

3901-8-07

**Advertisement of sickness and accident insurance.****(A) Purpose**

Section 3923.16 of the Revised Code prohibits the use of any advertising copy, advertising plan, or plan of solicitation in connection with the solicitation of sickness or accident insurance which is materially misleading or deceptive. The purpose of this rule is to assure truthful and adequate disclosure of all material and relevant information in the advertising of sickness and accident insurance. This purpose is intended to be accomplished by the establishment of, and adherence to, certain minimum standards and guidelines of conduct in the advertising of sickness and accident insurance in a manner which prevents unfair competition among insurers and is conducive to the accurate presentation and description for the insurance buying public of a policy of such insurance offered through various advertising media.

**(B) Applicability**

- (1) This rule shall apply to any sickness and accident insurance "advertisement," as that term is hereinafter defined, intended for presentation, distribution or dissemination in this state when such presentation, distribution or dissemination is made either directly or indirectly by or on behalf of an insurer, agent, broker or solicitor as those terms are defined in the Revised Code and this rule.
- (2) Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the insurer whose policies are so advertised.
- (3) Advertisements that are reproduced in quantity shall be identified by form numbers or other identifying means. The identification shall be sufficient to distinguish an advertisement from any other advertising materials, policies, applications or other materials used by the insurer.

**(C) Definitions**

- (1) An advertisement for the purpose of this rule shall include:
  - (a) Printed and published material, audio-visual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio scripts, TV scripts, web sites and other internet displays or communications, other forms of electronic communications, billboards and similar displays; and
  - (b) Descriptive literature and sales aids of all kinds issued by an insurer, agent or broker for presentation to members of the insurance buying public,

including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters and lead-generating devices of all kinds;

(c) Prepared sales talks, presentations and material for use by agents;

(d) Advertising material included with a policy when the policy is delivered and material used in the solicitations of renewals and reinstatements;

(e) The definition of advertisement extends to the use of all media for communications to the general public, to the use of all media for communication to specific members of the general public, and to the use of all media for communications by agents;

(f) The definition of advertisement does not include:

(i) Material used solely for the training and education of an insurer's employees or agents;

(ii) Material used in-house by insurers;

(iii) Communications within an insurer's own organization not intended for dissemination to the public; or

(iv) Individual communication of a personal nature with current policyholders other than material urging the policyholders to increase or expand coverages.

(2) "Policy" for the purpose of this rule shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement which provides sickness or accident benefits, or medical, surgical or hospital expense benefits, whether on an indemnity, reimbursement, service or prepaid basis, except when issued in connection with another kind of insurance other than life, and except disability, waiver of premium and multiple indemnity benefits included in life insurance and annuity contracts.

(3) "Insurer" for the purpose of this rule shall include any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds, fraternal benefit society, health insuring corporation, and any other legal entity which is defined as an "insurer" in the Revised Code and is engaged in the advertisement of itself or a policy as "policy" is herein defined.

(4) "Exception" for the purpose of this rule shall mean any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of a risk not assumed under the policy.

(5) "Reduction" for the purpose of this rule shall mean any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the

occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction not been used.

- (6) "Limitation" for the purpose of this rule shall mean any provision which restricts coverage under the policy other than an exception or a reduction.
- (7) "Institutional advertisement" for the purpose of this rule shall mean an advertisement having as its sole purpose the promotion of the reader's, viewer's or listener's interest in the concept of sickness and accident insurance, or the promotion of the insurer as a seller of sickness and accident insurance.
- (8) "Invitation to inquire" for the purpose of this rule shall mean an advertisement having as its objective the creation of a desire to inquire further about sickness and accident insurance and which is limited to a brief description of the loss for which benefits are payable, but may contain:
- (a) The dollar amount of benefit payable, and
  - (b) The period of time during which the benefit is payable, provided the advertisement does not refer to cost. An invitation to inquire shall contain a provision in the following or substantially similar form: "This policy has (exclusions) (limitations) (reduction of benefits) (terms under which the policy may be continued in force or discontinued). For costs and complete details of the coverage, call (or write) your insurance agent or the company (whichever is applicable)."
- (9) "Invitation to contract" for the purpose of this rule shall mean an advertisement which is neither an invitation to inquire nor an institutional advertisement.
- (10) "Lead-generating device" for the purpose of this rule shall mean any communication directed to the public that, regardless of form, content, or stated purpose, is intended to result in the compilation or qualification of a list containing names and other personal information to be used to solicit residents of this state for the purchase of sickness and accident insurance.
- (11) "Prominently" or "conspicuously" for the purpose of this rule shall mean that the information to be disclosed prominently or conspicuously will be presented in such a manner that is noticeably set apart from other information or images in the advertisement.

(D) Method of disclosure of required information

All information required to be disclosed by this rule shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the

contents of the advertisement so as to be confusing or misleading.

(E) Form and content of advertisements

- (1) The format and content of an advertisement of a sickness or accident insurance policy shall be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive. Format means the arrangement of the text and the captions.
- (2) Where an advertisement consists of more than one piece of material, each piece of material must, independent of all other pieces of material, conform to the disclosure requirements of this rule.
- (3) Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, shall not be used.
- (4) An insurer, agent, or other person shall not solicit residents of this state for the purchase of sickness and accident insurance through the use of a true or fictitious name that is deceptive or misleading with regard to the status, character or proprietary or representative capacity of the person or the true purpose of the advertisement.
- (5) Whether an advertisement has a capacity or tendency to mislead or deceive shall be determined by the superintendent of insurance from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, within the segment of the public to which it is directed.
- (6) An insurer shall clearly identify its sickness and accident policy as an insurance policy. A policy trade name shall be followed by the words "insurance policy" or similar words clearly identifying the fact that an insurance policy or health benefits product (in the case of health insuring corporations, prepaid health plans and other direct service organizations) is being offered.
- (7) An insurer, agent, or other person shall not solicit a resident of this state for the purchase of sickness and accident insurance in connection with or as a result of the use of advertisement by the person or any other persons, where the advertisement:
  - (a) Contains any misleading representations or misrepresentations, or is otherwise untrue, deceptive, or misleading with regard to the information imparted, the status, character or representative capacity of the person or the true purpose of the advertisement; or
  - (b) Otherwise violates the provisions of this rule.

(F) Advertisement of benefits payable, losses covered or premiums payable

(1) The use of deceptive words, phrases or illustrations in advertisements of sickness and accident insurance is prohibited.

(a) An advertisement that fails to state clearly the type of insurance coverage that is being offered is prohibited.

(b) No advertisement shall omit information or use words, phrases, statements, references or illustrations if the omission of such information or use of such words, phrases, statements, references or illustrations has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered or premium payable. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale or an offer is made to refund the premium if the purchaser is not satisfied does not remedy misleading statements.

(c) No advertisement shall contain or use words or phrases such as, "all," "full," "complete," "comprehensive," "unlimited," "up to," "as high as," "this policy will help pay your hospital and surgical bills," "this policy will help fill some of the gaps that medicare and your present insurance leave out," "this policy will help to replace your income" when used to express loss of time benefits, or similar words and phrases, in a manner which exaggerates any benefits beyond the terms of the policy.

(d) An advertisement shall not contain descriptions of a policy limitation, exception, or reduction worded in a positive manner to imply that it is a benefit, such as describing a waiting period as a "benefit builder" or stating "even pre-existing conditions are covered after two years." Words and phrases used in an advertisement to describe such policy limitations, exceptions and reductions shall fairly and accurately describe the negative features of such limitations, exceptions and reductions of the policy offered.

(e) No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility shall use words or phrases such as "tax free," "extra cash," "extra income," "extra pay," or substantially similar words or phrases in a manner which has the capacity, tendency or effect of misleading the public into believing that the policy advertised will, in some way, enable them to make a profit from being hospitalized.

(f) No advertisement of a hospital or other similar facility confinement benefit shall advertise that the amount of the benefit is payable on a

monthly or weekly basis when, in fact, the amount of the benefit payable is based upon a daily pro rata basis relating to the number of days of confinement unless such statements of such monthly or weekly benefit amounts are preceded immediately by equally prominent statements of the benefit payable on a daily basis; for example, the following statement is acceptable: "\$33.33 a day (\$1,000.00 a month)." When the policy contains a limit on the number of days of coverage provided, such limit must appear in the advertisement.

(g) No advertisement of a policy covering only one disease or a list of specified diseases shall imply coverage beyond the terms of the policy. Synonymous terms shall not be used to refer to any disease so as to imply broader coverage than is the fact.

(h) An advertisement for a policy providing benefits for specified illnesses only, such as cancer, or for specified accidents only, such as automobile accidents, shall clearly and conspicuously in prominent type state the limited nature of the policy. The statement shall be worded in language identical to or substantially similar to the following: "THIS IS A LIMITED POLICY," "THIS POLICY PROVIDES LIMITED BENEFITS," "THIS IS A CANCER ONLY POLICY," "THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY."

(i) An advertisement of a direct response insurance product shall not imply that because "no insurance agent will call and no commissions will be paid to agents" that it is "a low cost plan," or use other similar words or phrases because the cost of advertising and servicing such policies is a substantial cost in the marketing of a direct response insurance product.

## (2) Exceptions, reductions and limitations

(a) When an advertisement which is an invitation to contract refers to either a dollar amount, or a period of time for which any benefit is payable, or the cost of the policy, or specific policy benefit, or the loss for which such benefit is payable, it shall also disclose those exceptions, reductions and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity or tendency to mislead or deceive.

(b) When a policy contains a waiting, elimination, probationary or similar time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for such loss, an advertisement which is subject to the requirements of the preceding paragraph shall disclose the existence of such periods.

(c) An advertisement shall not use the words "only," "just," "merely," "minimum," or similar words or phrases to describe the applicability of any exceptions and reductions, such as: "This policy is subject to the following minimum exceptions and reductions."

(3) Pre-existing conditions

(a) An advertisement which is subject to the requirements of paragraph (F)(2) of this rule shall, in negative terms, disclose the extent to which any loss is not covered if the cause of such loss is traceable to a condition existing prior to the effective date of the policy. The use of the term "pre-existing condition" without an appropriate definition or description is not permissible.

(b) When a policy does not cover losses resulting from pre-existing conditions, no advertisement of the policy shall state or imply that the applicant's physical condition or medical history will not affect issuance of the policy or the payment of a claim thereunder. This prohibits the use of the phrase "no medical examination required" and phrases of similar import, but does not prohibit explaining "automatic issue." If an insurer requires a medical examination for a specified policy, the advertisement, if it is an invitation to contract, shall disclose that a medical examination is required.

(c) When an advertisement contains an application form to be completed by the applicant and returned by mail for a direct-response insurance product, such application form shall contain a question which reflects the pre-existing condition provisions of the policy immediately preceding the blank space for the applicant's signature. For example, such an application form shall contain a question substantially as follows: "Do you understand that this policy will not pay benefits during the first \_\_\_\_\_ year(s) after the issue date for a disease or physical conditions which you now have or have had in the past?" YES. Or substantially the following statement: "I understand that the policy applied for will not pay benefits for any loss incurred during the first \_\_\_\_\_ year(s) after the issue date on account of disease or physical conditions which I now have or have had in the past."

(G) Necessity for disclosing policy provisions relating to renewability, cancellability and termination

When an advertisement which is an invitation to contract refers to either a dollar amount or a period of time for which any benefit is payable, or the cost of the policy, or specific policy benefit, or the loss for which such benefit is payable, it shall disclose the provisions relating to renewability, cancellability and termination

and any modification of benefits, losses covered or premiums because of age or for other reasons in a manner which shall not minimize or render obscure the qualifying conditions.

(H) Standards for marketing

(1) An insurer, directly or through its agents, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents will be fair and accurate;

(b) Establish marketing procedures assuring excessive insurance is not sold or issued.

(c) Establish auditable procedures for verifying compliance with this subparagraph.

(2) In addition to the practices prohibited in Section 3901.19 through 3901.21 of the Revised Code, the following acts and practices are prohibited:

(a) Twisting, knowingly making any misleading representation or incomplete or fraudulent comparison of insurance policies or insurers for the purpose of inducing, or tending to induce, a person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy, or take out a policy of insurance with another insurer;

(b) High pressure tactics. Employing a method of marketing that has the effect of inducing the purchase of insurance, or tends to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance; and

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurer.

(I) Testimonials or endorsements by third parties

(1) Testimonials used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced. The insurer, in using a testimonial, makes as its own all of the statements contained therein, and the advertisement, including such statement, is subject to all the provisions of this rule. When a testimonial or endorsement is used more than one year after it was originally given, a confirmation must be obtained.



- (2) If the person making a testimonial, an endorsement or an appraisal has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, such fact shall be disclosed in the advertisement. If a person is compensated for making a testimonial, endorsement or appraisal, such fact shall be disclosed in the advertisement by language substantially as follows: "Paid Endorsement." This disclosure shall be in a type style and size at least equal to that used for the person's name or the body of the testimonial or endorsement, whichever is larger. In the case of television or radio advertising, the required disclosure shall be accomplished in the introductory portion of the advertisement and shall be given prominence. This rule does not require disclosure of union "scale" wages required by union rules if the payment is actually for such "scale" for TV or radio performances. The payment of substantial amounts, directly or indirectly, for "travel and entertainment" for filming or recording of TV or radio advertisements removes the filming or recording from the category of an unsolicited testimonial and requires disclosure of such compensation.
- (3) An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by any individual, group of individuals, society, association or other organizations, unless such is the fact, and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial has been formed by the insurer or is owned or controlled by the insurer or the person or persons who own or control the insurer, such fact shall be disclosed in the advertisement. If the insurer or an officer of the insurer formed or controls or holds any policy-making position in the entity making the endorsement or testimonial, that fact must be disclosed.
- (4) When a testimonial refers to benefits received under a policy, the specific claim data, including claim number, date of loss, and other pertinent information shall be retained by the insurer for inspection for a period of four years or until the filing of the next regular report of examination of the insurer, whichever is the longer period of time.
- (5) The use of testimonials that do not correctly reflect the present practices of the insurer or that are not applicable to the policy or benefit being advertised is not permissible.

(J) Use of statistics

- (1) An advertisement relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy shall not use irrelevant facts, and shall not be used unless it accurately reflects all of the current and relevant facts. Such an advertisement shall not imply that such statistics are derived from the policy advertised unless such is

the fact, and when applicable to other policies or plans shall specifically so state. Where statistics are given that are applicable to a different policy, it shall be stated clearly that the data do not relate to the policy being advertised.

- (2) An advertisement shall not represent or imply that claim settlements by the insurer are "liberal" or "generous," or use words of similar import, or that claim settlements are or will be beyond the actual terms of the contract. An amount paid for a unique claim for the policy advertised is misleading and shall not be used.
- (3) The source of any statistics used in an advertisement shall be identified in such advertisement.

(K) Identification of plan or number of policies

- (1) When a choice of the amount of benefits is referred to, an advertisement which is an invitation to contract shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of the benefits selected.
- (2) When an advertisement which is an invitation to contract refers to various benefits which may be contained in two or more policies, other than group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies.

(L) Disparaging comparisons and statements

- (1) An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or comparisons of non-comparable policies of other insurers, and shall not disparage competitors, their policies, services or business methods, and shall not disparage or unfairly minimize competing methods of marketing insurance.
- (2) An advertisement shall not contain statements such as "no red tape" or "here is all you have to do to receive benefits."
- (3) Advertisements that state or imply that competing insurance coverages customarily contain certain exceptions, reductions or limitations not contained in the advertised policies are prohibited unless the exceptions, reductions or limitations are contained in a substantial majority of the competing coverages.
- (4) Advertisements that state or imply that an insurer's premiums are lower or that its loss ratios are higher because its organizational structure differs from that of competing insurers are prohibited.

(M) Jurisdictional licensing and status of insurer

- (1) An advertisement which is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond those limits.
- (2) An advertisement shall not create the impression directly or indirectly that the insurer, its financial condition or status, or the payment of its claims, or the merits, desirability, or advisability of its policy forms or kinds or plans of insurance are approved, endorsed, or accredited by any division or agency of this state or the federal government.

(N) Identity of insurer

- (1) The name of the actual insurer shall be stated in all of its advertisements. The form number or numbers of the policy advertised shall be stated in an advertisement which is an invitation to contract. An advertisement shall not use a trade name, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol or other device which without disclosing the name of the actual insurer would have the capacity and tendency to mislead or deceive as to the true identity of the insurer.
- (2) No advertisement shall use any combination of words, symbols or physical materials which by its content, phraseology, shape, color or other characteristics is so similar to combination of words, symbols or physical materials used by agencies of the federal government or of this state, or otherwise appear to be of such a nature that it tends to confuse or mislead prospective insureds into believing that the solicitation is in some manner connected with an agency of the municipal, state, or federal government.
- (3) An advertisement shall not use the name of a state or political subdivision of a state in a policy name or description.

(O) Group or quasi-group implications

- (1) An advertisement of a particular policy shall not state or imply that prospective insureds become group or quasi-group members covered under a group policy and as such enjoy special rates or underwriting privileges, unless such is the fact.
- (2) An advertisement to join an association, trust or discretionary group that is also an invitation to contract for insurance coverage shall clearly disclose that the applicant will be purchasing both membership in the association, trust or discretionary group and insurance coverage. The insurer shall solicit insurance coverage on a separate and distinct application that requires a

separate signature. The separate and distinct applications required need not be on separate documents or contained in separate mailing. The insurance program shall be presented so as not to conceal the fact that the prospective members are purchasing insurance as well as applying for membership, if that is the case. Similarly, it is prohibited to use terms such as "enroll" or "join" to imply group or blanket insurance coverage when that is not the fact.

(P) Introductory, initial or special offers

(1)

(a) An advertisement of an individual policy shall not directly or by implication represent that a contract or combination of contracts is an introductory, initial or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such is the fact. An advertisement shall not contain phrases describing an enrollment period as "special," "limited," or in similar words or phrases when the insurer uses such enrollment periods as the usual method of advertising sickness and accident insurance.

(b) An enrollment period during which a particular insurance product may be purchased on an individual basis shall not be offered within this state unless there has been a lapse of not less than six months between the close of the immediately preceding enrollment period for the same product and the opening of the new enrollment period. The advertisement shall indicate the date by which the applicant must mail the application which shall be not less than ten days and not more than forty days from the date that such enrollment period is advertised for the first time. This rule applies to all advertising media, i.e., mail, newspapers, radio, television, website and other internet displays or communications, other forms of electronic communications, billboards and similar displays, magazines and periodicals, by any one insurer. It is inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the Revised Code for group, blanket or franchise insurance. The phrase "any one insurer" includes all the affiliated companies of a group of insurance companies under common management or control.

(c) This rule prohibits any statement or implication to the effect that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy, unless such is the fact.

(d) The phrase "a particular insurance product" in paragraph (P)(1)(b) of this

rule encompasses insurance policies which provide substantially different benefits than those contained in any other policy. Different terms of renewability, an increase or decrease in the dollar amounts of benefits, or an increase or decrease in any elimination period or waiting period from those available during an enrollment period for another policy shall not be sufficient to constitute the product being offered as a different product eligible for concurrent or overlapping enrollment periods.

(2) An advertisement shall not offer a policy which utilizes a reduced initial premium rate in a manner which over-emphasizes the availability and the amount of the initial reduced premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, the advertisement shall not display the amount of the reduced initial premium either more frequently or more prominently than the renewal premium, and both the initial reduced premium and the renewal premium must be stated in juxtaposition in each portion of the advertisement where the initial reduced premium appears.

(3) Special awards, such as a "safe driver's award" shall not be used in connection with advertisements of accident or sickness and accident insurance.

(Q) Statements about an insurer

An advertisement shall not contain statements which are untrue in fact, or by implication misleading, with respect to the assets, corporate structure, financial standing, age or relative position of the insurer in the insurance business. An advertisement shall not contain a recommendation by any commercial rating system unless it clearly indicates the purpose of the recommendation and the limitations of the scope and extent of the recommendation.

(R) Enforcement procedures

(1) Advertising file

Each insurer shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement of its individual policies and typical printed, published or prepared advertisements of its blanket, franchise and group policies hereafter disseminated in this or any other state whether or not licensed in such other state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised. Such file shall be subject to regular and periodical inspection by this department. All such advertisements shall be maintained in said file for a period of either four years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time.

(2) Certificate of compliance

Each insurer required to file an annual statement which is now or which hereafter becomes subject to the provisions of this rule must file with this department with its annual statement a certificate of compliance executed by an authorized officer of the insurer wherein it is stated that to the best of the officer's knowledge, information and belief, the advertisements which were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of this rule and the insurance laws of this state as implemented and interpreted by this rule.

(S) Severability

If any paragraph or portion of a paragraph of this rule, or the applicability thereof to any person or circumstance is held invalid by a court, the remainder of the rule, or the applicability of such provision to other persons or circumstances, shall not be affected thereby.

Replaces: 3901-1-16

Effective:

R.C. 119.032 review dates:

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Certification

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Date

Promulgated Under: 119.03  
Statutory Authority: 3901.041, 3923.16  
Rule Amplifies: 3923.16  
Prior Effective Dates: 10/1/1974, 7/27/1986, 3/28/2004