

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.
 - (16) "Freight Charge" in a transaction involving the sale of a new motorcycle, a new motorized bicycle, new utility vehicle, new all-purpose vehicle, or other similar type of new vehicle that is not subject to the Automobile Information Disclosure Act of 1958, means the cost paid for the packaging and delivery of a vehicle to a motor vehicle dealer from a manufacturer or distributor. For the purposes of this rule, all references to the word "freight" shall include within that term all other words of similar import and meaning, including "shipping", "delivery", and "destination".
- (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 paragraph (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) of this rule was held invalid by the Ohio supreme court. The Ohio supreme court issued an opinion on July 28,

2009, holding that to the extent paragraph (B)(22) of rule 109:4-3-16 of the Administrative Code 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, e.g., "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.
- (35) In a transaction involving the sale of a new motorcycle, a new motorized bicycle, new utility vehicle, new all-purpose vehicle, or other similar type of new vehicle that is not subject to the Automobile Information Disclosure Act of 1958, to contract for and collect from a purchaser a freight charge in an amount that exceeds the dealer's actual cost of such charge, if such charge is assessed to the dealer by the manufacturer or distributor.

If a dealer contracts and collects from a purchaser a freight charge which is not included in the manufacturer's suggested retail price, the amount must:

(a) Be specified in writing by the dealer;

(b) Reflect the dealer's actual freight charge from the manufacturer or distributor; and

(c) The dealer must make the actual invoice, or a copy thereof, or other documentation furnished by the manufacturer or distributor, available to the customer upon request.

(36) Advertise the price of a new motorcycle, new motorized bicycle, new utility vehicle, new all-purpose vehicle, or other similar type of new vehicle that is not subject to the Automobile Information Disclosure Act of 1958, without clearly and conspicuously disclosing:

(a) That the advertised price includes a freight charge and enumerates the amount of the charge; or

(b) If the advertised price does not include a freight charge, that such charge will be assessed, and enumerates the amount of the charge.

If either (a) or (b) applies, the dealer must make the actual invoice, or a copy thereof, or other documentation furnished by the manufacturer or distributor available to the customer upon request.

A freight charge shall not exceed the actual costs associated with transporting the goods from the manufacturer or distributor to the dealer.

Nothing herein shall require a dealer to charge an amount for freight.

(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.

Effective:

R.C. 119.032 review dates: 05/28/2015

WITHDRAWN ELECTRONICALLY

Certification

12/16/2013

Date

Promulgated Under: 119.03
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Rule Amplifies: 1345.02
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