(3)(a) to (C)(3)(k) of this rule, the full text of any warranty provided by the manufacturer.

(4) Fail to provide to any supplier in sufficient quantity to insure distribution to each ultimate consumer who purchases the manufacturer's insulation, a form designated "CONSUMER INFORMATION CARD" for completion and placement by installers of the manufacturer's insulation as required by paragraph (E)(3)(b) of this rule.

(D) It shall be an unfair or deceptive act or practice in connection with a consumer transaction involving insulation for any supplier to:

(1) Fail to provide to another supplier who obtains insulation from him, any materials provided by a manufacturer pursuant to the requirements of paragraphs (C)(3) and (C)(4) of this rule;

(2) Fail to provide to a consumer, prior to the consumer's purchase of insulation, the "MANUFACTURER'S INSULATION FACT SHEET" required by paragraph (C)(3) of this rule;

(3) Without the permission of the manufacturer, supply a consumer with any package of insulation the contents of which have been removed or altered.

(E) It shall be an unfair or deceptive act or practice in connection with a consumer transaction involving insulation for an installer of insulation to:

(1) Prior to the time of contracting, fail to provide the consumer with a written list containing the following information:

(a) All warranties given by the installer, including any limitations thereon;

(b) That subcontractors will be used by the installer if such is the case;

(c) Whether the installer is insured under appropriate workers' compensation laws and against liability for damages;

(d) Whether the installer has met all applicable licensing and/or bonding requirements pursuant to law.

(2) At the time of contracting, fail to provide the consumer with a written contract containing the following information:

(a) The installer's business name, address and telephone number;

(b) The anticipated completion date of the contract;

(c) The type and brand name of insulation to be installed;

(d) The total number of square feet to be covered and the overall R-value after installation, the thickness in inches, and the number of packages to be used for each type of insulation to be installed;

(e) The total contract price;

(f) In twelve-point type, the statement, "YOU HAVE SPECIFIC RIGHTS UNDER OHIO MECHANIC'S LIEN STATUTES, IF YOU HAVE ANY QUESTIONS CONCERNING THESE RIGHTS BEFORE, DURING OR AFTER INSTALLATION UNDER THIS CONTRACT, YOU ARE ADVISED TO CONSULT YOUR LAWYER.";

(g) The specific method of installation which will be used by the installer, including specific information about the work to be performed, materials to be used, and any alteration of the consumer's property necessitated by installation;

(h) The information required by paragraph (E)(1) of this rule.

(3) At the time of completion of installation, fail to:

(a) To the extent that the supplier has affected the consumer's property, return the consumer's property to substantially the same condition in which it was found prior to installation;

(b) Provide the consumer with the "CONSUMER INFORMATION CARD" required by paragraph (C)(4) of this rule, to be placed by the installer conspicuously on or adjacent to the consumer's electric service panel, or in another location in the consumer's residence if required by federal law, with notice of such placement to the consumer, stating the brand name and type of insulation installed, the parts of the house insulated, the R-value of insulation installed, the date of installation, and the following information:

(i) For sprayed-in-place foam, the weight in pounds per cubic foot at which the foam was installed and the outside temperature at the time of installation;

(ii) For aluminum foil, the number and thickness of air spaces and the direction of heat flow;

(iii) For batts, blankets, and loose-fill insulation, the number of packages used;

(4) At any time, sell or provide to a consumer for any purpose other than installation by the installer any package of insulation not labeled according to the requirements of paragraph (C)(2) of this rule.

(F) Where testing under this rule requires the use of ASTM or comparable standards and testing methods, the standards and testing methods to be used shall be the latest generally accepted testing methods in the industry at the time that any such tests are conducted. Any applicable standard adopted by an agency of the federal government shall be deemed for the purposes of this rule to be a comparable standard. In the event that a supplier elects to use any standard other than an ASTM standard, or an adopted federal standard, the supplier shall retain all data which tend to show that said standard is the latest generally accepted standard in the industry at the time any testing is conducted and that the testing was conducted in conformity with that standard.

(G) Nothing in this rule shall be deemed to be in conflict with any federal statutory or regulatory requirement, and all requirements of this rule are in addition to the requirements of any federal statute or regulation either existing or to become effective at any future date. A supplier who provides any disclosures required by or under any federal law, trade regulation rule or guide adopted by the federal trade commission under the Federal Trade Commission Act, 38 Stat. 717 (1914), 15 U.S.C.A. 41, as amended, which apply to the advertisement, sale or installation of insulation in connection with a consumer transaction, and which are substantially similar to the disclosures required by this rule, shall be deemed to comply with requirements of this rule with respect to form and language, including the disclosure requirements contained in paragraphs (B)(5), (C)(2) and (3) of this rule, so long as the language mandated by such federal law, trade regulation rule or guide provides at least equal information to the consumer.

HISTORY: Eff. 12-7-78; 7-18-09

109:4-3-15 Motor vehicle rust inhibitors

(A) It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to represent that an item of goods or a service will prevent, inhibit or retard rusting or corrosion of any part of a motor vehicle if that representation is false.

(B) It shall be a deceptive act or practice in connection with a consumer transaction involving an item of goods or a service that a supplier represents will prevent, inhibit or retard rusting or corrosion of any part of a motor vehicle for a supplier to use the term "rust-proofing" in connection with the advertising, the promotion or sale of any such item of goods or a service unless the supplier guarantees that the item of goods or the service will prevent rust or corrosion and agrees in writing to indemnify a consumer who purchases such an item of goods or a service for the actual cost or repairing damage caused by rusting or corrosion of any part of a motor vehicle to which the item of goods or a service has been applied.

(C) It shall be a deceptive act or practice in connection with a consumer transaction involving an item of goods or service that a supplier warrants to prevent, inhibit or retard rusting or corrosion of any part of a motor vehicle for the supplier:

> (1) To fail to inform the consumer clearly and conspicuously in writing of all of the terms of any written warranty prior to the time when the consumer enters into a contract for the purchase of any such item of goods or a service;
>
> (2) To fail to honor a warranty claim of a consumer on the basis that the consumer delayed in reporting rust or corrosion to the supplier unless the supplier's time limitation for the presentation of claims is set forth clearly and conspicuously in writing in the warranty;

(3) To fail to repair rust or corrosion damage on the basis that the supplier believes that damage has not become extensive enough to repair;

(4) To fail to honor a warranty claim of a consumer on the basis that the item of goods or the service was provided improperly when the supplier has authorized the person who provided the item of goods or the service to the consumer to issue a warranty on behalf of the supplier;

(5) To fail to honor an otherwise valid warranty claim on the basis that the cost of repairing an area damaged by rust or corrosion is excessive or unreasonable unless the warranty itself expressly reserves to the supplier the right to limit the supplier's obligation in this manner;

(6) To refuse to replace rusted or corroded areas when the supplier's warranty obligates the supplier to make repairs to such areas and methods of repair other than replacement of the rusted or corroded area will not restore the rusted or corroded area to substantially the same condition as it was in prior to being damaged by rust or corrosion;

(7) To fail to honor a warranty claim on the basis that the supplier previously has allowed a different claim on the same warranty, unless a limitation on the number of claims is set forth clearly and conspicuously in writing in the warranty;

(8) To fail to inspect a motor vehicle within thirty days of receiving a consumer's warranty claim for rust or corrosion damage, provided that the consumer makes the motor vehicle available for inspection within that period. Presentation of a claim to supplier's authorized or franchised dealer or distributor shall constitute receipt by the supplier. The supplier shall provide for inspection of the motor vehicle at a place within the county where the consumer resides, or where the consumer purchased the supplier's goods or services;

(9) To fail to notify a consumer in writing within ten business days of inspecting the consumer's motor vehicle for rust or corrosion damage whether the consumer's warranty claim will be allowed or denied. If a claim is denied, the specific reason for that denial shall be stated in writing. For purposes of this rule, notification is effective upon making the supplier's determination on the claim to the last address supplied to the supplier by the consumer or upon personal delivery to the consumer;

(10) To fail to honor a warranty claim because the person who issued the warranty to the consumer on behalf of the supplier provided the consumer with an incorrect warranty;

(11) Who applies the item of goods to any part of a consumer's automobile to fail to provide the consumer, in advance of the application, with a written or pictorial description of the specific areas of the automobile to which the item of goods will be applied.

(D) It shall be a deceptive act or practice in connection with a consumer transaction involving an item of goods or a service that is represented by a supplier to prevent, inhibit or retard rusting or corrosion of any part of a motor vehicle for a supplier to misrepresent the cause or the origin of rust or corrosion of any part of a motor vehicle.

(E) No provision in this rule shall be construed to annul, alter or limit the application of any provision of the "Motor vehicle repairs or services" rule 109:4-3-13 of the Administrative Code or the Federal Trade Commission Improvements Act, 88 Stat. 2183, 15 U.S.C. 2301 et seq., to any consumer transaction involving the advertising, promotion or sale of any goods or services represented to prevent, inhibit or retard rusting or corrosion of any part of a motor vehicle.

(F) As used in this rule, "motor vehicle" shall have the same meaning as the term is defined in division (B) of section 4501.01 of the Revised Code.

HISTORY: Eff. 1-26-80; 12-3-09.

109:4-3-16 Advertisement and sale of motor vehicles

(A) For purposes of this rule, the following definitions shall apply:

(1) "Dealer" means any person engaged in the business of selling, offering for sale or negotiating the sale of five or more motor vehicles during a twelve-month period, commencing with the day of the month in which the first such sale is made, or leasing any motor vehicles, including the officers, agents, salespersons, or employees of such a person; or any person licensed as a motor vehicle dealer or salesperson under chapter 4517. of the Revised Code.

(2) "Manufacturer" means any person:

(a) Engaged in the business of manufacturing or assembling new or unused motor vehicles; or

(b) Engaged in the business of importing new or used motor vehicles into the United States; or

(c) Engaged in the business of selling or distributing new and unused motor vehicles to motor vehicles dealers in this state.

(3) "Motor vehicle" means any vehicle defined as such by section 4501.01 of the Revised Code.

(4) "Authorized agent" means any person within the dealership with designated authority to contractually bind the dealership.

(5) "Purchase price" means the total amount the consumer is required to pay the dealer pursuant to the contract, but excluding tax, title and registration fees and documentary service charges. A negative equity adjustment may be included in the purchase price.

(6) "MSRP," "list," or "sticker" means the final manufacturer's suggested retail price as stated on the federally mandated window sticker (aka Monroney).

(7) "New motor vehicle" means a motor vehicle, the legal title to which has never been transferred to an ultimate purchaser, including a demonstrator vehicle.

(8) "Demonstrator" means a new motor vehicle of the current or previous model year, for sale only by an authorized dealer of the same make and model, which is available

for demonstration purposes to prospective purchasers whether operated by the dealer, its agents or employees, a third party or prospective purchaser, and has been driven less than six thousand miles.

(9) "Factory official vehicle" means a motor vehicle of the current or previous model year which has been operated by a representative or automotive related subsidiary of the manufacturer/distributor of the vehicle.

(10) "Rental vehicle" means a motor vehicle which has been operated for hire by an entity which is engaged in the business of renting vehicles, and includes daily rentals of dealers.

(11) "Invoice" or "invoice amount" is the gross amount a dealer pays the manufacturer for a vehicle before deduction of holdback or other miscellaneous charges.

(12) "Negative equity adjustment" means an equal amount which is added to both the purchase price of a vehicle and the trade-in allowance for the trade-in vehicle in a transaction.

(13) "Conversion" means a motor vehicle, other than a motor home, which has been substantially modified by a person other than the manufacturer or distributor of the chassis of the motor vehicle and which has not been the subject of a retail sale.

(14) "Advertising association or group" means a group, collection, alliance, combination, or other joining of any persons or business entities or any combination thereof, assembled or joined for the purpose of promoting or advertising products or services to consumers through the use of visual, audio or print medias.

(15) "Purchase" includes the lease of a motor vehicle.

(B) It shall be a deceptive and unfair act or practice for a dealer, manufacturer, advertising association, or advertising group, in connection with the advertisement or sale of a motor vehicle, to:

(1) Advertise an interest rate where the extension of credit is contingent upon qualification without including the disclosure "subject to approved credit" or words of similar import;

(2) In any advertisement or sales presentation, misrepresent in any way the size, inventory or nature of the business of the dealer; the expertise of the dealer; or the ability or capacity of the dealer, manufacturer, advertising association or advertising group to offer price reductions;

(3) Use any statement, layout, or illustration in any advertisement or sales presentation which could create in the mind of a reasonable consumer a false impression as to any material aspect of said advertised or offered vehicle, or to convey or permit an erroneous impression as to which vehicles are offered for sale at which prices;

(4) Advertise any motor vehicle for sale at a specific price or on specific terms if the dealer is not in possession of said vehicle or has not previously ordered said vehicle which is expected for delivery within a reasonable time unless the advertisement clearly and conspicuously discloses that the specific price applies to a vehicle which must be ordered;

(5) Advertise any motor vehicle for sale at a specific price or on specific terms and subsequently fail to show and make available for sale said vehicle as advertised;

(6) Misrepresent the availability of an advertised motor vehicle;

(7) Fail to clearly and conspicuously disclose, in any advertisement, that a particular advertised motor vehicle is not immediately available in stock and must be ordered if such is the case;

(8) Represent that advertised motor vehicles are in stock or previously ordered and expected for delivery within a reasonable time unless the dealer has or will have on hand sufficient supply of the advertised vehicles to meet reasonably anticipated demand, unless the advertisement clearly and conspicuously discloses the exact number of said vehicles on hand as of the last date on which any change can be made in the advertisement;

(9) Use the terms "MSRP," "list" or "sticker" in any advertisement or sales presentation except in reference to the manufacturer's suggested retail price;

(10) Compare an advertised price for a new motor vehicle to any other price unless the other price is "list," "sticker," or "invoice". An advertised price for a used motor vehicle may not be compared to a "list," "sticker" or "invoice" price;

(11) Represent, state or imply in any advertisement that the purchase price is a "savings," "discount" or words of similar import unless it is a "savings" or "discount" from the "list" or "sticker." During the sales presentation only, the dealer may refer to a "savings" or "discount" or words of similar import in reference to a supplemental sticker that specifically discloses any additional charges related to a specific vehicle;

(12) Use the word "cost" or words or concepts of similar import, inference, or implication, except "invoice," which relate to any reference price other than "list" or "sticker" in any advertisements. If a dealer uses the word "invoice" in any advertisement, the dealer must clearly and conspicuously disclose in the advertisement that the invoice price may not reflect the dealer's actual cost of the vehicle, and must make the actual invoice or a copy thereof available to consumers upon request;

(13) Fail to disclose, in any advertisement or sales presentation, the model, year, and, for current and previous model year vehicles, the fact that the vehicle is used if it is not new. For purposes of this rule, the terms "previously owned" or "pre-owned" have the same meaning and may be substituted for the term "used";

(14) Fail to disclose prior to the dealer's obtaining signature by the consumer on any document for the purchase of the vehicle, any defect and/or the extent of any previous damage to such vehicle, retail repair cost of which exceeds or exceeded six per cent of the manufacturer's suggested retail price, excluding damage to glass, tires and bumpers where replaced by identical manufacturer's original equipment. The above disclosure is required when the dealer has actual knowledge of the defect and/or damage and the vehicle is a new motor vehicle as defined in division (C) of section 4517.01 of the Revised Code.

(15) Fail to disclose prior to the dealer's requiring signature by the consumer on any

document for the purchase or lease of the vehicle, the fact that said vehicle has been previously used as a demonstrator, factory official vehicle or rental vehicle. The above disclosure is required when such is known by the dealer;

(16) Fail to immediately make available a refund of a consumer's deposit if the consumer's offer is not accepted within four working days of delivery of such deposit or if the transaction is otherwise rescinded pursuant to paragraphs (B)(17) or (B)(28) of this rule;

(17) Raise or attempt to raise the actual purchase price of any motor vehicle to a specific consumer except that a trade-in re-evaluation may occur pursuant to paragraph (B)(19) of this rule, a negative equity adjustment for a trade-in vehicle may be made, or the consumer otherwise consents to such price increase. In the instance that a motor vehicle is ordered by the dealer, the purchase price cannot be increased by that dealer after submission of the order to the manufacturer for a specific consumer except that the dealer may raise the actual purchase price by an amount equal to the increase if the dealer has actually paid the increased charge. In any instance where the purchase price of a vehicle has been increased, the consumer shall have the right to either pay the increased amount or rescind the transaction. A price increase due to a change in freight charges does not entitle a consumer to rescission;

(18) Lower or attempt to lower the price of a trade-in vehicle unless there exists a reasonable basis for such re-evaluation based upon change to that vehicle due to accident, failure of or damage to major components, removal or substitution of equipment or accessories or the market value of that vehicle at the time of the re-evaluation;

(19) Fail to disclose prior to the dealer's requiring signature by the consumer on any document for the purchase of the motor vehicle, the fact that a trade-in re-evaluation may occur, if such is the case;

(20) Represent that a motor vehicle will be delivered within a given period of time unless there exists a reasonable basis upon which such representation is made;

(21) Advertise any price for a motor vehicle unless such price includes all costs to the consumer except tax, title and registration fees, and a documentary service charge, provided such charge does not exceed the maximum documentary service charge permitted to be charged pursuant to section 1317.07 of the Revised Code. Additionally, a dealer may advertise a price which includes a deduction for a discount or rebate which all consumers qualify for, provided that such advertisement clearly discloses the deduction of such discount or rebate.

(22) No text.

[Comment: Former paragraph (B)(22) was held invalid by the Ohio Supreme Court. The Ohio Supreme Court issued an opinion on July 28, 2009, holding that to the extent R.C. 109:4-3-16(B)(22) conflicts with the parol evidence rule in "R.C. 1302.05 and allows parol evidence contradicting the final written contract, Ohio Adm. Code 109:4-3-16(B)(22) constitutes an unconstitutional usurpation of the General Assembly's legislative function and is therefore invalid." See Williams v. Spitzer Autoworld Canton, L.L.C., (2009) 122 Ohio St.3d 546, 2009-Ohio-3554.]

(23) Advertise the price such dealer will pay for any trade-in vehicle unless:

(a) The price of motor vehicles offered for sale by such dealer is within the range of prices at which the dealer usually sells said motor vehicles and is not increased because of the amount offered for the trade-in; and

(b) The advertised trade-in price will be paid for all vehicles regardless of their condition or age, or unless the advertisement clearly and conspicuously discloses the conditions the trade-in vehicle must meet before such advertised price will be paid.

(24) Advertise the price to be paid for trade-in vehicles as a range of prices, "up to two thousand dollars" or "as much as two thousand dollars";

(25) Add or substitute any equipment and/or service after acceptance of the purchase agreement except when such addition or substitution is beyond the control of the dealer or is otherwise with the consumer's consent.

(26) Fail to disclose the beginning and ending dates of any sale or other offer for the sale of a motor vehicle. However, if the dealer states and/or lists the specific quantity of vehicles available for sale, the dealer shall only be required to disclose the beginning date of the sale and may disclose the ending date by use of the phrase "while supply lasts." Additionally, a dealer is not required to list a beginning date for a sale, if such sale begins on the date the advertisement appears.

(27) Advertise, represent or offer a rebate, interest reduction program or similar program or procedure in which the dealer financially contributes without the following clear and conspicuous disclosure: "dealer contribution may affect consumer cost," or other words or terms which convey to the public the effect on consumer's cost;

(28) Fail to immediately notify the consumer of any additional or substituted equipment, features and/or service which has come to the dealer's attention pursuant to paragraph (C)(3) of this rule, and afford the consumer an opportunity to rescind the purchase agreement;

(29) Fail to disclose prior to obtaining signature by the consumer on any document for the purchase of the vehicle the fact that such vehicle was previously titled as a salvage vehicle if the seller has actual knowledge of such fact.

(30) Deliver a motor vehicle to a consumer pursuant to a sale which is contingent upon financing without a written agreement stating the parties' obligations should such financing not be obtained.

(31) Advertise a price for a conversion van without setting forth separately the "list" price for the vehicle, along with the price for the conversion package, or fail to show the discounts or other deductions which are being applied to each of these prices to arrive at the overall advertised price for the vehicle.

(32) Sell, offer for sale, or assist in the sale of more than five motor vehicles in any twelve month period, at retail, without being licensed as a dealer or salesperson pursuant

to Chapter 4517. of the Revised Code, or otherwise being licensed pursuant to applicable law.

(33) Lease or assist in the lease of any motor vehicle to a consumer as defined in section 1345.01 of the Revised Code without being licensed as a motor vehicle leasing dealer or salesperson pursuant to Chapter 4517. of the Revised Code, or otherwise being licensed pursuant to applicable law.

(34) Fail to notify a consumer of a dealer's currently advertised price for a motor vehicle.

(C) It shall be a deceptive and unfair act or practice for a manufacturer, in connection with the advertisement or sale of a motor vehicle, to:

(1) Advertise the price of a vehicle and represent or imply that said vehicle is available at a specific dealer, unless a sufficient number of vehicles is available at each specified dealer to meet reasonably anticipated demand or unless the advertisement clearly and conspicuously discloses that said vehicle is not immediately available for delivery and must be ordered;

(2) Increase the price of a motor vehicle which a dealer has ordered for a consumer after the date on which such order was accepted by the manufacturer from the dealer;

(3) Add or substitute any equipment unless the dealer is notified immediately of the proposed addition and/or substitution and is given the opportunity either to rescind the purchase agreement within five days of notification or purchase the substituted or additional equipment;

(4) Advertise the price of a vehicle and represent or imply that said vehicle is available at a specific dealer unless:

(a) The advertised price includes all charges to be paid by the consumer including freight, handling and dealer preparation; or

(b) The advertisement clearly and conspicuously discloses that the advertised price is a suggested base price or that the advertised price does not include charges for freight, handling, dealer preparation or any optional equipment.

(5) Advertise, represent or offer a rebate, interest reduction program or similar program or procedure in which the dealer financially contributes without the following clear and conspicuous disclosure: "manufacturer's condition of dealer contribution may affect consumer cost," or other words or terms which convey to the public the effect on consumer's cost.

(6) Fail to disclose to a prospective consumer, in an itemized written statement, any increase in price to a motor vehicle which is attributable to funding an advertising association, advertising group or similar entity.

(D) For purposes of this rule, and Chapter 1345. of the Revised Code, the following shall apply:

(1) In advertising a closed-end credit (purchase) transaction, in addition to complying with Regulation Z of the federal Truth-In-Lending Act, a dealer manufacturer or

advertising association or group, must clearly and conspicuously disclose in any radio, television or printed advertisement the following terms: the amount of any down payment, the number of payments, the monthly payment and the annual percentage rate which may be abbreviated as A.P.R.

(2) In advertising a lease transaction, in addition to complying with Regulation M of the federal Truth-In-Lending Act, a dealer, manufacturer or advertising association or group must clearly and conspicuously disclose the following terms in any printed, television or radio advertisement: the fact that the transaction is a lease, the amount due at lease inception, the number of payments and the monthly payment. All remaining required disclosures may be set forth in a footnote to such advertisement, which must be in close proximity to the advertised vehicle in any printed or television advertisement.

(3) The information required by paragraph (B) of Rule 109:4-3-07 of the Administrative Code may be set forth on the face of a contract for sale of a motor vehicle.

HISTORY: Eff. 6-5-73; 8-28-81; 2-2-82; 6-29-84; 10-24-94; 3-14-05; 5-28-10

109:4-3-17 Distress sale

(A) Definition.

Distress sale. A "distress sale" is any sale which is described or represented either directly or indirectly by any term which would reasonably lead a consumer to believe that the offer of such goods, either by choice or necessity, has been occasioned by any of the following factors.

(1) Termination or discontinuance by the supplier of all or any portion of the supplier's business;

(2) Loss or termination of lease;

(3) Liquidation of assets;

(4) Fire, smoke, water or other disaster, regardless of cause;

(5) Bankruptcy or receivership;

(6) The financial condition of the supplier.

Distress sale does not include the sale of special purchase items, clearance items, or seasonal items as those terms are defined in rule 109:4-3-03 of the Administrative Code.

(B) It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to:

(1) Make any representation concerning the cause, basis, reason or necessity of any distress sale unless such representation is true;

(2) Advertise, conduct or continue any distress sale for a period greater than forty-five days except that a supplier may extend the duration of a distress sale for an additional forty-five day period by clearly and conspicuously disclosing in any advertisement or

other representation regarding such distress sale the fact of such extension;

(3) Substitute or supplement the stock or inventory by purchase, consignment or transfer of goods from another outlet unless (a) such item of goods was ordered for that outlet prior to the placement of any advertisement or other representation declaring a distress sale; (b) such item of goods was ordered in compliance with rule 109:4-3-03 of the Administrative Code; or (c) such items of goods owned prior to the filing of bankruptcy or creation of a receivership is transferred from another outlet of the supplier in conformity with a court order and the supplier provides a clear and conspicuous notice of that fact in all advertisements that merchandise has been added;

(4) Misrepresent the former price, savings, quality or ownership of any goods to be sold at such sale;

(5) Fail to include in any advertisement concerning a distress sale the opening and terminating dates of the sale;

(6) Advertise or represent a distress sale for the purpose of closing and relocating an outlet at another location without clearly and conspicuously disclosing that fact;

(7) Fail to separate or otherwise clearly identify distress sale merchandise from regular stock in any distress sale advertisement;

(8) Fail to clearly and conspicuously mark, identify or otherwise physically separate at the business location each item of goods that is subject to the terms of any distress sale advertisement so their identity may be readily ascertained;

(9) Misrepresent the identity of the person or entity conducting a distress sale;

(10) Make reference to a liquidation sale or use a term or similar import unless the supplier is in fact liquidating all assets for final distribution;

(11) Advertise, announce or conduct a going-out-of-business sale and subsequently reopen or resume within twelve months of any such distress sale the same business under the same or any new name if the ownership and/or control of such business substantially remains the same. Nothing in this provision shall be deemed to preclude a true sale of a business if that fact is clearly disclosed;

(12) Fail to comply with any license, registration, inventory itemization or other requirement of the particular political subdivision of this state wherein such distress sale is being conducted.

(C) Exceptions.

(1) Except as set forth herein, this rule shall have no application to licensed auctioneers, sheriffs or other public officials or court officers or any other persons acting under the direction or authority of any court selling goods in the course of their official duties; provided that suppliers in receivership, bankruptcy, or any liquidator acting on their behalf shall be subject to the provisions of this rule unless enforcement would conflict and be preempted by federal law.

(2) Except as specifically set forth above, the requirements of this rule are in addition to all other requirements contained in Chapter 109:4-3 of the Administrative Code, pertaining to consumer transactions.

HISTORY: Eff. 8-28-81; 3-14-05

109:4-3-18 Sale and labeling of gasoline which contains alcohol

(A) For purposes of this rule, the following definitions shall apply:

(1) "Alcohol" means a volatile flammable liquid having the general formula CnH2n+1OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles, and commonly or commercially known or sold as an alcohol, including methanol.

(2) "Co-solvent" means an alcohol or any other chemical with higher molecular weight than methanol which is blended to prevent phase separation in gasoline.

(3) "Gasoline" means any fuel sold for use in motor vehicles and commonly or commercially known or sold as gasoline whether leaded or unleaded.

(4) "Maximum percentage" means the highest amount by volume of methanol or co-solvent permitted to be blended or mixed with gasoline in conformity with the specifications established by the United States environmental protection agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. Section 7545, 40 C.F.R. part 79 subpart A, 58 FR 65554, as amended Dec. 15, 1993.

(5) "Methanol" means methyl alcohol, a flammable liquid having the formula CH3OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles, and commonly or commercially known or sold as methanol or methyl alcohol.

(6) "Motor vehicles" include all vehicles, vessels, watercraft, engines, machines or mechanical contrivances that are propelled by internal combustion engines or motors.

(7) "Person" means an individual, sole proprietorship, partnership, corporation, association or other legal entity.

(8) "Retail dealer" means any person who owns, operates, controls or supervises an establishment at which gasoline is sold or offered for sale to the public.

(9) "Wholesale dealer" means any person engaged in the sale of gasoline to others who the seller knows or has reasonable cause to believe intends to resell the gasoline in the same or an altered form to another.

(B) It shall be a deceptive and unfair act or practice in connection with a consumer transaction for a wholesale or retail dealer of gasoline to sell or offer for sale any gasoline blended or mixed with any alcohol, where the blend or mixture fails to meet the specifications or the registration requirements established by the United States environmental protection agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. section 7545 and 40 C.F.R. part 79 subpart A. 58 FR 65554. as amended Dec. 15. 1993.

(C) It shall be a deceptive and unfair act or practice in connection with a consumer transaction, when methanol or co-solvent, or any combination thereof, is blended or mixed into gasoline in quantities greater than three-tenths of one per cent by volume and sold or offered for sale to the public, for a retail dealer to fail to disclose:

(1) The fact that the gasoline contains methanol or co-solvent;

(2) The maximum percentage to the nearest tenth of a per cent of any methanol or co-solvent contained in the gasoline.

The disclosure required by this paragraph shall be made by printed sign or label affixed to the retail dispensing pump. The printed sign or label shall be visible and legible to the purchaser and shall be displayed in a clear, conspicuous and prominent manner. The word "Contains" shall be in block letters not less than one-half inch in height. All other required disclosures shall be in block letters or numerals not less than one-quarter inch in height.

(D) It shall be a deceptive and unfair act or practice for a person who transfers the possession of gasoline at wholesale, which may affect a consumer transaction, to fail to deliver to a buyer, before or at the time of the transfer of possession of the gasoline, a written notice identifying the gasoline transferred, including any methanol or co-solvent contained therein if the gasoline contains more than three-tenths of one percent of methanol or co-solvent, or any combination thereof, by volume. The notice required by this rule shall be contained in or affixed to a manifest, invoice or other instrument or document of sale of title and shall specify in capital letters the type and maximum percentage by volume to the nearest tenth of a per cent of any methanol or co-solvent.

HISTORY: Eff. 6-1-84; 3-14-05; 5-28-10

109:4-3-19 Determining a consumer's ability to repay a residential mortgage loan

(A) Division (B)(2) of section 1345.031 of the Revised Code prohibits a supplier from engaging in a pattern or practice of providing residential mortgage loan transactions to consumers based predominantly on the supplier's realization of the foreclosure or liquidation value of the consumer's collateral without regard to the consumer's ability to repay the loan in accordance with its terms, provided that the supplier may use any reasonable method to determine a borrower's ability to repay the loan. Such methods may include, but shall not be limited to, verification of the borrower's current and expected income, current and expected cash flow, net worth and other financial resources, current financial obligations, property taxes and insurance, assessments on the property, employment status, credit history, and other relevant factors such as debt-to-income ratio, credit score, tax returns, pension statements, employment payment records, and statements or information submitted by the consumer in their mortgage loan application, provided that no supplier shall disregard facts and circumstances that indicate that the financial or other information submitted by the consumer is inaccurate or incomplete.

(B) "Pattern or practice" is not established by isolated, random, or accidental acts, although it can be established without the use of a statistical process. In addition, a supplier may be acting pursuant to a written or unwritten policy and that action alone could establish a pattern or practice of making mortgage loans in violation of this rule.

(C) "The supplier's realization of the foreclosure value of the consumer's collateral" means the amount of money the supplier would reasonably be expected to recoup from the proceeds of a

court-ordered sale of the collateral through a foreclosure action.

(D) "The supplier's realization of the liquidation value of the consumer's collateral" means the amount of money the supplier would reasonably be expected to recoup from the proceeds of a sale of the collateral by the consumer.

(E) In addition to the factors listed in paragraph (A) of this rule, and without limiting the applicability of section 1345.031(B)(2) of the Revised Code and this rule to all residential mortgage loan products, for nontraditional mortgage loan products and mortgage loan products with a discounted introductory rate, great weight and due consideration shall be given to the federal Interagency Guidance on Nontraditional Mortgage Product Risks, 71 Fed. Reg. 58,609 (2006), as amended, in deciding whether or not the supplier used a reasonable method of determining a borrower's ability to repay the loan.

(F) Neither division (B)(2) of section 1345.031 nor this rule shall apply to reverse mortgages.

(G) All records, worksheets, or supporting documentation used by the supplier in conducting an analysis of the consumer's ability to repay the loan in accordance with its terms shall be maintained by that supplier in the consumer's loan file for each residential mortgage loan transaction for a period of at least two years from the date of closing, or as required by other applicable state or federal law, whichever time period is greater. The records required to be maintained by this rule may be retained in an electronic format.

HISTORY: Eff. 1-7-07

109:4-3-20 Refinancing a low rate mortgage

For purposes of division (B)(4) of section 1345.031 of the Revised Code:

(A) "The current yield on United States treasury securities with a comparable maturity" means the yield as reported by the Federal Reserve on the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is obtained by the supplier, for a United States treasury security with a maturity period equal to that of the consumer's existing loan, or for the United States treasury security with the closest shorter maturity period in the event there is no treasury security of an equal maturity period.

(B) "Discounted introductory rate" means an interest rate that, by the terms of the mortgage loan agreement, will increase at the expiration of the introductory time period or by the occurrence of a specific triggering event to a specific higher interest rate but does not include any mortgage loan agreement where the specific higher interest rate is not known or determinable with certainty at the time of execution of the mortgage loan.

(C) "A rate that automatically steps up over time" means an interest rate that, by terms of the mortgage loan agreement, will increase at known time intervals to a higher specific interest rate but does not include any mortgage loan agreement where the specific higher interest rate is not known or determinable with certainty at the time of the execution of the mortgage loan.

(D) "The fully indexed rate" means the higher interest rate that will be imposed after the expiration of the introductory time period or by the occurrence of a specific triggering event for a mortgage loan agreement in which the current interest rate is a discounted or less than fully amortized interest rate.

(E) "The fully stepped-up rate" means the highest interest rate that will be imposed after all automatic increases have occurred for a mortgage loan agreement in which the current interest rate is a rate that will automatically step-up over time.

HISTORY: Eff. 1-7-07.

109:4-3-21 Instructing consumer to ignore information

For purposes of division (B)(5) of section 1345.031 of the Revised Code:

(A) "Instructing the consumer to ignore the supplier's written information" includes, but shall not be limited to, the supplier promising the consumer a specific interest rate or a specific number or dollar amount of points that is lower than the interest rate or points amount listed in the supplier's written information.

(B) The "dollar value of points" includes points expressed as either a percentage figure or a specific dollar figure, with "point" defined as a charge equal to one percent of either the principal amount of a pre-computed or interest-bearing loan, or one percent of the original credit line of an open-end loan.

HISTORY: Eff. 1-7-07.

109:4-3-22 Recommending default

For purposes of division (B)(6) of section 1345.031 of the Revised Code, the phrase "recommending or encouraging a consumer to default" means to suggest, advise, instruct, or endorse that the consumer should fail to comply with any of the terms of a residential mortgage or any consumer transaction or revolving credit agreement.

HISTORY: Eff. 1-7-07.

109:4-3-23 Required disclosure at closing

(A) Division (B)(8) of section 1345.031 of the Revised Code states that no supplier shall fail to disclose to the consumer at the closing of the consumer transaction that a consumer is not required to complete a consumer transaction merely because the consumer has received prior estimates of closing costs or has signed an application and should not close a loan transaction that contains different terms and conditions than those the consumer was promised.

(B) To comply with division (B)(8) of section 1345.031 of the Revised Code, a supplier must provide the notice attached to this rule as addendum A, in writing, in duplicate, in at least fourteen point type, signed and dated by the consumer before the consumer signs any other document at the closing of the loan. Compliance with this provision by any supplier required to provide the notice is deemed to constitute compliance by all suppliers required to provide the notice.

(C) The supplier shall provide a copy of the signed disclosure required under this rule to the consumer at the closing. In the event there is more than one consumer who is a party to the residential mortgage loan transaction, the supplier must obtain the signature of, and provide a copy of, the signed disclosure required under this rule to each consumer.

(D) The supplier shall retain the original or a copy of the signed closing disclosure form required under this rule in the consumer's loan file for a period of at least two years from the date of closing, or as required by other applicable state or federal law, whichever time period is greater. Records required to be retained under this rule may be retained in an electronic format.

(E) The requirement that the supplier obtain and retain the disclosure required under this rule cannot be waived.

Appendix 1 Addendum A

CLOSING DISCLOSURE

Ohio Revised Code Section 1345.031(B)(8)

This Is An Important Disclosure That Must Be Provided To You And Signed Before You Sign Any Other Document At The Closing

To:_____[Name of Borrower #1]

_____[Name of Borrower #2]

From:_____ __[Name of Supplier]

Re: Loan Number _____

Mortgage Loan Amount $_____

Property Address: _____

_____, Ohio _____[Zip Code]

Under Ohio law, you are not required to complete this transaction merely because you received prior estimates of closing costs or have signed an application.

You should not close this loan transaction if it contains different terms and conditions than those you were promised.

Your signature below means that you have read this Closing Disclosure.

_____[Borrower]

_____[Date]

_____[Borrower]

_____ [Date]

HISTORY: Eff. 1-7-07

109:4-3-24 Improperly influencing appraiser.

(A) Division (B)(10) of section 1345.031 of the Revised Code states that in connection with a consumer transaction, a supplier is prohibited from knowingly compensating, instructing, inducing, coercing, or intimidating, or attempting to compensate, instruct, induce, coerce, or intimidate, a person licensed or certified under Chapter 4763. of the Revised Code for the purpose of corrupting or improperly influencing the independent judgment of the person with respect to the value of the dwelling offered as security for repayment of a mortgage loan.

(B) Without limiting the scope or applicability to other acts or practices that may violate division (B)(10) of section 1345.031 of the Revised Code, a supplier is "attempting to instruct or induce a person licensed or certified under Chapter 4763. of the Revised Code for the purpose of improperly influencing the independent judgment of that person with respect to the valuation of the dwelling offered as security for repayment of a mortgage loan" if:

> (1) In the case of any refinance loan or non-purchase second mortgage loan, a supplier, or any person acting at the supplier's direction, identifies on the appraisal order form or communicates by any other means to any person licensed or certified under Chapter 4763. of the Revised Code, either the loan amount or any other express or implied statement of the anticipated or desired appraisal valuation of the dwelling subject to the appraisal; or,
>
> (2) In the case of any purchase money mortgage loan, including any second mortgage loan connected to a sale transaction, a supplier or person acting at the supplier's direction, except as set forth herein, identifies on the appraisal order form or communicates by any other means to any person licensed or certified under Chapter 4763. of the Revised Code, either the loan amount or any other express or implied statement of the anticipated or desired appraisal valuation of the dwelling subject to the appraisal. This prohibition does not preclude the supplier, or a person acting at the direction of the supplier, from disclosing either the sales price of the property or providing a copy of the sales agreement to the person licensed or certified under Chapter 4763. of the Revised Code. However, if the supplier knows that within the preceding thirty days there had been a separate sales agreement between the buyer and seller containing a lower sales price for the same property, the supplier shall provide a copy of the prior sales agreement to the appraiser and append a copy of the prior sales agreement to any appraisal the supplier provides to the consumer, lender or anticipated purchaser of the note.

(C) It is not a violation of division (B)(10) of section 1345.031 of the Revised Code or this rule for a supplier, based upon a good faith belief that a completed appraisal report prepared by a person licensed or certified under Chapter 4763. of the Revised Code contains an error or is professionally deficient, to request, in writing or by electronic transmittal, that the appraiser who prepared the appraisal report consider additional appropriate information about the dwelling or property; provide further detail, substantiation, or explanation for the appraiser's valuation; or correct errors in the appraisal. However, the supplier may not request, orally or in writing, that an appraiser review or revise their appraisal report on the grounds that the valuation is not high enough to qualify the consumer for the proposed loan.

(D) This rule shall not be construed to preclude a supplier from communicating any information to a person licensed or certified under Chapter 4763. of the Revised Code that is required to be communicated to the appraiser by Chapter 1322. of the Revised Code, Chapter 4763. of the

Revised Code, or by the Uniform Standards of Professional Appraisal Practice as promulgated by the appraisal standards board of the appraisal foundation, including, without limitation, a copy of a previously completed appraisal report provided to a person licensed or certified under Chapter 4763. of the Revised Code for the purpose of an appraisal review.

(E) For purposes of this rule a "refinance loan" includes any subsequent first mortgage loan on the borrower's primary residence or other property subject to coverage pursuant to division (A) of section 1322.01 of the Revised Code.

(F) For purposes of this rule the words "appraisal," "appraisal report," "appraisal foundation," and "valuation" have the same definition as contained in section 4763.01 of the Revised Code.

(G) Each supplier who orders or controls the referral of an appraisal on a residential mortgage lending transaction and each supplier who subsequently comes into possession of appraisal documents shall retain all documents related to the appraisal in the borrower's residential mortgage loan file for a period of at least two years from the date of closing, or as required by other applicable state or federal law, whichever time period is greater. This document retention requirement applies to any appraisal, whether or not the appraisal is ultimately relied upon to set the market value of the real property underlying the residential mortgage loan. Records required to be maintained by this rule may be retained in an electronic format.

HISTORY: Eff. 1-7-07

109:4-3-25 Debt collection agreements

For purposes of division (B)(11) of section 1345.031 of the Revised Code, "debt collection agreement" means any debt cancellation, deferment, suspension or any similar product coverage (whether or not insurance under applicable law), written in connection with a residential mortgage, that provides for cancellation, deferment or suspension of all or part of the consumer's liability for the residential mortgage in the event of loss of life, health, or income, or in the case of accident, unless financed or calculated upon a monthly basis.

HISTORY: Eff. 1-7-07

109:4-3-26 Reasonable, tangible net benefit

(A) Division (B)(12) of section 1345.031 of the Revised Code states that a supplier shall not knowingly or intentionally engage in the act or practice of "flipping" a residential mortgage loan by making a residential mortgage loan that refinances an existing residential mortgage loan when the new loan does not have a reasonable, tangible net benefit to the consumer considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the consumer's circumstances. "Reasonable tangible net benefit" is determined by a weighing of the relative costs and benefits to the consumer of replacing the consumer's existing loan with the new loan under the totality of the circumstances.

(B) The phrase "terms of both the new and refinanced loan" includes, but shall not be limited to, the monthly payment, the interest rate, the interest rate type (i.e., adjustable or fixed), the loan duration, the mortgage product type, the loan amount, any prepayment penalty, and any required insurance.

(C) The phrase "cost of the new loan" includes, but shall not be limited to, all paid or financed points and fees, all broker compensation paid, directly or indirectly, in connection with the new loan, any prepayment penalty paid on the consumer's existing loan in connection with the refinancing, and any other closing costs disclosed on the HUD-1 settlement statement for the new loan that were paid or financed by the consumer.

(D) The phrase "all of the circumstances" may include, but shall not be limited to, the amount of cash received by the consumer in excess of and in relation to the fees and costs of the refinancing, the loan-to-value ratio of the new loan compared to the pre-existing loan, the necessity of the consumer to comply with a court order, and the amount of time that has lapsed between the new loan and the origination of the pre-existing loan.

(E) All records, worksheets, and supporting documentation used by the supplier in determining the "reasonable, tangible net benefit" of a new loan that is a refinancing of the consumer's existing loan shall be maintained by that supplier in the consumer's loan file for each residential mortgage loan transaction for a period of at least two years from the date of closing, or as required by other applicable state or federal law, whichever time period is greater. Records required to be maintained by this rule may be retained in an electronic format.

HISTORY: Eff. 1-7-07

109:4-3-27 No reasonable probability of payment

(A) Pursuant to division (B)(14) of section 1345.031 of the Revised Code, no supplier shall enter into a consumer transaction knowing there was no reasonable probability of payment of the obligation by the consumer.

(B) The supplier's analysis of the reasonable probability of payment of the obligation by the consumer may include, but shall not be limited to, verification of the borrower's current and expected income, current and expected cash flow, net worth and other financial resources (other than the consumer's equity in the dwelling that secures repayment of the loan), current financial obligations, property taxes and insurance, assessments on the property, employment status, credit history, and other relevant factors such as debt-to-income ratio, credit score, tax returns, pension statements, employment payment records, and statements or information submitted by the consumer in their mortgage loan application, provided that no supplier shall disregard facts and circumstances that indicate that the financial or other information submitted by the consumer is inaccurate or incomplete.

(C) In addition to the factors listed in paragraph (B) of this rule, and without limiting the applicability section 1345.031(B)(14) of the Revised Code and this rule to all residential mortgage loan products, for nontraditional mortgage loan products and mortgage loan products with a discounted introductory rate, great weight and due consideration shall be given to the federal Interagency Guidance on Nontraditional Mortgage Product Risks, 71 Fed. Reg. 58,609 (2006), as amended, in deciding whether or not the supplier used a reasonable method of determining whether there was a reasonable probability of payment of the obligation by the consumer.

(D) Neither division (B)(14) of section 1345.031 nor this rule shall apply to reverse mortgages.

(E) All records, worksheets, or supporting documentation used by the supplier in conducting an analysis of the reasonable probability of payment of the obligation by the consumer shall be maintained by that supplier in the consumer's loan file for each residential mortgage loan transac-

tion for a period of at least two years from the date of closing, or as required by other applicable state or federal law, whichever time period is greater. The records required to be maintained by this rule may be retained in an electronic format.

HISTORY: Eff. 1-7-07

109:4-3-28 Unconscionable terms in home mortgage loans

(A) Pursuant to division (C)(1) of section 1345.031 of the Revised Code, any unconscionable arbitration clause, unconscionable clause requiring the consumer to pay the supplier's attorney fees, or unconscionable liquidated damages clause included in a mortgage loan contract is unenforceable.

(B) The basis for determining that an arbitration clause is unconscionable shall be on grounds that exist at law or in equity for the revocation of any contract.

(C) Mortgage loan contract clauses that are unconscionable and unenforceable pursuant to division (C) of section 1345.031 of the Revised Code, include, but shall not be limited to:

(1) An arbitration clause that is not clearly and conspicuously disclosed to the consumer;

(2) An arbitration clause that limits, restricts or precludes the applicability of any rights or remedies afforded the consumer under Chapter 1345. of the Revised Code;

(3) An arbitration clause that provides for a limitation on actions of a shorter duration than provided for by statute under state or federal law;

(4) An arbitration clause that fails to provide the consumer with fair and reasonable access to discover and present information, documents and other evidence necessary to support the consumer's claim or defense;

(5) An arbitration clause that requires that the arbitration decision remain confidential;

(6) An arbitration clause that fails to provide an appeal process for a decision on the basis that the decision is arbitrary, capricious or contrary to law;

(7) A liquidated damages clause is unconscionable unless fixing the amount of actual damages is impracticable or extremely difficult, the amount selected represents a reasonable endeavor by the supplier and consumer to estimate fair compensation for the loss sustained by the breach described, and the amount is not a penalty. This provision does not prohibit a supplier from imposing and collecting late payment fees and check collection charges as permitted by law or from accelerating loan repayment in conformity with division (B)(3) of section 1345.031 of the Revised Code;

(8) A mandatory attorney fee clause that purports to bind the consumer to the payment of the supplier's attorney fees or legal costs in connection with the supplier's claim that the consumer has breached a term of the residential mortgage loan. This prohibition does not preclude the supplier from requesting or receiving an award of attorney fees or legal costs as a prevailing party in a civil action as provided by law and ordered by a court.

(D) In determining whether or not an arbitration clause in a residential mortgage loan is unconscionable, great weight and due consideration shall be given to the "Statement of Principles" of the National Consumer Disputes Advisory Committee in the "Consumer Due Process Protocol" promulgated by the American Arbitration Association.

HISTORY: Eff. 1-7-07

109:4-3-29 Distribution and receipt of home mortgage loan informational document

(A) Division (G) of section 1345.05 of the Revised Code requires that the "Informational Document" published by the attorney general in accordance with division (A)(4) of section 1345.05 of the Revised Code shall be made available for distribution to consumers who are applying for a mortgage loan. An "Acknowledgement of Receipt" form shall be retained by the lender, mortgage broker, and loan officer, as applicable, subject to review by the attorney general and department of commerce.

(B) The supplier who takes the consumer's mortgage loan application shall provide the required "Informational Document" and "Acknowledgement of Receipt" form to the applying consumer, free of cost:

(1) At the time of application when the loan application is submitted by the consumer in person; or,

(2) Within five business days after taking the loan application if the loan is not submitted in person, i.e., via internet, facsimile or telephone.

(C) The "Acknowledgment of Receipt" form must be in writing, in duplicate, in at least fourteen point type, signed and dated by the consumer making the application, and shall read according to addendum A of this rule.

(D) If a supplier provides the "Informational Document" and "Acknowledgement of Receipt" form other than in person, the supplier must also provide the consumer with instructions on completing the form and a cost-free method by which the consumer can return the signed original to the supplier.

(E) The supplier providing the "Informational Document" shall retain the original or a copy of the "Acknowledgment of Receipt" form in the consumer's loan file for a period of at least two years from the date of closing, or as required by other applicable state or federal law, whichever time period is greater. The supplier may retain the "Acknowledgement of Receipt" form in an electronic format.

(F) Neither the requirement that the "Informational Document" be provided to the mortgage loan applicant nor the requirement of providing, obtaining, and retaining the "Acknowledgement of Receipt" form can be waived.

(G) The "Informational Document" and "Acknowledgment of Receipt" form may be provided to the consumer with other disclosures or forms required to be provided to the consumer by federal or state law.

(H) In the event that the consumer fails to return the "Acknowledgement of Receipt" form to the supplier, the supplier may satisfy the requirements of division (G) of section 1345.05 of the Revised Code and this rule by presenting documentary proof that the supplier mailed, delivered, or electronically transmitted the required documents within the required time period.

(I) It is an unfair or deceptive act or practice in violation of division (A) of section 1345.02 of the Revised Code for a supplier required to retain the "Acknowledgement of Receipt" form pursuant to division (G) of section 1345.05 of the Revised Code and this rule to fail to promptly respond to a request by the attorney general or department of commerce to review the Acknowledgement of Receipt form.

Appendix 1 Addendum A

Acknowledgment of Receipt of Home Mortgage Loan Informational Document

Ohio Revised Code Section 1345.05(G)

Ohio Law requires that consumers applying for a mortgage loan receive the Home Mortgage Loan Informational Document and this Acknowledgement of Receipt from their loan officer, mortgage broker or non-bank mortgage lender. By signing this form you acknowledge that you have received the Informational Document (check one):

_____ at the time you applied for a mortgage loan if you applied in person; or,

_____ within five business days of your loan application if you did not apply in person (for example if you applied via the internet, facsimile or by telephone).

_____

Applicant's Signature

_____ _____

Date of Receipt Loan Applicant #1

_____ _____

Date of Receipt Loan Applicant #2

After signing this form, please keep the "customer copy" of the Acknowledgement of Receipt form and provide the original to the person or company that gave or sent you the Informational Document.

HISTORY: Eff. 1-7-07

109:4-3-30 Limitation on advance payments

(A) Division (B)(9) of section 1345.031 of the Revised Code prohibits a supplier from arranging for or making a consumer transaction that includes terms under which more than two periodic payments required under the consumer transaction are consolidated and paid in advance from the loan proceeds provided to the consumer.

(B) The provisions of division (B)(9) of section 1345.031 of the Revised Code shall not apply to any residential mortgage loan with a maturity of less than one year, if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling. However, this exemption shall not apply to a "covered loan" as that term is defined under division (D) of section 1349.25 of the Revised Code, or a mortgage under section 152(a) of the "Home Ownership and Equity Protection Act of 1994," 108 Stat. 2190, 15 U.S.C.A. 1602(aa), as amended, and the regulations adopted thereunder by the federal reserve board, as amended.

HISTORY: Eff. 1-7-07

Consumer Sales Practices Act

Help Center:
800-282-0515

TTY users, please call Relay Ohio
800-325-2223

Consumer Protection
SECTION

30 E. Broad St., 14th Floor
Columbus, OH 43215

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