

PROTECTING ★ THE ★ UNPROTECTED

Complying With Ohio Consumer Law

A Guide for Businesses



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Table of Contents

OHIO CONSUMER LAW OVERVIEW.....	1
ADVERTISING.....	2
AUTO.....	4
BUSINESS OPPORTUNITY PLANS.....	7
CANCELLATION RIGHTS OF CONSUMERS.....	9
CREDIT SERVICES ORGANIZATION ACT.....	11
DEBT ADJUSTERS ACT.....	11
DEPOSITS.....	12
DOOR-TO-DOOR SALES.....	13
FAILURE TO DELIVER/SUBSTITUTIONS.....	13
GIFT CARDS.....	15
GOING OUT OF BUSINESS/DISTRESS SALES.....	17
HOME CONSTRUCTION SERVICES.....	19
LAYAWAY ARRANGEMENTS.....	20
PERSONAL INFORMATION OF CONSUMERS.....	21
PREPAID ENTERTAINMENT CONTRACTS.....	22
REFUND POLICIES AND RESTOCKING FEES.....	23
REPAIRS AND SERVICES.....	23
RETAIL INSTALLMENT SALES.....	26
TELEMARKETING AND DO NOT CALL REGISTRY.....	27
PROTECTING SMALL BUSINESSES.....	30
OHIO CONSUMER PROTECTION LAWS.....	30

Ohio Consumer Law Overview

The cornerstone of Ohio consumer law is the Consumer Sales Practices Act (CSPA), which protects individual consumers from unfair, deceptive and unconscionable sales practices in connection with consumer transactions. The CSPA and its substantive rules can be found in the Ohio Revised Code (R.C.) starting at [1345.01](#) and in the Ohio Administrative Code (O.A.C.) starting at [109:4-3-01](#). Both codes are available at <http://codes.ohio.gov>.

What is a consumer transaction?

A consumer transaction is the purchase, solicitation for purchase or award by chance of a product or service intended for home, family or personal use. Among other examples, a consumer transaction includes:

- A motor vehicle dealer selling a used or new vehicle to a consumer.
- A wallpaper company selling its goods online to consumers.
- A department store advertising a sale.
- A home improvement contractor soliciting consumers at their homes.
- Third-party debt collectors calling consumers to collect debts.
- Salespeople making telemarketing calls to consumers.
- Credit repair companies contracting with consumers to improve their credit.

The CSPA requires sellers (or “suppliers”) to:

- Accurately represent the characteristics of a product or service.
- Honor guarantees and warranties.
- Make no misrepresentations about the nature of their business, their products and/or services, the prices of their goods, or the terms of a transaction.
- Not take advantage of a consumer’s illiteracy, mental disability, physical disability, or inability to understand the terms of a sale.
- Not sell a product or service knowing the consumer cannot afford or substantially benefit from it.
- Disclose important exclusions and limitations in advertisements.
- Not sell used items as new.
- Not use bait-and-switch tactics to trick consumers into paying higher prices.

Under the CSPA, the Ohio Attorney General’s Office can:

- Investigate businesses that may be conducting unfair, deceptive or unconscionable practices.
- Order businesses to stop unfair, deceptive or unconscionable practices.
- Make rules describing unfair, deceptive or unconscionable acts or practices.
- Go to court to have actions declared unfair, deceptive or unconscionable.
- Inform the public about actions that are unfair, deceptive or unconscionable.
- Obtain relief for consumers (such as refunds or changes in contracts).
- Request that courts impose appropriate civil penalties for violations by suppliers.

The CSPA allows consumers to:

- Pursue private litigation (file a lawsuit against a supplier).
- Rescind (cancel) transactions or recover damages, if successful in litigation.

In addition to the CSPA, the Ohio Attorney General enforces more than 25 consumer protection laws, many of which are addressed in this guide. For a list of these laws, see the Ohio Consumer Protection Laws section at the end of this guide.

Advertising

Sellers advertise online, in newspapers, on the radio, on television, in magazines, on billboards and through other avenues of communication. The CSPA sets forth specific rules about how sellers can advertise and what constitutes deceptive advertising. In general, deceptive advertising occurs when sellers make misleading price comparisons or misrepresentations about the quality or quantity of their goods. The following outlines specific provisions related to advertising.

Exclusions and limitations

It is illegal to advertise a sale without listing any specific limitations that apply ([O.A.C. 109:4-3-02](#)). For example, a supplier is prohibited from advertising “20% off all shoes” when only children’s shoes are reduced in price. If an ad includes a picture of items that are not included in the advertised price, this exclusion must be stated. All disclosures must be clear and conspicuous.

Advertisements also must list:

- Important terms and conditions.
- Extra costs, such as delivery charges, restocking fees and handling fees.
- Limited times of the sale, such as “July 2, 9 a.m. to 1 p.m.”

Bait advertising

Bait-and-switch tactics are illegal ([O.A.C. 109:4-3-03](#)). Bait advertising occurs when a supplier offers goods or services for sale, but the offer is not a *bona fide* or “good faith” offer to sell the product or service. An offer is considered *not* in good faith if the supplier:

- Misrepresents an important aspect or function of the product or service.
- Secures the first contact with the consumer through deception.
- Discourages the sale of the advertised product or service in favor of a costlier item.

Rain checks

If a seller advertises goods or services at a certain price and sells out of those goods or services, consumers who respond to the ad after the product is no longer available are entitled to a rain check, allowing them to purchase the advertised product or service at a later date for the sale price ([O.A.C. 109:4-3-03](#)).

This requirement does not apply if, in advertisements, the seller clearly and conspicuously discloses the number of goods available, such as “at least 10 in stock,” or if the seller clearly and conspicuously discloses that the merchandise is seasonal or on clearance and that no rain checks will be given.

The rain check requirement also does not apply if the seller, at the consumer’s option, allows the consumer to purchase a similar item of equal or greater value at the same savings, or if the seller proves that it had a sufficient supply of the advertised goods, based on reasonably expected consumer demand.

A rain check must be honored for up to 60 days after it is issued. Once the seller notifies the consumer that the item is in stock, the consumer has 14 days to redeem the rain check. If the item is not restocked within 60 days, the supplier may sell similar merchandise at a savings matching that of the advertised goods; the supplier may also do this – at any time – instead of providing a rain check.

Use of the word “free”

A seller may not advertise goods or services as “free” when the cost of the “free” offer is passed on to the consumer by raising the regular price of the goods or services ([O.A.C. 109:4-3-04](#)). For example, if a box of cereal regularly costs \$3, a store may not raise the price to \$6 a box during a “buy-one, get-one-free” sale to offset the cost of the “free” box. Additionally, when using the word “free,” all terms, conditions and obligations must be clearly described at the outset of the offer.

Prizes

A seller may not advertise that a consumer has won a prize when the consumer must pay certain charges to receive the prize ([O.A.C. 109:4-3-06](#)). Additionally, all material terms and conditions of a prize offer must be disclosed in advertisements, as must the market value of the prize. A seller may not advertise that a consumer has won a beach vacation when, in fact, the consumer must listen to a sales presentation to receive the vacation. (The seller would need to disclose that attending a sales presentation is required in the ad).

Use of the word “new”

Under Ohio law, used items may not be sold as new ([O.A.C. 109:4-3-08](#)). Refurbished or reconditioned products must be properly labeled. For example, a supplier may not advertise or sell a computer as new when, in fact, it has been used and refurbished.

Price comparisons

Price comparisons must be based on truth ([O.A.C. 109:4-3-12](#)). In advertisements, sellers must not make misleading price comparisons that create false expectations in the minds of consumers. If ads include terms such as “discount,” “bargain,” “outlet,” “wholesale” or “factory prices,” the terms must accurately describe the products offered for sale. For example, a seller may not advertise that its televisions are “Regularly \$5,000, Now \$3,000,” unless \$5,000 actually is the regular price of that particular kind of television.

Overview of advertising rules:

- Exclusions and limitations of an offer must be listed in ads.
- Bait-and-switch tactics are illegal.
- Sellers must issue rain checks in certain situations.
- When used in advertisements, “free” must really mean.
- Sellers cannot offer something as a “prize” if the consumer must pay to receive it.
- If an item is used or refurbished, sellers cannot describe the item as new.
- Price comparisons must be truthful.

Auto

The following provides a general overview of Ohio's Lemon Law and Title Defect Rescission Act. For guidelines on complying with Ohio's advertising laws for motor vehicles, please see the Attorney General's Guidelines for Motor Vehicle Advertising. For information on auto repairs and services, please see the Repairs and Services section in this guide.

What is a lemon?

A "lemon" is a new motor vehicle that has one or more problems covered by the warranty that substantially impair the use, value or safety of the vehicle. Ohio's Lemon Law (starting at [R.C. 1345.71](#)) requires manufacturers to repair defects that affect the use, value or safety of a new motor vehicle within the first 12 months or first 18,000 miles of use, whichever comes first.

What vehicles are covered under the Lemon Law?

The Lemon Law covers new passenger cars, motorcycles, certain recreational vehicles, noncommercial motor vehicles, or those parts of any motor home that are not part of the permanently installed facilities for cold storage, for cooking and consuming of food, or for sleeping. It does not cover mobile homes, recreational vehicles or any manufactured home.

Does the Lemon Law cover used cars?

The Lemon Law generally does not cover used cars unless they fall within the protection period (that is, unless the problems occur within the vehicle's first year or first 18,000 miles, whichever comes first). The Lemon Law does protect consumers even if the problem is discovered late within the protection period and the repair attempts extend beyond one year or 18,000 miles.

The law does not cover lemons that have been resold to consumers. However, when these used cars are offered for sale, they must include a notice describing the defect and must include a 12-month, 12,000-mile warranty or the remainder of the original warranty, whichever is greater. The manufacturer must also "brand" (place a notation upon) the resale title indicating the vehicle was returned because of nonconformance to the warranty. Vehicles returned for problems that could cause death or serious injury may not be resold in Ohio.

Consumers' rights under the Lemon Law

Under the Lemon Law, the auto manufacturer must be given a reasonable opportunity to fix the problem; if the problem is not corrected, the consumer might be eligible for a refund or a replacement.

A manufacturer has had a reasonable opportunity to fix the problem if, during the protected period, any of the following apply:

- Substantially the same nonconformity has been subject to repair three or more times and either continues to exist or recurs.
- The vehicle is out of service by reason of repair for a cumulative 30 or more calendar days (certain exceptions apply).
- There have been eight or more attempts to repair any nonconformity.
- At least one attempt has been made to repair a nonconformity that results in a condition likely to cause death or serious bodily injury if the vehicle is driven, and the nonconformity either continues to exist or recurs.

Refund of the full purchase price

The refund includes the full purchase price and incidental damages, including but not limited to any fees charged by the lender or lessor for making or canceling the loan or lease and expenses incurred by the consumer as a result of the nonconformity, such as charges for towing, vehicle rental, meals and lodging.

Lemon Law notification

Manufacturers must provide every new vehicle buyer with a notice describing their legal rights under Ohio's Lemon Law.

Resolving Lemon Law disputes

Arbitration allows a neutral party to make a decision about a lemon if the consumer and manufacturer cannot reach a resolution. Consumers must use arbitration if the manufacturer participates in an arbitration program approved by the Ohio Attorney General. Contact the Attorney General's Office for a list of approved arbitration programs.

Automotive Consumer Action Program (AUTOCAP), sponsored by the Ohio Automobile Dealers Association, is a third-party dispute resolution program for dealers in new motor vehicle. The Attorney General's Office refers complaints involving AUTOCAP members to AUTOCAP for mediation. If the issue is not resolved, it goes to arbitration; the resulting decision is final.

Warranties and service contracts

The federal Magnuson-Moss Warranty Act establishes requirements for entities that provide warranties. Under the law, if a manufacturer offers a warranty, the warranty must be available for the consumer to read before a purchase is made. A product sold "as is" has no warranty. A service contract, as defined by federal law, is not a warranty and should not be advertised as such.

Title Defect Rescission Fund

Licensed Ohio dealers in used motor vehicles participate in the program called Title Defect Rescission (TDR) Fund. Such participation allows dealers to sell vehicles before obtaining the titles for those vehicles.

What is the purpose of the TDR Fund?

The TDR Fund was created to maintain and administer refunds to retail purchasers of motor vehicles who suffer damages from motor vehicle dealers who fail to provide a valid certificate of title in the purchaser's name within the statutorily required period. For more information, see [R.C. 4505.181](#) and [R.C. 1345.52](#). If the Ohio Attorney General's Office pays a consumer on behalf of a dealer as a result of a TDR payout, the dealer must obtain a surety bond.

Under the law, the retail purchaser has an unconditional right to rescind the transaction and the dealer has an obligation to refund to the retail purchaser all monies paid if one of the following applies:

- The dealer fails to obtain a certificate of title in the consumer's name after 40 days from the date of the purchase.
- The title for the vehicle indicates that it is a rebuilt salvage vehicle, and that fact was not disclosed to the consumer in writing before the execution of the purchase agreement.

- The title for the vehicle indicates that the dealer has made an inaccurate odometer disclosure to the consumer.
- The title indicates that the vehicle is a Lemon Law “buyback” ([R.C. 1345.71](#)) and that fact was not disclosed in the written purchase agreement.
- The vehicle is a used manufactured or mobile home that has been repossessed, and the dealer fails to obtain the title on or before the 40th day after obtaining the title from the repossessing party or the date on which an occupancy permit for the home is delivered to the purchaser by the appropriate legal authority, whichever occurs later.

When can a consumer apply for relief under TDR?

The consumer may apply to the Attorney General’s Office for payment from the TDR Fund of any monies paid for the purchase of the vehicle if the consumer notifies the dealer of one or more of the circumstances listed above, and, within three business days, the dealer fails to refund the consumer all monies paid for the purchase of the vehicle or fails to reach a satisfactory compromise with the consumer.

Additional motor vehicle laws

The Motor Vehicle Collision Repair Operators Act (starting at [R.C. 4775.02](#)) requires registration and insurance for people who repair vehicles that have been damaged in collisions.

The Odometer Rollback and Disclosure Act (starting at [R.C. 4549.41](#)) makes it illegal to alter or conceal the mileage reading of a vehicle. It provides for a civil penalty of \$1,000 to \$2,000 for each tampered odometer and requires written notice of odometer repair when an odometer is serviced.

Overview of auto laws:

- A “lemon” is a new motor vehicle that has one or more problems covered by the warranty that substantially impair the use, value or safety of the vehicle.
- Ohio’s Lemon Law covers vehicles within the first year or first 18,000 miles of use, whichever comes first.
- Those licensed in Ohio to deal in used motor vehicles participate in the TDR Fund.
- It is illegal to alter or conceal a vehicle’s mileage reading.

Business Opportunity Plans

Generally, a business opportunity plan is an agreement in which a buyer pays a seller for the right to offer, sell or distribute goods or services.

What is a business opportunity plan?

Ohio's Business Opportunity Purchasers Protection Act (starting at [R.C. 1334.01](#)) defines a business opportunity. For a plan to be a business opportunity, the buyer must be required to make an initial payment greater than \$500 but less than \$50,000. Additionally, the goods or services must be supplied by the seller, a third person authorized by the seller or an affiliated person.

Also, to qualify as a business plan, the seller must make any one of the following representations:

- The purchaser will be provided with retail outlets, accounts or help establishing them.
- The purchaser will be provided with locations (or help finding locations) for vending machines, rack displays or similar equipment used for the distribution or sale of the goods or services.
- The purchase can earn a profit greater than the initial payment.
- There is a market for the goods or services.
- There is a buy-back arrangement.

What are the exemptions?

The Business Opportunity Purchasers Protection Act has 14 complete exemptions. For example, the law does not apply to the relationship between an employer and employee, the sale of an ongoing business or previous purchasers of similar business plans. For the list of complete exemptions, see [R.C. 1334.12](#).

What disclosures are required in a business opportunity agreement?

Sellers of business opportunity plans must provide a written disclosure document 10 business days before the buyer purchases the plan. Required disclosures include the history of the company, the identity and background of company officials, any bankruptcy history, initial fees required for the purchase and a description of the purchaser's requirements. For additional required disclosures, including specific language that may be required, see [R.C. 1334.02](#).

What actions are prohibited?

Sellers may not make false statements or misrepresentations about earnings, profits or sales. They also may not accept a down payment of more than 20% of the total price before the goods or services are delivered. For more prohibited actions, see [R.C. 1334.03](#).

How much time do purchasers have to cancel?

The Business Opportunity Purchasers Protection Act gives purchasers five business days to cancel the agreement. Cancellations must be delivered in writing and postmarked by midnight of the fifth business day after the agreement is signed.

Do federal laws apply?

If a seller complies with the federal FTC Rule or the Uniform Franchise Offering Circular Guidelines adopted by the North American Securities Administrators Association, the seller is considered to be in compliance with the Ohio Business Opportunity Purchasers Protection Act. Essentially, sellers who fully comply with the federal rules need not also comply with Ohio's law.

Cancellation Rights of Consumers

Certain consumer laws require sellers to provide cancellation rights to consumers who enter into contracts for specific goods or services. Such "cooling-off" periods apply to the following types of contracts:

- **Door-to-door sales: three days.** Ohio's Home Solicitation Sales Act (starting at [R.C. 1345.21](#)) gives consumers three days to cancel sales made in their homes or outside the seller's regular place of business.
- **Credit and debt counseling services: three days.** Ohio's Credit Services Organization Act (starting at [R.C. 4712.01](#)) gives consumers three days to cancel credit and debt counseling services.
- **Prepaid entertainment contracts: three days.** Ohio's Prepaid Entertainment Contracts Act (starting at [R.C. 1345.41](#)) – which covers the sale of services for dance lessons, dating agencies, martial arts schools and health spas – gives consumers three days to cancel.
- **Home equity loans or mortgage refinancing: three days.** The federal Truth in Lending Act gives consumers three days to cancel a home equity loan or a mortgage refinancing.
- **Business opportunity plans: five days.** Ohio's Business Opportunity Purchasers Protection Act (starting at [R.C. 1334.01](#)) gives consumers five days to cancel a business opportunity agreement.
- **Hearing aids: 30 days.** Ohio's Hearing Aid Returns Act ([R.C. 1345.30](#)) gives consumers the right to return a hearing aid for any reason within 30 days after its original delivery.
- **Telemarketing sales: seven days or until buyer signs a written agreement:** Ohio's Telephone Solicitation Sales Act (starting at [R.C. 4719.01](#)) requires the telemarketer to either obtain a signed written confirmation or provide the buyer a seven-day notice of cancellation.

NOTE: Except as provided under statutes described above, consumers do not have a general three-day right to cancel a contract or purchase. For example, consumers do not have the right to cancel the purchase of a motor vehicle.

How are cancellation periods measured?

Ohio law generally measures cancellation periods in business days, although sellers should check individual statutes to determine what rules apply. Business days are Mondays through Saturdays; Sundays and federal holidays are not considered business days. Federal holidays are New Year's Day, Martin Luther King Jr. Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving and Christmas.

What is the seller's responsibility?

When a seller enters into a contract and cancellation rights are applicable, the seller generally must provide consumers a cancellation form at the time of the sale. Sellers should check the applicable law to determine what information the cancellation notice must contain. Generally, cancellation periods do not take effect until the consumer receives written notification of the right to cancel.

For example, if a health club sells a membership but fails to provide the consumer with written notice of the right to cancel, the consumer's right to cancel extends until the club provides written notice. The cancellation notice or form must comply with all requirements.

What is the consumer's responsibility?

In general, to take advantage of a three-day "cooling-off" period, a consumer must cancel in writing by midnight of the third business day after the transaction. For example, if a martial arts school signs a contract with a consumer on a Saturday, then the consumer has until midnight on the next Wednesday to cancel the contract, because Sunday is not a business day. If no contract is used, or if the contract does not comply with the law, the consumer's right to cancel extends until the supplier complies with the contract requirements.

To cancel the contract, the consumer may sign and date the form and mail it to the address provided for cancellation. If the consumer does not use the cancellation form, the consumer may write a letter to notify the seller of the cancellation. The cancellation is effective upon the postmarked date of the letter. Essentially, this means that a cancellation is valid as long as the consumer's letter is postmarked by the final date of the cancellation period, even if the seller does not receive or process the letter until after that date.

Consumers also may cancel a contract by personally delivering the cancellation to the appropriate address of the seller. Again, the cancellation must be in writing. Under Ohio law, it is not acceptable to cancel a contract via telephone. Under certain laws, consumers may cancel by email or fax.

When to offer cancellation rights:

- Door-to-door sales: three days
- Credit and debt counseling services: three days
- Prepaid entertainment contracts (such as dance lessons): three days
- Home equity loans or mortgage refinancing: three days
- Business opportunity plans: five days
- Hearing aids: 30 days
- Telemarketing sales: seven days or until the buyer signs a written agreement, depending on the transaction

Consumers do not have a general three-day right to cancel a contract for *all* consumer transactions.

Credit Services Organization Act

Ohio's Credit Services Organization Act (starting at [R.C. 4712.01](#)) mandates registration and bonding for organizations that offer credit repair, debt counseling and related services.

What is a credit services organization?

A credit services organization refers to any person who advertises, sells, provides or performs one or more of the following services:

- Improving a buyer's credit record, history or rating
- Obtaining an extension of credit by others for a buyer
- Providing advice or assistance to a buyer about improving or obtaining credit
- Removing negative but accurate information from the buyer's credit record
- Altering the buyer's identification to prevent the display of the buyer's credit record, history or rating

What organizations are exempt from the law?

Certain organizations or individuals are not considered credit services organizations. Included are a person who makes or collects loans who is, if applicable, properly licensed/registered; licensed mortgage brokers; banks; credit unions; 501(c)(3) nonprofits offering budget and debt counseling services; and government agencies. For additional exemptions, see [R.C. 4712.01](#).

How long do consumers have to cancel a contract with a credit services organization?

The law gives consumers a three-day right to cancel contracts with credit services organizations. Credit services organizations must provide consumers with written contracts and written notification of their right to cancel; each contract shall have two easily datable copies of a notice of cancellation.

Debt Adjusters Act

Ohio's Debt Adjusters Act (starting at [R.C. 4710.01](#)) sets rules and regulations for individuals, partnerships, associations, corporations, trusts and other legal entities that offer debt adjusting, budget counseling, debt management, debt pooling or other services that affect the adjustment of a debt or disburse money from a debtor to the debtor's creditor.

Among other provisions, the law:

- Requires debt adjusters to file the results of an annual audit, conducted by an independent CPA, with the Attorney General's Office.
- Requires debt adjusters to maintain separate trust accounts for funds and maintain \$100,000 insurance coverage to protect against loss of debtors' money.
- Prohibits debt adjusters from accepting more than \$75 for initial consultation, accepting more than \$100 annually for consultation fees or contributions, and charging a periodic fee or contribution more than 8.5% of amount paid by debtor each month or \$30, whichever is greater.

Deposits

Generally, a seller may not accept a deposit for a consumer transaction unless the seller will be able to provide the goods or services to the consumer. A deposit is money a consumer pays in advance toward the purchase of a good or service.

Deposit Rule

The Deposit Rule ([O.A.C. 109:4-3-07](#)) says that if a seller accepts a deposit for unique (one-of-a-kind) goods or services, the seller may not offer those goods or services to anyone else within a specific period. If the goods or services are not unique, sellers may accept deposits only if they have enough goods or services for all consumers who make deposits.

Receipt for a deposit

The Deposit Rule requires the seller to provide the consumer with a dated receipt that includes:

- A description of the goods and/or services.
- The cash selling price (for motor vehicles, this includes all discounts, rebates and incentives).
- The amount of the deposit and amount for any trade-ins or discounts.
- The time frame to exercise any options.
- Whether the deposit is refundable and the refund terms.
- Any additional costs, including storage, assembly and/or delivery charges.

Each time the consumer makes an additional deposit, the seller must provide a receipt showing the date, amount paid and remaining balance.

Door-to-Door Sales

Ohio's Home Solicitation Sales Act (starting at [R.C. 1345.21](#)) protects consumers from high-pressure, door-to-door sales by giving them a three-day "cooling-off" period during which the contract can be canceled. After signing the agreement, the consumer has until midnight of the third business day to cancel.

What is a home solicitation sale?

For the purposes of this law, a home solicitation sale is a sale of \$25 or more in which the seller makes an in-person solicitation at the consumer's home and the agreement is made at the consumer's home. It also applies to sales made outside a seller's normal place of business, such as a fair booth or hotel meeting room. Additionally, the law applies when the seller invites an in-person solicitation (such as a flyer encouraging consumers to schedule a home visit from a roof repair company) and then makes the agreement at the consumer's home.

What does Ohio law require of door-to-door sales?

Under the Home Solicitation Sales Act, a seller must:

- Give the consumer a copy of the signed written agreement, including the date, the seller's name, the seller's address and essentially the same language used in the verbal sales presentation.
- Provide a completed notice of cancellation form, attached to the contract, notifying consumers of their right to cancel. For more information, see [R.C. 1345.23](#).
- Accept the consumer's right to cancel the sale, for any reason, within three business days of the sale.
- Not begin any service or sell any loan agreement the consumer signed until the three-day cooling-off period has ended.

What happens if a consumer cancels a door-to-door sale?

If a consumer cancels a home solicitation sale, the seller must provide a refund to the consumer within 10 days of receiving the consumer's cancellation notice. If any goods were left at the consumer's home, the consumer must make those goods available to the seller, who must arrange to pick them up.

Some cities and municipalities may require door-to-door solicitors to be registered. Sellers should check with the appropriate city or municipality in which they intend to solicit.

Door-to-door sales overview:

- In door-to-door sales of \$25 or more, sellers must give consumers three days to cancel.
- The seller must provide a written agreement and written cancellation notice.
- The seller may not begin services until after the three-day cancellation period ends.
- If the consumer cancels, the seller must provide a refund within 10 days.

Failure to Deliver/Substitutions

Under the CSPA, a seller may not advertise prompt delivery of goods or services unless the seller actually takes reasonable steps to ensure prompt delivery ([O.A.C. 109:4-3-09](#)).

Failure to deliver

It is deceptive for a seller to accept money from a consumer and allow eight weeks to pass without:

- Delivering the goods or services.
- Providing a full refund.
- Telling the consumer about the delay and offering to send a refund within two weeks, if the consumer requests it.
- Substituting similar goods or services of equal or greater value, if the consumer agrees.

Substitutions of “equal or greater value”

To be considered “equal or greater value,” the substituted goods or services must be substantially similar to the original goods or services. They also must be made for the same purposes and cannot have a lower normal price than the original goods or services.

Sellers may not provide similar goods of equal or greater value when they had no intention to ship, deliver or install the original goods ordered.

Gift Cards

Consumers have certain gift card rights under Ohio law and additional rights under federal law. Both sets of rights combine to provide maximum protection for consumers. In general, most gift cards must last at least five years and sellers generally cannot impose inactivity fees for at least two years after the card's issue date.

How can sellers comply with both Ohio and federal gift card regulations?

For single-merchant gift cards or affiliated-merchant gift cards, sellers cannot impose fees for two years (excluding prepaid phone cards and gift cards exempted by Ohio's Gift Card Act, [R.C. 1349.61](#)).

After the two-year period, sellers may charge fees only after a 12-month period of inactivity and only one fee within a given month. The fee type, amount and frequency must be clearly and conspicuously disclosed on the card and made known to the buyer before the purchase.

For prepaid network-branded gift cards, which are redeemable at any merchant who accepts the brand, fees can be administered once a month after a 12-month period of inactivity. In other words, sellers do not have to wait two years as they do with single-brand gift cards. This is because Ohio law, which prohibits fees for the first two years, does not apply to mall cards, bank-branded gift cards or credit-branded gift cards.

What are the requirements for expiration dates?

A general-use prepaid card, gift certificate or store gift card cannot have an expiration date within five years of the date the card was issued or within five years of the date funds were last loaded on the card, unless the end use is for business purposes. The expiration terms also must be clearly and conspicuously stated.

Reloadable cards marketed as gift cards must alert consumers to any difference between a card's expiration date and the funds' expiration date. It also must explain that the consumer may obtain a replacement card (or a refund, at the discretion of the issuer) without any fee as long as the underlying funds still are valid.

Ohio's gift card law

Under Ohio's Gift Card Act, most single-store gift cards must not expire or be assessed fees within two years of the date the card was issued. Specifically, merchants cannot sell gift cards or gift certificates with an expiration date of less than two years from the date the gift card was issued (federal law extends this to five years, in many cases). If the gift card has no expiration date, it is valid until redeemed or replaced with a new gift card. Merchants may not charge service fees, dormancy fees, latency fees, administrative fees or any other fees that reduce the total amount of the gift card, within two years of the card being issued.

What cards are not covered by Ohio's gift card law?

Ohio's Gift Card Act does not apply to gift cards or gift certificates that are:

- Distributed pursuant to an awards, loyalty or promotional program for which the consumer gives no money or anything of value in exchange for the card.
- Sold below face value at a volume discount to employers or sold to nonprofits and charities for fundraising purposes, if the card expires within 30 days after the sale date.
- Sold by a nonprofit or charitable organization for fundraising purposes.
- Issued to an employee from an employer for use exclusively at the employer's business establishment, which includes a group of merchants affiliated with that business establishment.
- Used to purchase hunting or fishing licenses or other wildlife permits, as defined under [R.C. 1533.131](#).
- Issued by an employer to an employee in recognition of the employee's service.
- Usable with multiple retailers that have no affiliated goods or services, including mall cards, bank-branded gift cards and credit-branded gift cards.

Liability for violating Ohio's gift card laws

Violators of Ohio's gift card laws are liable to the holder for any amount that the redemption value of the gift card was reduced, any court costs incurred and reasonable attorney's fees.

Federal law

Provisions of the federal Credit Card Accountability, Responsibility and Disclosure Act of 2009 (Credit CARD Act) require most gift cards to last at least five years.

Sellers cannot impose inactivity, dormancy or service fees on gift certificates, store gift cards or general-use prepaid cards unless the card has been inactive for one year (or, if Ohio law applies, for at least two years). After a 12-month period of inactivity, one fee may be imposed per calendar month.

Additionally, the seller must clearly and conspicuously disclose any inactivity, dormancy or service fees on the card or certificate itself.

What cards are not covered by the federal law?

The federal gift card rules do not apply to cards whose end use is for business purposes, such as a gift card issued from an employer to an employee for travel expenses. Additional exclusions include cards that are issued because of a loyalty or promotional program, reloadable prepaid cards not labeled as gift cards, and cards not marketed to the general public. To qualify for the loyalty or promotional exemption, the front of the card must state the expiration date and that the card is intended for loyalty, promotional or award purposes.

Cards issued in paper form only, without any necessary information in electronic form, also are excluded, as are cards that provide a certain percentage off a purchase, such as a card that offers "20% off any purchase."

Additionally, the federal restrictions do not apply to certificates that are for a certain service or experience (such as a spa treatment) or solely for admission to an event or venue (such as an amusement park ticket) when such certificates are not issued in a specified amount. On the other hand, if a card for a service states a specified amount or specifies a monetary value, it is subject to the rules, unless other exemptions apply.

TYPE OF GIFT	MIN. EXPIRATION DATE	FEES ALLOWED
Gift card for single store or restaurant	Five years	First two years, no fees allowed, then only one fee per month after 12-month period of inactivity
Reloadable gift card for any purchase at a shop	Five years	First two years, no fees allowed, then only one fee per month after 12-month period of inactivity
Rewards card for free coffee after 10 th purchase	No restrictions	No restrictions
Certificate for free manicure at local spa	No restrictions	No restrictions
Mall gift card valid at all stores in the mall	Five years	After 12-month period of inactivity, one fee per month
Coupon labeled as gift certificate for entrance to a craft show	No restrictions	No restrictions
Card given by employer to employee for business purposes	No restrictions	No restrictions

Overview of gift card rules:

- Many gift cards must last at least five years from their issue date.
- For single-store gift cards, fees generally cannot be assessed for at least the first two years and then only after a 12-month period of inactivity (one fee per month).
- For multiple-store gift cards (usable at unaffiliated merchants), a fee generally can be assessed after a 12-month period of inactivity, but only one fee may be assessed per calendar month.
- State and federal gift card laws differ, but many sellers must comply with both to provide the maximum protection for consumers.

Going out of Business/Distress Sales

If a seller advertises a sale using claims such as “going-out-of-business,” “final liquidation” or “everything must go,” those claims must be accurate.

What is a distress sale?

Under the Distress Sale Rule ([O.A.C. 109:4-3-17](#)), a “distress sale” is any sale that would lead a consumer to believe the seller has or is:

- Going out of business.
- Discontinuing all or any portion of its business.
- Lost or is terminating its lease.
- Liquidating its assets (“final liquidation,” “everything must go”).
- Suffered a disaster (fire, smoke, or water).
- In bankruptcy or receivership.
- Holding the sale based on its financial condition.

If none of those conditions applies, a seller may not advertise a sale as a distress sale.

Distress sales do not include the sale of special purchase items, clearance items or seasonal items. Additionally, the Distress Sale Rule does not apply to licensed auctioneers, sheriffs or other public officials selling goods in the course of their official duties. However, sellers in receivership or bankruptcy, or any liquidator acting on their behalf are subject to and must comply with Ohio’s Distress Sale Rule unless enforcement would conflict and be preempted by federal law.

Time limits for holding a distress sale

Under the Distress Sale Rule, sellers may not advertise or conduct a distress sale for more than 45 days, but they may extend the sale for an additional 45-day period by clearly and conspicuously disclosing the extension in any advertisement or other representation regarding the sale.

Additional restrictions

The Distress Sale Rule also sets forth the following restrictions:

- No substituting goods. A seller may not substitute or supplement its goods with goods from another outlet unless (1) those goods were ordered before announcing or advertising the distress sale (2) the goods were ordered in compliance with Ohio’s Bait Advertising Rule ([O.A.C. 109:4-3-03](#)) or (3) the goods were owned prior to the bankruptcy or receivership, and the goods were transferred pursuant to court order and all advertisements clearly and conspicuously note the goods were added to the distress sale.
- No misrepresentation. A seller may not misrepresent the former price, savings, quality or ownership of any goods to be sold. The seller may not indicate a sale is a liquidation or similar type of sale unless the seller is liquidating all assets for final distribution. It also may not misrepresent who is holding the distress sale.

- No reopening. A seller may not advertise or hold a going-out-of-business sale and then reopen, or resume the same business under the same – or any new – name if the ownership and/or control of the business remain the same, within 12 months after the distress sale.

Sellers that hold distress sales also must physically separate or otherwise identify distress sale items from regular stock items in the store.

Advertising requirements

When advertising a distress sale, a seller must:

- Include the start and end dates of the sale.
- Disclose the intention to close and relocate after the distress sale, if that is the case.
- Distinguish distress sale items from regular stock items, if some items are not part of the distress sale.

Some cities and municipalities may have additional requirements for advertising and conducting distress sales. Sellers should check with the appropriate entities.

Home Construction Services

The Home Construction Services Act (covered by [R.C. 4722.01](#) to [R.C. 4722.08](#)) generally requires a supplier to enter into a written contract with an owner before performing home construction services that cost \$25,000 or more. It also requires the supplier to provide the owner with a written or oral estimate (as selected by the owner) before beginning unforeseen but necessary work when costs total more than \$5,000.

Transactions involving a home construction service contract as defined in [R.C. 4722.01](#) are exempt from the definition of a consumer transaction under the Consumer Sales Practices Act, [R.C. 1345.01](#).

Home construction service defined

A home construction service contract generally means a contract to construct a residential building for more than \$25,000. A residential building is a one-, two- or three-family dwelling. (It is not an industrialized unit, a manufactured home or a mobile home.)

Required written contract

A home construction service supplier must enter into a written contract with the owner when the cost of the contract will exceed \$25,000. The contract must include all agreements and conditions, including:

- Supplier's name, address, phone number and taxpayer identification number.
- Owner's name, address and phone number.
- Address or location of the property where construction services will be performed.
- Description of the work.
- Anticipated beginning and ending dates or time periods.
- Total estimated cost.
- Any installation or delivery costs not covered by the total estimated cost.

- A copy of the supplier's certificate of insurance showing general liability coverage of \$250,000 or more.
- Dated signatures of the owner and supplier.
- Statement regarding estimate for excess costs. (See explanation below.)

Estimate for excess costs

If the total unforeseen but needed costs exceeds \$5,000, the supplier generally must provide the owner with a written or oral estimate, based on the owner's preference. To determine the owner's preference, the contract must include a statement with language substantially similar to the following:

"EXCESS COSTS

IF AT ANY TIME A HOME CONSTRUCTION SERVICE REQUIRES EXTRA COSTS ABOVE THE COST SPECIFIED OR ESTIMATED IN THE CONTRACT THAT WERE REASONABLY UNFORESEEN, BUT NECESSARY, AND THE TOTAL OF ALL EXTRA COSTS TO DATE EXCEEDS FIVE THOUSAND DOLLARS OVER THE COURSE OF THE ENTIRE HOME CONSTRUCTION CONTRACT, YOU HAVE A RIGHT TO AN ESTIMATE OF THOSE EXCESS COSTS BEFORE THE HOME CONSTRUCTION SERVICE SUPPLIER BEGINS WORK RELATED TO THOSE COSTS. INITIAL YOUR CHOICE OF THE TYPE OF ESTIMATE YOU REQUIRE:

..... written estimate oral estimate"

If the contract stipulates that the home construction service is a firm price, or if the contract is a cost-plus contract, the supplier does not need to comply with the excess cost notice requirement.

Layaway Arrangements

In a layaway arrangement (covered by [R.C. 1317.21](#) to [R.C. 1317.24](#)), the seller agrees to hold certain goods for the buyer and delivers the goods based on payment arrangements.

Layaway arrangements of \$500 or less

Layaway agreements for goods costing \$500 or less need not be in writing. The buyer may cancel such an agreement at any time but must do so in writing. If the buyer fails to make a payment when due, the seller must notify the buyer of the default in writing. The buyer has 10 days to correct the default. After 10 days, if the buyer has not fixed the default, the seller is entitled to \$25 or 10 percent of the value of the goods, whichever is less.

Layaway arrangements of \$500 or more

If the layaway arrangement costs more than \$500, the buyer must receive a copy of the written contract upon the buyer's first payment. The buyer may cancel at any time but must do so in writing. The buyer may not be penalized for canceling within the first five days, and the buyer's down payment, deposit or partial payment must be returned. Thereafter (or if the buyer defaults), the buyer may be penalized by up to 50% of the total amount the buyer has already paid.

Personal Information of Consumers

Certain Ohio laws specify how sellers should handle consumers' personal information, such as their Social Security numbers and credit card numbers, and how they should address a security breach that puts consumers' personal information at risk.

Printing credit card numbers on receipts

Ohio's Credit Card Truncation Act ([R.C. 1349.18](#)) prohibits sellers from printing the expiration date or more than the last five digits of a consumer's credit or debit card number on a receipt. This law applies to sellers such as restaurants, stores, online retailers and other entities that electronically print these numbers on receipts.

Recording a consumer's Social Security number

The Credit Card Recording Act ([R.C. 1349.17](#)) says that sellers may not record a consumer's credit card or Social Security number when a check, bill of exchange or other draft is presented for payment, unless all the following conditions apply:

- The number is recorded for a legitimate business purpose, including collection purposes.
- The number is not disclosed to any third party, except for collection purposes.
- The consumer consents to having the number recorded.

Security breach

A security breach is the unauthorized access to and acquisition of personal information that causes, reasonably is believed to have caused or reasonably is believed will cause a risk of identity theft or other fraud to the person or property of a resident of this state.

What is "personal information"?

Personal information is an individual's name connected with any of the following data, if the data is not encrypted, redacted or altered to make them unreadable:

- Social Security number.
- Driver's license number or state identification card number.
- Account number, credit card number or debit card number linked to a security code or password.

Do consumers need to be notified of a breach?

Under the Security Breach Notification Act ([R.C. 1349.19](#)), consumers must be notified of any security breach to stored personal information that may reasonably cause a material risk of identity theft or other fraud.

How quickly must a business notify consumers of a breach?

Consumers must be notified in the quickest way possible but generally not later than 45 days after the breach is discovered (subject to certain restrictions in the law).

What is an acceptable notice of a breach?

The type of notice required depends on the number of consumers affected and the size of the business. Depending on these factors, it may be acceptable to notify consumers in writing, via e-mail or electronic notice, over the phone, through the local newspaper, on the business's website or through notification to major media outlets in the area where the entity is located. For more information, see [R.C. 1349.19\(E\)](#).

Prepaid Entertainment Contracts

Ohio's Prepaid Entertainment Contracts Act ([R.C. 1345.41](#) to [R.C. 1345.50](#)) gives consumers three business days to cancel a prepaid entertainment contract, such as a gym membership.

What is a prepaid entertainment contract?

Under Ohio law, a prepaid entertainment contract is a contract under which the buyer pays for or is obligated to pay for services before the buyer receives or enjoys the services. These services include dance studio lessons, social referral services (such as dating services), martial arts training and health spa services (such as gym memberships).

How long do consumers have to cancel a prepaid entertainment contract?

Under the Prepaid Entertainment Contracts Act, suppliers must give consumers a three-day right to cancel. Specifically, consumers have until midnight of the third business day after which the first service is available to cancel the contract. Health clubs and other prepaid entertainment sellers are required to give consumers notice of their right to cancel. If a consumer chooses to cancel the contract, the cancellation must be in writing and the cancellation letter must be postmarked by midnight of the third day. In the event of a cancellation, the company must refund any money the consumer has paid, minus an expense fee up to \$10.

What if the facility is not yet open?

If the facility has not yet opened for business when the consumer signs the contract, the consumer's right to cancel extends to seven days after the first service under the contract is available. The facility or services must be available to the consumer no later than 180 days (six months) after the contract is signed. The business cannot require the consumer to pay more than \$50 or 10% of the total contract price, whichever amount is less, before the facility opens.

What happens if the facility relocates or the consumer moves?

If the facility relocates 25 miles or more from a consumer's home, or if the consumer moves 25 miles or more away from the facility, the consumer has the right to a refund that is proportionate to the time remaining in the contract. The only exception is if a similar facility within 25 miles of the consumer's home takes over the contract.

How long can a prepaid entertainment contract last?

The terms of a prepaid entertainment contract cannot exceed three years.

What contracts are not covered under the Prepaid Entertainment Contracts Act?

The Prepaid Entertainment Contracts Act does not apply to all contracts for “prepaid entertainment.” For example, contracts not covered by the law include prepaid tanning salon sessions prepayment for a band, prepaid plans at laser tag or paint ball facilities and prepaid plans for ring tones or other cellphone services. Also not included are contracts for services provided by any public or private nonprofit school, college or university; by the state; or by any nonprofit religious, ethnic, or community organization. Nevertheless, sellers who provide these services must clearly and conspicuously notify consumers of their return policies and other important terms and conditions.

Refund Policies and Restocking Fees

Sellers are not required to have any specific type of return policy under Ohio law. However, if a store has a refund policy, it must be clearly and conspicuously posted ([R.C. 1345.03\(B\)\(7\)](#)).

A refund policy may not be printed only on the receipt, because the consumer sees the receipt after the purchase has been made. If a seller does not have a refund policy posted, a consumer who requests a refund is entitled to one.

Ohio law does not prohibit restocking fees, or fees for returning an item to the shelves. Nevertheless, sellers should clearly and conspicuously disclose any restocking fees before the consumer makes a purchase.

Repairs and Services

Repairs and services are covered by [O.A.C. 109:4-3-05](#) (all repairs and services) and by [O.A.C. 109:4-3-13](#) (motor vehicle repairs and services).

Estimates

In general, the rules give consumers the right to a verbal or written estimate for repairs or services that will cost more than \$25 (more than \$50 for motor vehicles). The rules also require suppliers to obtain the consumer’s authorization for additional repairs or services whose costs will exceed 10% of the estimate.

Upon an initial face-to-face contact with the consumer, the supplier must provide a form listing the:

- Date.
- Supplier’s identity.
- Consumer’s name and phone number.
- Anticipated cost of the repair or service, if requested by the consumer.
- Reasonably anticipated completion date.
- Disclosure of the consumer’s right to an estimate.

Required disclosures

The disclosure of the consumer's right to an estimate may be a separate form or incorporated into another form, as long as the required disclosures are easily legible and clearly and conspicuously appear on the form.

The disclosure form must use substantially the following language:

<p>ESTIMATE</p> <p>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:</p> <p><input type="checkbox"/> Written estimate</p> <p><input type="checkbox"/> Oral estimate</p> <p><input type="checkbox"/> No estimate</p>

If no face-to-face contact with the consumer has taken place, upon first contact the supplier must verbally inform the consumer of the right to an estimate. If the consumer requests a verbal estimate, the supplier must provide the estimate before starting the repair or service. If the consumer requests a written estimate, the supplier must prepare the estimate, tell the consumer it has been prepared, and, if the consumer requests, give it to the consumer before starting the repair or service.

For repairs or services that occur at the consumer's residence and whose anticipated cost exceeds \$25, the supplier or its representative must verbally inform the consumer of the right to an estimate during the initial face-to-face contact before starting the repairs or services. For additional disclosure requirements, including disclosures that must appear on signs at a supplier's place of business, see [O.A.C. 109:4-3-05](#).

Alternative to providing an estimate

In lieu of these requirements, the supplier may provide the consumer with a written quotation of the price at which the repair or service will be performed, indicating that the quotation shall be binding on the supplier for five days. If the supplier chooses this option, the repair or service must be available to consumer for that period.

Authorization for extra work

If the consumer requested an estimate and the anticipated cost of the repair or service is \$50 or less, the supplier must obtain written or verbal authorization for extra costs of more than \$5 (excluding tax). For example, if the original estimate for a repair was \$40 but an unforeseen repair will cost \$7, the supplier must obtain the consumer's written or verbal authorization before beginning the \$7 repair.

If the consumer requested an estimate and the anticipated cost is more than \$50, the supplier must obtain the consumer's written or verbal authorization if the total cost will be 10% or more (excluding tax) of the original estimate. For example, if the original estimate was \$200, but the supplier later determines that the repairs will cost \$300, the supplier must obtain the consumer's written or verbal authorization before beginning the additional repairs, given that the \$100 in additional costs is more than 10% of \$200.

Additional requirements for repairs and services

In any repair or service transaction, the supplier must disclose:

- Charges for disassembly or reassembly.
- Charges for work that gets only partially completed.
- Storage charges.
- Service charges, travel charges and charges for diagnosis.
- Work that will be performed by a third party, if the supplier disclaims the warranty of that work.

Suppliers also must provide to consumers:

- A written itemized list of repairs or services performed.
- Replaced parts, unless the parts are rebuilt or returned to the manufacturer per warranty.
- Copies of documents signed by the consumer.
- Upon the consumer's request, a written receipt of goods left for repair, including the supplier's identity, the signature of the supplier or its representative and a description of the goods left (including the make and model).

Under the Repairs and Services Rule, suppliers may not:

- Represent that certain repairs or services are needed if they are not.
- Misrepresent repairs or services performed.
- Materially underestimate or misstate estimated cost.
- Represent that repairs must be made outside a consumer's home when that is not the case.

Auto repairs and services

The Motor Vehicle Repairs or Services Rule ([R.C. 109:4-3-13](#)) conforms closely to the Repairs and Services Rule except the right to an estimate exists when the repairs or services will cost more than \$50 instead of \$25. Some additional requirements apply to auto repairs and services.

One of the additional rules: If a supplier permits "night drops" – meaning that consumers can drop off vehicles for repair after business hours – the supplier must provide two forms stating the consumer's right to an estimate. The consumer should be instructed to leave one form at the facility and to keep the other copy for himself or herself. The form must identify the supplier and disclose the consumer's right to an estimate.

Overview of repairs and services rules:

- Consumers have the right to an estimate for repairs and services of more than \$25 (more than \$50 for motor vehicles).
- Sellers must provide consumers notice of their right to an estimate.
- If the cost will be 10% or more of the estimate, sellers must get the consumer's permission before beginning the additional work.
- Suppliers may not misrepresent repairs or services performed or needed.

Retail Installment Sales

Ohio's Retail Installment Sales Act (RISA) (starting at [R.C. 1317.01](#)) covers certain types of sales in which the cash price may be paid in installments over an extended period.

Contacts covered under RISA

Sales of the following goods and services are covered under RISA: health spa services, home improvement services, automobiles, mobile homes, furniture, cemetery burial plots and swimming pools. Additional installment sales also may apply.

Requirements for a RISA contract

A RISA contract must be in writing, and the seller must provide a copy of the signed contract to the buyer. Each contract must contain the following:

- Cash price of the specific goods.
- Buyer's down payment, if any, of money and/or goods.
- Unpaid balance of the cash price.
- Cost of any insurance the buyer has agreed to purchase.
- Principal balance owed on the contract.
- Amount of the finance charge.
- Total amount owed, number of installment payments required, and amount and due date of each payment.

Prohibited charges

Certain charges are prohibited in a RISA contract, such as attorney fees and excessive finance charges for document services or late payments.

Under RISA, if the original seller transfers the contract to another person, that person inherits the legal rights the consumer had under the original seller. The transfer of the contract to another seller or owner does not change the consumer's legal rights.

Telemarketing and Do Not Call Registry

Sellers who make telemarketing calls to consumers must ensure that they comply with state and federal telemarketing laws, notably Ohio's Telephone Solicitation Sales Act, the Federal Trade Commission's Telemarketing Sales Rule and the Telephone Consumer Protection Act of 1991, including their Do Not Call provisions.

What is a telephone solicitation?

In general, a telephone solicitation is communication initiated by or on behalf of a telephone solicitor (telemarketer) or a salesperson and meant to induce the consumer to purchase goods or services.

What are Ohio's telemarketing laws?

The Telephone Solicitation Sales Act (starting at [R.C. 4719.01](#)) requires certain telemarketing businesses operating inside and outside Ohio to register with the Ohio Attorney General's Office and to post a bond before soliciting Ohio consumers. To determine whether registration is required, sellers should carefully review the definitions and exemptions of the law in [R.C. 4719.01](#).

What is required under Ohio's Telephone Solicitation Sales Act?

Under the Telephone Solicitation Sales Act:

- A telephone solicitor may not block the disclosure of his or her telephone number on caller ID.
- A solicitor must state, within the first 60 seconds of a call, his or her real name, the company name, the purpose of the call, and the goods or services being sold.
- If a sale or agreement is made during the call, the telephone solicitor must (verbally) provide the consumer with the following information *before* requesting payment:
 - Solicitor's street address and telephone number.
 - Total cost of the goods or services.
 - Restrictions, limitations or conditions.
 - Refund/cancellation policy terms and conditions.
 - For prize promotions, a description of the prize, terms and conditions.
 - The consumer's legal rights, which require the telemarketer to either obtain a signed written confirmation or provide a seven-day notice of cancellation.
- A solicitor who intends to offer prizes must provide notice to the Attorney General's Office at least 14 days before making calls.

When can a telemarketer collect payment?

The Telephone Solicitation Sales Act says that a sale is not valid until the sale is documented by either a signed written agreement or by providing a notice of cancellation. Specifically, telephone solicitors have the following two options for evidence agreements with consumers:

- Solicitors may accept a consumer's payment for goods and services *only after* obtaining a signed written contract from the consumer that contains specific material terms found at [R.C. 4719.07\(F\)](#); or
- Solicitors may accept a consumer's payment during the telephone solicitation if they comply with the Federal Trade Commission's Telemarketing Sales Rule method of confirming sales (16 C.F. R. part 310.3 to 310.05, available at [www.ftc.gov](#)) and they give an unconditional full refund for cancellations within seven days after the consumer's receipt of the goods and a NOTICE OF CANCELLATION, which includes specific material terms and notice language that can be found at [R.C. 4719.07\(H\)\(3\)](#).

Does the Ohio attorney general enforce federal telemarketing laws?

Yes. The attorney general has the authority to enforce the federal telemarketing laws; the Telemarketing and Consumer Fraud and Abuse Prevention Act, which incorporates the Federal Trade Commission's Telemarketing Sales Rule; and the Telephone Consumer Protection Act of 1991.

Do Not Call Registry

Businesses that wish to solicit customers by telephone must comply with the Do Not Call restrictions of two very similar federal laws, the FTC's Telemarketing Sales Rule and the Telephone Consumer Protection Act of 1991. Both federal statutes require businesses to access the National Do Not Call Registry, which is maintained by the FTC and to "scrub," or remove, registered numbers from their calling lists. The laws also require businesses to maintain internal Do Not Call lists to track requests made by the consumers upon receipt of a call.

The laws are enforced by the FTC, the Federal Communications Commission (FCC) and state officials. Ohio does not have a separate Do Not Call law, although the federal laws may be enforced in federal or state court by the attorney general. Businesses that violate the Do Not Call provisions may be ordered to pay damages for each violation.

What calls are covered?

The Do Not Call provisions cover interstate and intrastate phone calls. They cover any plan, program or campaign to sell goods or services, including calls by telemarketers who solicit consumers on behalf of third-party sellers. The provisions also apply to sellers who are paid to provide, offer to provide or arrange to provide goods or services to consumers. Even if sellers make telemarketing calls infrequently and dial by hand, they generally must comply with the Do Not Call provisions.

What calls are not covered?

The Do Not Call provisions do not cover calls from political organizations, telephone surveyors, companies with which a consumer has an existing business relationship or to which a consumer has given express written permission to the organization or caller. Charitable organizations are not covered by the Telephone Consumer Protection Act, but they are covered by the Telemarketing Sales Rule.

If a call includes a telephone survey and a sales pitch, is it covered?

Yes. Callers purporting to take a survey but also offering to sell goods or services must comply with the Do Not Call provisions. But if the call is for the sole purpose of conducting a survey, it is exempt.

How does the “established business relationship” provision work?

A company with which a consumer has an established business relationship may call for up to 18 months after the consumer’s last purchase, last delivery or last payment, unless the consumer asks the company not to call again. In that case, the company must honor the request not to call.

If a consumer makes an inquiry or submits an application to a company, the company can call for three months. Once again, if the consumer makes a specific request to that company not to call, the company may not call, even if it has an established business relationship with the consumer. A consumer whose number is not on the national registry still can prohibit individual telemarketers from calling by asking to be put on the company’s internal Do Not Call list.

How can I download the registry or get more information?

To download the registry, visit the FTC’s website, www.ftc.gov. To learn more, visit www.ftc.gov and www.fcc.gov.

Telemarketing and Do Not Call overview:

- Covered telephone solicitors must register with the Ohio Attorney General’s Office.
- To have a valid sale, telephone solicitors must obtain a signed, written confirmation from consumers before accepting money or they may use a notice of cancellation form containing specific language that provides for an unconditional refund for seven days after the consumer’s receipt of the notice and the goods or services.
- Only certain types of calls are exempt from the Do Not Call Registry.
- Do Not Call laws are enforceable by the Ohio attorney general in federal or state courts.

Protecting Small Businesses

The Ohio Attorney General's Consumer Protection Section provides a free complaint dispute resolution process for small businesses and nonprofits.

Businesses often act as consumers in the marketplace – purchasing goods and services from other businesses. And, just like other consumers, businesses can be taken advantage of by the unscrupulous actions of others.

Businesses should file complaints if they have not received a product in the condition promised, been charged for services they did not request or had other problems transacting with another business.

You can learn more at www.OhioAttorneyGeneral.gov/BusinessServices or by calling 800-282-0515.

Complaints and other information sent to the Attorney General's Office are public records, except for protected personal financial information (such as credit card numbers and Social Security numbers). Sensitive personal information should be removed from any documents or information submitted with a complaint. The complaint will be shared with the business that is the subject of the complaint in order to help resolve the issue.

Ohio Consumer Protection Laws

The Ohio attorney general has enforcement authority over more than 25 consumer protection laws, which are listed below. Please note that additional laws may apply. The Ohio Revised Code (R.C.) and the Ohio Administrative Code (O.A.C.) are available at <http://codes.ohio.gov>. You also can find these laws at www.OhioAttorneyGeneral.gov (laws protecting consumers).

- Anti-Pyramid Sales Act (starting at [R.C. 1333.91](#))
- Business Opportunity Purchaser's Protection Act (starting at [R.C. 1334.01](#))
- Certificate of Motor Vehicle Title Act (starting at [R.C. 4505.181](#))
- Condominium Sales Act (starting at [R.C. 5311.25](#))
- Consumer Sales Practices Act (starting at [R.C. 1345.01](#)) and Substantive Rules (starting at [O.A.C. 109:4-3-01](#))
- Credit Card Recording Act (starting at [R.C. 1349.17](#))
- Credit Card Truncation Act ([R.C. 1349.18](#))
- Credit Freeze Act (starting at [R.C. 1349.52](#))
- Credit Services Organization Act (starting at [R.C. 4712.01](#))
- Debt Adjusters Act (starting at [R.C. 4710.01](#))
- Defective Assistive Devices Act (starting at [R.C. 1345.94](#)) (definitions, [R.C. 1345.90](#))
- Gift Card Act ([R.C. 1349.61](#))
- Hearing Aid Returns Act ([R.C. 1345.31](#)) (definitions, [R.C. 1345.30](#))
- Home Construction Service Law (starting at [R.C. 4722.01](#))
- Homebuyer's Protection Act, also known as the Predatory Lending Law and the Mortgage Brokers Act (starting at [R.C. 1322.01](#))
- Home Solicitation Sales Act (starting at [R.C. 1345.21](#))

- Lemon Law (Nonconforming New Motor Vehicle Law) (starting at [R.C. 1345.71](#))
- Motor Vehicle Collision Repair Operators Act (starting at [R.C. 4775.02](#))
- Odometer Rollback and Disclosure Act (starting at [R.C. 4549.41](#))
- Prepaid Entertainment Contracts Act (starting at [R.C. 1345.41](#))
- Public Utilities Commission Act ([R.C. 4905.72](#))
- Retail Installment Sales / Layaway Arrangements Act (starting at [R.C. 1317.01](#))
- Security Breach Notification Act ([R.C. 1349.19](#))
- Short-Term Lender Law, also known as the Payday Lending Law ([R.C. 1321.35](#))
- Telemarketing Act ([R.C. 109.87](#))
- Telephone Solicitation Sales Act (starting at [R.C. 4719.01](#))
- Title Defect Rescission Act ([R.C. 4505.181](#))
- Title Insurance Act (starting at [R.C. 3953.35](#))

Ohio Attorney General's Office, Consumer Protection Section

The Ohio Attorney General's Consumer Protection Section protects Ohio's marketplace by enforcing consumer laws, offering complaint dispute resolution and educating consumers and businesses.

This guide is intended to be used for educational purposes only. The Ohio Attorney General's Office does not provide legal advice to individual consumers or businesses. For legal advice, please consult an attorney. Last updated August 2019.



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OHIO ATTORNEY GENERAL

Complying With Ohio Consumer Law

A Guide for Businesses

**Ohio Attorney General's
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The mission of the **Ohio Attorney General's Consumer Protection Section** is to protect Ohio's consumers and businesses by ensuring a safe and strong marketplace through education, dispute resolution, and the enforcement of consumer laws.

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