

A public hearing will be held by the Office of Attorney General Mike DeWine on Monday, April 27, 2015 at 2:30 p.m. in the B-1 Hearing Room of the Rhodes State Office Tower, located at 30 East Broad Street, Columbus, Ohio 43215.

The purpose of the hearing is to solicit comment on amended rules 109:4-3-05 & 11.

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 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 performed, 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~~the supplier's 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) of this rule 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.

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 paragraph 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~~the consumer or prospective consumer's 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~~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 paragraphs (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, as amended on August 20, 1998).

All interested parties are invited to attend the hearing and present oral and/or written testimony. Written comments may also be submitted prior to the hearing to the attention of Amber Aimar, Policy and Public Affairs Section, Office of the Ohio Attorney General Mike DeWine, 30 East Broad Street, Columbus, Ohio 43215, or Amber.Aimar@OhioAttorneyGeneral.gov no later than Friday, April 24, 2015 by close of business.