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BROADCASTERS' GUIDE TO

Advertising in Ohio

Prepared by **Vorys, Sater, Seymour, and Pease, LLP**

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Table of Contents

Appendices

Selected Ohio Liquor Control Commission Rules

Federal Statutes Prohibiting Electronic Advertising of Certain Tobacco Products

Selected Ohio Rules Regarding Medical Marijuana Advertising

Selected Ohio Constitution Provisions and Gambling Statutes

Excerpts from Ohio Consumer Sales Practices Act

Selected Provision of Code of Federal Regulations

Selected Ohio Revised Code Provisions Governing Displays of Motor Vehicles

Foreword

This *Broadcasters' Guide to Advertising in Ohio* has been prepared to provide general information to members of The Ohio Association of Broadcasters regarding Ohio laws and rules governing advertising by commercial broadcasters.[1]

Advertising questions are, by their nature, fact-driven, and stations should consult their own legal counsel when deciding whether to air a prospective advertisement. This Guide does not constitute legal advice from the OAB or its legal counsel with respect to any specific advertisement and does not establish an attorney-client relationship between any member and OAB legal counsel.

The primary purpose of this new edition is to provide OAB members with the updated statutes and rules set forth in the Appendices. All statutes, rules, cases, Ohio Attorney General opinions and releases and positions of federal and state governmental agencies cited in this new edition (the "Update") are current as of July 1, 2020. Ohio's laws and administrative regulations are contained in the Ohio Revised Code and the Ohio Administrative Code, respectively. Both Codes are available online at http://codes.ohio.gov. Additional scenarios and questions on a number of Ohio advertising subjects, including rules with regards to advertising alcoholic beverages, tobacco products, lotteries and games of chance, are also provided.

Also, with respect to political advertisements, please refer to the *2020 Nuts and Bolts of Political Broadcasting Guide* available to all members in print or on the OAB website.

If you have any questions about any of the issues raised in this Guide, or have an issue not covered herein, please call us on the free OAB Ohio Info-Line at 866-OAB-5785 (please identify yourself as an OAB member) or submit your question through the OAB website.

We thank Brooks, Pierce, McLendon, Humphrey & Leonard LLP, OAB's FCC legal counsel, for its valuable contributions and assistance in preparing this Guide.

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[1] Noncommercial broadcasters are prohibited from broadcasting promotional announcements on behalf of for profit entities in exchange for any consideration (see 47 C.F.R. §§ 73.503(d) and 73.621(e)).

Alcoholic Beverages

ALCOHOLIC BEVERAGES

1. Who regulates the advertising of alcoholic beverages in Ohio?

The Ohio Liquor Control Commission has promulgated the following rules which regulate or affect the content of alcoholic beverage advertising: Ohio Administrative Code ("OAC") Rules 4301:1-1-03, 4301:1-1-43, 4301:1-1-44, 4301:1-1-45, 4301:1-1-46, 4301:1-1-50, 4301:1-1-53 and 4301:1-1-71. Enforcement orders of the Commission do not include reasons for a decision; therefore, there is little interpretative guidance available on advertising questions.

The distribution and sale of alcoholic beverages in Ohio are also regulated by the Division of Liquor Control of the Ohio Department of Commerce which, among other things, issues permits to retailers; and the Liquor Enforcement Unit of the Ohio Department of Public Safety which, as its name implies, enforces Ohio's liquor laws.

Ohio's liquor laws and regulations apply only to manufacturers, distributors and retail permit holders and do not impose any penalties on broadcast stations or other media that disseminate advertisements for alcoholic beverages which violate the Commission's advertising rules.

2. May alcoholic beverages be advertised on radio and television in Ohio, or on a radio or television station's website?

Yes. OAC Rule 4301:1-1-44 permits manufacturers, wholesale distributors and retailers to advertise alcoholic products, including spirituous liquors, beer, malt beverages, wine, prepared highballs, cocktails and other mixed beverages, on radio and television. However, no manufacturer or distributor may sponsor or participate in any advertising program for or with a retail permit holder, and no advertisement of a manufacturer or distributor can include the name or address of a retailer where its beverages may be purchased.

Generally speaking, the same restrictions which apply to broadcast advertising of alcoholic beverages also apply to advertising those beverages on a radio or television station's website.

3. May retail prices and brand names be included in broadcast advertisements?

Yes. OAC Rule 4301:1-1-44 expressly permits advertisements to include such information.

4. What general restrictions apply to alcoholic beverage advertising?

OAC Rule 4301:1-1-44 requires advertisements to be dignified in make-up and not offensive to the good taste of the public, and prohibits advertisements which:

- Misrepresent the products advertised
- Condone or encourage excessive use of alcoholic beverages
- Portray intoxication

- Refer to or portray Santa Claus
- Contain any representation of children

5. Are there any differences in the rules regulating the advertising of beer, wine and spirituous liquor?

No. OAC Rule 4301:1-1-44 establishes uniform advertising rules for all types of alcoholic beverages.

6. May contests, giveaways and other promotions be advertised on behalf of manufacturers, suppliers or wholesale distributors of alcoholic beverages?

No, with respect to a wholesale distributor, but yes with respect to a manufacturer or supplier. OAC Rule 4301:1-1-45 permits a manufacturer or out-of-state supplier or a third party acting on its behalf (**but not a wholesale distributor**) to offer and advertise contests, prizes and other promotions directly to the consumer through printed or other media methods, subject to the following:

- No premium or gift is contingent on the purchase of alcoholic beverages.
- Entry forms may be distributed at the premises of retail permit holders.
- No employee, or immediate family member, of a manufacturer, supplier, distributor or retailer shall be eligible to receive any prize or award.
- Except for a mail-in rebate offer, no purchase of alcoholic beverages shall be required to participate. Neither alcoholic beverages or coupons or discounts for alcoholic beverages shall be a prize or award.
- No one under the age of 21 shall be permitted to participate or receive a prize.
- The prize or award may not be claimed at the premises of a wholesale distributor or retailer.
- An entry form is permitted on a container or package only if other methods of entry are readily available to the consumer at the place of purchase and purchase of the product is not required to participate.
- The contest or promotion must not be an illegal scheme of chance (illegal lottery, numbers, game, pool conducted for profit, illegal slot machine or other electronic device or other scheme in which a participant gives valuable consideration for a chance to win a prize) or game of chance (poker, craps, roulette, a slot machine, a punch board, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely or wholly by chance) (see Part III of this Guide) and must comply with general laws prohibiting deceptive acts or practices in consumer transactions (see Part IV of this Guide).

7. May contests, giveaways and other promotions be conducted on the premises of a retail permit holder?

Yes. OAC Rule 4301:1-1-53 permits promotional games and contests to be conducted on the permit premises and advertised, subject to the following:

- No retail permit holder may have, use or allow on the permit premises any gambling device (book or equipment for recording bets, a ticket or token representing a chance or evidencing a bet, deck of cards, dice, gaming table, roulette wheel, slot machine or other similar apparatus, any device designed for gambling purposes, or bingo cards, instant bingo tickets or cards, raffle tickets or other bingo supplies) which is or has been used for any activity constituting a gambling offense under Ohio law (see Part III of this Guide).
- The participant is not required to pay money or something of value other than visiting the premises to participate.
- Alcoholic beverages are not, directly or indirectly, an element of the game or contest.
- The game or contest is sponsored or designed and run by a retailer licensed to sell alcoholic beverages, a manufacturer whose main product line is not alcoholic beverages or their advertising agent or representative.
- No premium or gift is contingent on the purchase of alcoholic beverages.
- Except for promotions of alcoholic beverages, an entry fee or purchase of a product at customary retail price is permitted if the outcome of the game or contest is not determined largely or wholly by chance.
- The contest or promotion must not be an illegal scheme of chance or game of chance (see Part III of this Guide) and must comply with general laws prohibiting deceptive acts or practices in consumer transactions (see Part IV of this Guide).
- The rule does not apply to the sale of Ohio state lottery tickets and does not prohibit schemes and games of chance by charitable organizations permitted by Ohio law.

8. Are there any special rules applicable to the advertising of happy hours?

Yes. Advertising should be consistent with OAC Rule 4301:1-1-50 which prohibits the following happy hour practices:

- An offer of two or more alcoholic beverages for the price of one;
- An offer of unlimited servings of alcoholic beverages during any set time period;
- The sale of any alcoholic beverages after 9 p.m. at a price less than what is listed in the schedule of regularly-charged prices required to be maintained by the permit holder;
- Games or contests involving drinking alcohol, or awarding alcoholic beverages as a prize; and,
- An increase in the volume of alcoholic beverages in a serving without proportionately increasing its price.

9. May a station advertise or conduct an on-air promotion, which includes a free alcoholic product, such as a gift basket which includes a bottle of wine?

It depends on who is sponsoring or giving away the alcoholic product. OAC Rules 4301:1-1-45 and 4301:1-1-46 prohibit manufacturers, suppliers, distributors and retailers from

giving away alcoholic beverages, with or without a purchase of merchandise or thing of value, or giving away merchandise or a thing of value with the purchase of an alcoholic product. Therefore, manufacturers, suppliers, distributors and retailers may not conduct or advertise such a promotion or provide free alcoholic beverages to a non-permit holder for such a promotion.

If the sponsor of the promotion is an organization, such as a station, which is not a liquor permit holder, it arguably may include an alcoholic beverage in a giveaway if it has purchased the alcoholic beverage. Due to a lack of clarity in the law, it would be preferable for such a sponsor to purchase and give away a gift certificate for the basket which can then be redeemed at a retailer.

10. Are there any legal restrictions on advertising a local event sponsored by an alcoholic beverage manufacturer and retail permit holder?

Yes. OAC Rule 4301:1-1-71 permits a manufacturer to sponsor radio and television broadcasts of athletic events and tournaments and to sponsor athletic events and tournaments, so long as no participant is a minor.

A manufacturer may also sponsor non-athletic events conducted by a nonprofit or charitable organization that is not a liquor permit holder (other than a temporary permit) and concerts, shows and other entertainment events on the premises of a retail permit holder so long as the primary purpose of the facility is not the sale of alcoholic beverages.

Sponsorship of any event by a manufacturer cannot be contingent on the purchase of alcoholic beverages or retail advertising specialties. A manufacturer and a retail permit holder may co-sponsor an athletic event or tournament and or other events conducted by a tax-exempt charitable organization that is not a liquor permit holder (other than a temporary permit).

11. Are there any other restrictions on advertising alcoholic beverages in connection with the broadcast of sporting and other events?

Yes. In addition to the restrictions under OAC Rule 4301:1-1-71, certain event sponsors have policies prohibiting the advertising of certain products, including alcoholic beverages. For example, the Ohio High School Athletic Association prohibits advertisements for alcoholic beverages, tobacco and patent medicines in broadcasts of high school athletic events and The Ohio State University Athletic Department bans the advertising of alcoholic beverages in broadcasts of its athletic events.

12. May a manufacturer or wholesale distributor sponsor or participate in an advertisement for a retail permit holder?

No. OAC Rule 4301:1-1-44(D) prohibits a manufacturer or distributor from sponsoring or participating in an advertising program for or with a retail permit holder and from stating or giving the name or address where beverages handled by the manufacturer or distributor may be purchased. Therefore, a manufacturer or distributor should never pay for a retailer's advertisement and cannot be named as the sponsor of a promotion that includes the name or address of a retailer.

However, a retailer may advertise brand and price in advertisements purchased and paid by it, and manufacturers and distributors may advertise their products so long as the advertisements do not include the name or address of retailers.

13. Are there any restrictions on advertising a promotion, such as a party bus, sponsored by an alcoholic beverage manufacturer offering drinks at special prices and free concert tickets at various locations around town?

It depends on the locations around town, as well as the relationship between the tickets and the drinks. As noted at question 10 above, a manufacturer may sponsor events at a location with a liquor permit, as long as the primary purpose of the facility is not to sell and serve alcoholic beverages. A bus being driven around town to random locations probably does not qualify. In addition, the distribution of concert tickets cannot be preconditioned on the purchase of alcohol, nor can the sponsorship of the event be contingent upon the purchase of alcoholic beverages.

14. Is there any restriction on advertising a hotel promotion such as a New Year's Eve package that includes a hotel room, dinner, and a happy hour with complimentary drinks and appetizers?

Yes. Ohio Revised Code ("R.C.") § 4301.22 prohibits a retail permit holder from giving away alcoholic beverages. Additionally, OAC Rule 4301:1-1-45 prohibits a permit holder from giving away something of value with the purchase of an alcoholic beverage. Therefore, advertising "complimentary drinks" is not appropriate.

15. Is there any restriction on advertising a hotel promotion such as a package that includes a hotel room, dinner, and casino party in which guests receive "free" play money to play casino games and to bid on gifts in an auction?

Arguably no, if it can be demonstrated that: (i) the package does not include any direct or indirect charge or consideration for playing casino games; (ii) guests are not required to buy alcoholic beverages to participate; and, (iii) alcoholic beverages are not given away by the permit holder.

However, it can be argued that since the sponsor is a business, a portion of the package cost should be allocated to the casino event. Gambling and games of chance are highly regulated in Ohio (see Part III of this Guide), and it is generally not possible to obtain any informal guidance on this question from law enforcement officials. Stations should consult with and rely on the advice of their own legal counsel.

16. What restrictions apply to advertisements for an out-of-state retailer by an Ohio station?

The advertisements should comply with the liquor law of the state where the retailer is located, not Ohio. Ohio's liquor laws and regulations governing the advertising of alcoholic beverages apply to manufacturers, wholesale distributors and retailers engaged in business within the State of Ohio, but not to out-of-state retailers that only advertise within Ohio.

Tobacco Products, E-Cigs, Marijuana and Hemp

TOBACCO PRODUCTS, E-CIGS, MARIJUANA AND HEMP

1. Who regulates tobacco product advertising?

Tobacco product advertising on radio and television has been regulated primarily by the Federal government. Federal laws on tobacco product advertising are found in 15 U.S.C. § 1331 *et seq*. These sections, known as the Federal Cigarette Labeling and Advertising Act of 1969 ("FCLAA"), were promulgated by Congress in order to "establish a comprehensive Federal program to deal with cigarette labeling and advertising..." 15 U.S.C. § 1331. In 1986, Congress enacted additional legislation, known as the Comprehensive Smokeless Tobacco Health Education Act ("CSPHEA"), which regulates the advertising of smokeless tobacco products. 15 U.S.C. § 4401 *et seq*. Together, these statutes make it unlawful to advertise cigarettes, little cigars, and smokeless tobacco products "on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission," including radio and television broadcast stations. 15 U.S.C. § 1335; 15 U.S.C. § 4402(c).

The radio and television broadcast ban on certain tobacco products is monitored by the Federal Communications Commission ("FCC"). The FCC refers complaints in this area to the Office of Consumer Litigation of the Department of Justice ("DOJ"), which has primary responsibility for enforcing tobacco advertising laws. 28 C.F.R. § 0.45(j). Any violation of the tobacco advertising restrictions is punishable by a fine not to exceed $10,000. 15 U.S.C. § 1338. Although the DOJ does not publish formal rules or guidelines regarding tobacco product advertising, it does issue informal advisory letters that provide guidance regarding how the agency intends to enforce various regulations pertaining to television and radio advertising.

States may also impose additional restrictions on tobacco product advertising, but these laws cannot be more sweeping than those already approved by the Federal government (see Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 547-51 (2001), where the Supreme Court struck down a Massachusetts statute restricting outdoor tobacco advertising as a violation of the First Amendment's guarantee of freedom of speech). However, Ohio has not enacted any laws specifically regulating tobacco advertising.

In November 1998, tobacco product manufacturers R.J. Reynolds, Philip Morris, Inc., Brown & Williamson Tobacco Corp., Lorillard Tobacco Co., and Liggett Group, Inc. entered into settlement agreements with the State of Ohio and 45 other states, four territories, the District of Columbia and the Commonwealth of Puerto Rico, ultimately settling litigation brought by those jurisdictions against those tobacco companies. These agreements, known as the Master Settlement Agreement ("MSA"), impose additional advertising restrictions on these five companies. These restrictions are not television or radio broadcast-related, but deal with other advertising areas including billboards and sponsorships.

2. What tobacco products can be advertised on radio and television?

Cigarettes, smokeless tobacco and little cigars may not be advertised on radio and television. 15 U.S.C. § 1335; 15 U.S.C. § 4402(c).

Cigars and pipe tobacco, on the other hand, **may be advertised**, subject to the restrictions and requirements referenced in questions 3, 5 and 6 below.

3. Is any disclaimer required in broadcast cigar advertisements?

Yes. A number of cigar manufacturers entered into a settlement agreement with the Federal Trade Commission ("FTC") which, among other things, imposes a fine for airing cigar advertisements which do not include a health risk disclosure. Since August 10, 2018, the following six statements have been required to be rotated quarterly in cigar advertisements:

> **WARNING:** This product contains nicotine. Nicotine is an addictive chemical.
>
> **WARNING:** Cigar smoking can cause cancers of the mouth and throat, even if you do not inhale.
>
> **WARNING:** Cigar smoking can cause lung cancer and heart disease.
>
> **WARNING:** Cigars are not a safe alternative to cigarettes.
>
> **WARNING:** Tobacco smoke increases the risk of lung cancer and heart disease, even in nonsmokers.
>
> **WARNING:** Cigar use while pregnant can harm you and your baby. (Or, as an optional alternative statement: **SURGEON GENERAL WARNING:** Tobacco Use Increases the Risk of Infertility, Stillbirth and Low Birth Weight.)

4. May tobacco advertisements be placed on a broadcast station's website?

Yes. The FCLAA and CSPHEA were enacted prior to the widespread use of the Internet and do not specifically prohibit the advertising of cigarettes, little cigars or smokeless tobacco on the Internet. In addition, the MSA does not cover Internet advertising. The FTC settlement agreement with cigar manufacturers does not expressly prohibit cigar advertising on the Internet.

Advertisements for such products on a station website should, however, include the appropriate warning statement.

5. May advertisements for smoke shops and other tobacco product retailers be broadcast?

Generally yes, although there is no "bright line" test for determining what is permitted and what is not. Smoke shop advertisements are not specifically prohibited by Federal law. However, such advertisements have been the subject of numerous informal opinions of the DOJ.

A sampling of these DOJ opinions suggest that advertisements should not: (i) use the words, "cigarettes," "little cigars" or "smokeless tobacco;" (ii) use brand names of such products; (iii) use or position words to suggest or promote the sale of cigarettes, little cigars or smokeless tobacco by the retailer.

Thus, examples of problem advertisements have included: the word "cigarette" in a store's name; listing products which cannot be advertised as items sold at a store; listing brand names of products which cannot be advertised as items sold at a store; words such as

"cartons" or "packs" associated with products which cannot be advertised; and, general phrases such as "meet all of your smoking needs."

Smoke shop advertisements that do not reference (directly or indirectly) tobacco products which cannot be advertised should be legal. Advertisements for retailers that only feature items associated with smoking, such as humidors, pipes, and rolling paper, should also be legal.

Because clear guidance is not possible, broadcast stations should exercise caution when considering advertisements for retailers that specialize in tobacco products.

6. Is it legal to advertise vaping products or electronic cigarettes?

There are no Ohio statutes or rules governing the advertising of vaping products or electronic cigarettes (or e-cigs). Certain Ohio statutes restricting the minimum age of persons seeking to purchase vaping products or electronic cigarettes may influence the placement of broadcast advertising to avoid programming that pertains to younger listeners/viewers.

In addition, the Food and Drug Administration (the "FDA") does have regulatory authority over vaping products and electronic cigarettes (along with dissolvables, gels, pipes, water pipes, hookah tobacco, pipe tobacco and related nicotine products), and its regulatory approach to these products is continuing to evolve. For example, certain flavored reusable vaping devices are now prohibited by the FDA with only tobacco and menthol flavors being allowed. Examples of other issues of which to be aware include: prohibitions on free samples; not making any health or safety related claims; not using descriptors such as "light," "mild," "low," or similar language; not promoting vaping products or electronic cigarettes as smoking cessation products; and being aware of the following warning requirement for electronic cigarettes, dissolvables, hookah tobacco, pipe tobacco and other similar nicotine products: "**WARNING:** This product contains nicotine. Nicotine is an addictive chemical."

Due to the specificity and changing scope of the federal requirements on these products, stations should contact the FCC Hotline for further guidance.

7. Is it legal to advertise "roll your own" cigarette machines in retail tobacco shops?

Because the DOJ has suggested that the use of the word "cigarettes" in an advertisement is prohibited, it would seem that advertising "roll your own" cigarette-making machines may be problematic. However, the FCC manual "The Public and Broadcasting," August 2019 edition, states that the advertising of smoking accessories, cigars, pipes, pipe tobacco or cigarette-making machines (emphasis added) is not prohibited. Accordingly, it appears that the safest course of action is for stations to consult with their FCC counsel regarding any proposed advertisement of "roll your own" cigarette machines.

8. May advertisements for medical marijuana be broadcast in Ohio?

Radio and television broadcast advertising of medical marijuana in Ohio is prohibited for medical marijuana dispensaries under OAC Rule 3796:6-3-24 and for medical marijuana cultivators, processors and testing laboratories under OAC Rule 3796:5-7-01. Copies of both rules are in the Appendices to this Guide. Further, because virtually all marijuana

remains illegal under federal law, we recommend against the advertising of marijuana or any related products because the FCC may take action adverse to the station at the time of the renewal of such station's license, and/or the possibility of being subject to federal criminal charges under a theory of aiding and abetting an illegal activity.

9. Is it legal to advertise the sale of hemp and CBD products in Ohio?

In July 2019, Ohio Governor Mike DeWine signed Senate Bill 57, which (i) decriminalized "hemp" and "hemp products"—including hemp-derived cannabidiol ("CBD")—that meet certain definitions, (ii) authorized Ohio to submit a plan to the U.S. Department of Agriculture (the "USDA") to be the primary regulator of hemp and CBD products in Ohio, and (iii) set forth a regulatory framework for the processing and cultivation of hemp in Ohio.

Prior to December 2018, many hemp products—including hemp-derived CBD products—were classified as illegal "marijuana" substances under both federal law and Ohio law. In December 2018, President Donald Trump signed into law the 2018 Farm Bill which decriminalized the production and sale of certain hemp and CBD products under federal law. Additionally, the 2018 Farm Bill provided that states could adopt their own regulatory regime to regulate the production, use and sale of hemp and CBD products.

Ohio adopted such a regulatory regime by enacting Senate Bill 57. The law excludes "hemp" from the definition of "marijuana" and defines "hemp" to mean the plant Cannabis sativa L. and any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not, with less than 0.3% THC (tetrahydrocannabinol, which is the psychoactive compound of the plant). The law required that the Ohio Director of Agriculture, the Ohio Governor and the Ohio Attorney General submit a plan for the regulation of hemp cultivation to the Secretary of the USDA for approval in accordance with the 2018 Farm Bill. Such a plan was submitted in December 2019, and the USDA approved the plan on December 27, 2019. Also, the Ohio Department of Agriculture (the "ODA") promulgated rules regarding the cultivation, processing and laboratory testing of hemp, which rules went into effect on January 31, 2020. There are no provisions regarding the advertising of hemp or CBD products in the Ohio law, the USDA-approved Ohio plan or the ODA rules.

Nevertheless, there are several potential areas of risk a station must consider before determining whether to air any specific advertisement for hemp or hemp-derived CBD products. These areas include (i) rules promulgated by the U.S. Food and Drug Administration (the "FDA") regarding the marketing of hemp and hemp-derived CBD in certain products, (ii) the source and type of hemp or hemp-derived CBD products being advertised, (iii) the allocation of risk between the station and the advertiser, and (iv) avoiding complaints during the FCC license renewal process. Here are some non-exclusive factors that stations may wish to consider:

- **FDA Issues**. The FDA has been cracking down on the marketing of hemp-derived CBD oil when it is an ingredient in a product that is intended to be ingested, such as a food or beverage, or when it is marketed as a "drug" under FDA rules. The FDA rules are relatively complex, but as a general rule, the FDA prohibits advertisers from making claims about any therapeutic benefits of CBD (e.g., "We have CBD products that will cure your chronic pain and depression"). Indeed, the FDA has sent warning letters to various CBD retailers regarding these type of claims. In addition, the Commissioner of the

FDA has stated that the FDA will prosecute manufacturers of products containing CBD if they make health and wellness claims that the FDA views as egregious.

Further, the FDA has issued numerous warning letters to companies, which the FDA believes are marketing and/or selling CBD products in ways that violate federal law. Moreover, the Ohio Attorney General and 32 other state attorneys general sent a letter to the FDA urging it to conduct further research into the benefits and risks of the use of CBD products. The letter also indicated that the attorneys general are concerned that companies soliciting CBD products may rely on "misleading advertising" to appeal to consumers. In short, the FDA and other regulators have repeatedly demonstrated their interest in CBD product advertising and have taken active, affirmative steps to address what they view as problematic advertising and marketing content and practices.

- **Less than 0.3% THC**. Because the decriminalization of hemp specifically applies to products—including CBD—with less than 0.3% THC, there remains a risk that stations may inadvertently advertise products that do not meet that strict definition. Other than the representation of the advertiser, stations will have no way of knowing whether the products are, in fact, legal hemp or CBD products. For this reason, stations seeking to mitigate risk from civil or criminal exposure should consider obtaining certifications and/or indemnifications from the advertiser regarding the products they are advertising. This option is discussed further below.

- **Ban on "Cigarette" Marketing; Illegal to Advertise Medical Marijuana**. As discussed earlier in this section, it is important to remember that there are federal restrictions that apply to the advertising of cigarettes and certain other tobacco products, and the decriminalization of hemp did not change any of those restrictions. Also, as noted above in question 8, Ohio already has a rule prohibiting the broadcast advertising of medical marijuana.

- **Enforcement/Complaints**. Although stations that broadcast ads for hemp or hemp-derived products may not be the initial targets of state or federal authorities for unlawful marketing claims or the sale of unlawful products generally, there is at least a risk of potential secondary liability (i.e., aiding and abetting). The ODA has indicated that it will randomly test CBD products to determine if they meet the less-than 0.3% THC legal standard and are otherwise in compliance with the Ohio law. If a station were to advertise a CBD product that was determined to be illegal under the Ohio law or under federal law, it is possible that the ODA or other authorities could take action against the station alleging it aided and abetted the illegal sale of the unlawful product. Another, and perhaps a more practical, risk is that airing advertisements that violate state or federal law could generate complaints to the FCC and, as a result, become a potential issue at license renewal time. While this same concept could be applied to any advertising that could be alleged to be unlawful, the focus by multiple regulators on hemp and hemp-derived CBD may present a somewhat heightened risk if the underlying products or ad copy actually do violate federal or state law.

- **Certifications/Indemnifications**. As mentioned above, given the varying issues regarding the products being advertised and the content of those advertisements, stations considering accepting hemp or hemp-derived CBD ads should also consider whether to require advertisers to make certain warranties or certifications regarding the lawfulness of their products and advertisements and/or agree to indemnify the station against any losses suffered by the station as a result of the advertisements. Although such provisions would not necessarily immunize stations from enforcement actions, they may at least demonstrate reasonable diligence and possibly mitigate any potential losses.

The bottom line is that each station should consult with its own legal counsel to assess the various risks associated with hemp and CBD advertising given the increased scrutiny of these products by regulatory authorities.

Lotteries, Games and Contests

LOTTERIES, GAMES AND CONTESTS

1. What state lotteries may be advertised in Ohio?

Because Ohio has a state-operated lottery, the state-conducted lottery of any state may be advertised in Ohio under the Federal Charity Games Advertising Act of 1988 (the "FCGAA"). 18 U.S.C. §§ 1304 and 1307.

2. May other types of lotteries be advertised in Ohio under Federal law?

Yes. The FCGAA also permits broadcast stations to promote any lottery that is not prohibited by the law of the state in which they operate and that is conducted by: (i) a nonprofit, tax exempt organization; (ii) a governmental organization; or (iii) a commercial organization, provided the lottery activities engaged in by the commercial organization are undertaken as promotional and are clearly occasional and ancillary to the primary business of the commercial organization.

A violation of the FCGAA is punishable by a fine up to $200,000 for an organization or imprisonment of up to one year, or both, for each offense. Each day's broadcast is deemed a separate offense. The FCC also has the power to impose fines and take other administrative action for violations.

Federal law generally preserves the right of states to regulate lotteries and other forms of gambling and the advertising of them. Therefore, all advertisements for lotteries and other forms of gambling, except state-conducted lotteries, must be analyzed under Ohio law.

3. What constitutes a lottery under Ohio law?

Article 15, Section 6 of the Ohio Constitution prohibits lotteries and the sale of lottery tickets, but authorizes the Ohio General Assembly to create an agency to conduct a state lottery and to enact statutes legalizing charitable bingo. The Constitution does not define "lottery" or "charitable bingo," nor does it impose any penalties for a violation of this constitutional prohibition. The Ohio General Assembly has enacted a number of criminal statutes defining and prohibiting various forms of gambling and defining and regulating charitable bingo. These laws are discussed in detail below.

Ohio courts have generally defined a lottery as a scheme for the distribution of prizes by lot or chance. The three elements of a lottery are chance, prize and consideration. While chance and prize can usually be easily identified, what constitutes consideration is more problematic, resulting in inconsistent conclusions over the years. Older court decisions hold that consideration is not restricted to money or items of readily ascertainable monetary value, and a 1964 decision of the Ohio Supreme Court holds that if a majority of participants purchase a product to participate, consideration is present, even if a minority participated for free. However, more recent opinions of the Ohio Attorney General, interpreting Ohio's criminal laws, have taken a more limited view of what constitutes consideration.

While public attitudes about gambling have changed (for example, 2010 amendments to the Ohio Constitution authorized casino gaming in four casino facilities within Ohio and sports gambling legislation is currently being debated in both the Ohio Senate and House of Representatives), gambling is generally prohibited in Ohio by the Ohio Constitution and

Ohio's criminal laws, and the exceptions to the criminal statutes are narrowly drawn. Any game or contest conducted by a commercial organization which a broadcast station is asked to promote must be closely evaluated to determine whether any of the three elements of a lottery are present, and it is recommended that a station consult with its legal counsel.

4. What forms of gambling, other than the Ohio Lottery, may be lawfully conducted in Ohio?

There are limited exceptions to the general prohibition on gambling. The rules for determining who may conduct permissible games or contests, and limitations on the manner in which the games or contests must be conducted, are complex and must be carefully reviewed to determine if a particular game or contest is legal. The advertising of an illegal game or contest is prohibited under Ohio law.

"Charitable Bingo"

Charitable bingo (including instant bingo) conducted by licensed charitable organizations, and raffles and certain other games or schemes of chance conducted by specified charitable organizations (see answers to questions 5, 6 and 8 below), are legal and may be advertised. As noted above, any game or contest conducted or sponsored by a commercial organization and in which a participant provides "consideration" is illegal.

"Game of Chance"

R.C. § 2915.01(D) defines a "game of chance" as poker, craps, roulette or other game (except bingo) in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, and R.C. § 2915.01(E) defines a "game of chance conducted for profit" as a game of chance designed to produce income for the person conducting or operating such game (but does not include bingo). R.C. § 2915.01(C) defines a "scheme of chance" as a slot machine (unless authorized under R.C. Chapter 3772), lottery (unless authorized under R.C. Chapter 3770), numbers game, pool conducted for profit, or other scheme (except bingo, a skill-based amusement machine or a pool not conducted for profit) in which a participant gives a valuable consideration for a chance to win a prize. A "scheme of chance" also includes the use of certain mechanical, video, digital or electronic devices which reveal the results of a game entry if valuable consideration is paid for a chance to win a prize under certain circumstances.

R.C. § 2915.02(D) provides that the prohibition against gambling does <u>not</u> apply to:

- Games of chance if <u>all</u> of the following conditions are met:

    1. The games are not craps for money or roulette for money;

    2. The games are conducted by a specified charitable organization (see answer to question 8 below) that has received an Internal Revenue Service ("IRS") determination letter stating that it is an organization exempt from federal income taxation under § 501(a) and described in § 501(c)(3) of the Internal Revenue Code;

3. The games are conducted at festivals of the charitable organization, conducted not more than a total of five days a calendar year, and on premises owned by the charitable organization for a least one (1) year preceding the conduct of the games, on premises leased from a governmental unit or (subject to certain additional limitations specified in the statute) on premises leased from a veteran's or fraternal organization that have been owned by such lessor for a least one (1) year preceding the conduct of the games;

4. All of the money or assets received from the games after deduction only of prizes paid out during the games are given to a qualifying charitable organization or governmental unit;

5. The games are not conducted during or within 10 hours of a bingo game conducted for amusement purposes only; and

6. No person receives any form of compensation, directly or indirectly, for operating or assisting in the operation of the games.

- Any tag fishing tournament operated pursuant to a permit issued under R.C. § 1533.92; or,
- Bingo conducted by a licensed charitable organization.

"Pool Not Conducted for Profit"

A "pool not conducted for profit" means a scheme in which a participant gives valuable consideration for a chance to win a prize, and the total amount of consideration wagered is distributed to a participant or participants. A pool not conducted for profit is specifically exempted from the definition of "scheme of chance" in R.C. § 2915.01(C), and therefore legal. Hence, a basketball tournament contest would qualify as a pool not conducted for profit if all of the money wagered is paid out to the winner(s).

"Skilled-Based Amusement Machine"

A skilled-based amusement machine may be lawfully operated in Ohio. A skilled-based amusement machine means a mechanical, video, digital or electronic device that rewards the player, if at all, only with merchandise prizes or with redeemable vouchers redeemable only for merchandise prizes, provided:

- The wholesale value of a merchandise prize awarded as a result of a single play of the machine does not exceed $10.00;
- Redeemable vouchers awarded for any single play are not redeemable for a merchandise prize with a wholesale value of more than $10.00;
- Redeemable vouchers are not redeemable for a merchandise prize that has a wholesale value of more than $10.00 times the fewest number of single plays necessary to accrue the redeemable vouchers required to obtain that prize; and
- Any redeemable vouchers or merchandise prizes are distributed at the site of the machine at the time of play.

In Pickaway Cty. Skilled Gaming L.L.C. v. DeWine, 2011-Ohio-278 (January 25, 2011), the 10th District Court of Appeals held that (i) the $10.00 limitation is not unconstitutionally vague and (ii) the value of a prize awarded for playing a skill-based amusement machine should be determined at the time the prize is obtained by the operator of the machine and not at the time the prize is awarded.

A merchandise prize is any item of value, but does not include:

(i) cash, gift cards or any equivalent thereof;

(ii) plays on games of chance, state lottery tickets, bingo or instant bingo;

(iii) firearms, tobacco or alcoholic beverages; or,

(iv) a redeemable voucher that is redeemable for any of the items listed in (i), (ii) or (iii) immediately above.

A machine that is not skilled-based shall be considered an illegal slot machine, if it pays cash or one or more of the following apply:

- The ability of a player to succeed at the game is impacted by the number or ratio of prior wins to prior losses of players playing the game.
- Any reward of redeemable vouchers is not based solely on the player achieving the object of the game or the player's score.
- The outcome of the game, or the value of the redeemable voucher or merchandise prize awarded for winning the game, can be controlled by a source other than any player playing the game.
- The success of any player is or may be determined by a chance event that cannot be altered by player actions.
- The ability of any player to succeed at the game is determined by game features not visible or known to the player.
- The ability of the player to succeed at the game is impacted by the exercise of a skill that no reasonable player could exercise.

"Casino Gaming"

Section 15.06 of the Ohio Constitution was amended effective May 4, 2010 and thereby authorized casino gaming at four casino facilities in Ohio. R.C. Chapter 3772 was enacted on September 10, 2010 to authorize and regulate casino gaming, and R.C. § 3772.03(D)(11) authorizes the Ohio Casino Control Commission (the "OCCC") to adopt standards regarding the marketing materials of casino operators. Those standards have been adopted by the OCCC and are set forth in OAC Chapter 3772-13.

OAC Rule 3772-13-01(A) defines the term "advertisement" to include any communication to the public concerning the gaming-related business of a casino operator through broadcasting, publication or other means of dissemination, including electronic dissemination. OAC Rule 3772-13-02(A) requires that each casino operator provide a

complete and accurate copy of all advertisements to the executive director of the OCCC at least five business days in advance of public dissemination.

OAC Rule 3772-13-02(B) provides that, for as long as they are publicly disseminated, all advertisements must meet the following criteria: (1) advertisements shall not obscure any material fact; (2) advertisements shall not depict any individual under the age of 21; (3) advertisements shall be based upon fact, and shall not be false, deceptive or misleading; (4) advertisements shall clearly and conspicuously state the problem gambling hotline established under R.C. §3772.062; (5) advertisements shall clearly and conspicuously specify any material conditions or limiting factors; (6) the advertisement shall clearly and conspicuously state the name and location of the relevant casino facility and (7) if the advertisement is disseminated to a specific individual or individuals, it shall clearly and conspicuously describe at least one of the following methods by which an individual may opt out of receiving future direct advertisements: (a) telephone, (b) regular U.S. mail or (c) electronic mail.

OAC Rule 3772-13-02(C) provides that casino operators shall cease the public dissemination of an advertisement upon discovery that the advertisement fails to comply with the criteria set forth in the preceding sentence, or to the extent ordered by the executive director of the OCCC.

"Video Lottery Terminal"

R.C. § 3770.21(A)(1) defines the phrase "video lottery terminal" to mean any electronic device approved by the Ohio Lottery Commission that provides immediate prize determinations for participants on an electronic display that is located at a facility owned by a holder of a permit issued by the Ohio State Racing Commission to conduct horse racing in Ohio. The operation of these terminals is further regulated by OAC Chapter 3770:2. OAC Rule 3770:2-6-05 provides that the executive director of the Ohio Lottery Commission may prohibit video lottery sales agents from engaging in certain advertising and promotions deemed by the executive director to be inappropriate. Also, the executive director may initiate advertising and may provide video lottery sales agents with such advertising materials as deemed appropriate.

5. Are raffles legal in Ohio and may they be advertised?

Certain raffles are legal and may be advertised. R.C. § 2915.02(C) provides that the gambling prohibitions, including the prohibition on advertising, do not apply to gambling expressly permitted by law.

R.C. § 2915.01(CC) defines a raffle as a form of bingo in which one or more prizes are won by one or more persons who have purchased a ticket, with winners determined by drawing a ticket stub or detachable section. A raffle does not include the drawing of a ticket stub or detachable section purchased to attend a professional sporting event if the ticket stub or detachable section is used to select the winner of a free prize given away at the event and the cost of the ticket is the same as the cost of a ticket to the professional sporting event on a day when no free prize is given away.

R.C. § 2915.092 permits a charitable organization (see answer to question 8 below), a public school, a chartered nonpublic school, a community school, a veteran's organization, a fraternal organization or a sporting organization that is exempt from federal income

taxation under § 501(a) and described in § 501(c)(3), (c)(4), (c)(7), (c)(8), (c)(10) or (c)(19) of the Internal Revenue Code to conduct a raffle to raise money for the organization or school.

Also, a chamber of commerce may conduct not more than one raffle per year to raise money for the chamber of commerce. These organizations do not need a bingo license to conduct a raffle drawing that is not for profit. Any raffle drawing that is for profit or that is not for profit is illegal unless it complies with R.C. § 2915.092.

6. Is bingo legal in Ohio and may it be advertised?

Only charitable bingo is legal and may be advertised pursuant to R.C. §§ 2915.02(C) and 2915.07. R.C. § 2915.08 permits certain charitable organizations to conduct charitable bingo, including instant bingo, but requires that they must be issued a license by the Ohio Attorney General in order to do so.

In addition, bingo "for amusement only" is expressly permitted by R.C. § 2915.12, subject to various restrictions, and may be advertised. Among other things, participants must not pay any money or anything of value to play (including an admission fee, donation or payment of tips), and all prizes must be non-monetary with a value of less than $100. However, a participant may be charged up to twenty-five cents to purchase a bingo card or other objects to play bingo, under very limited circumstances.

7. What penalty under Ohio law may be incurred by a station for broadcasting an advertisement for an illegal game or contest?

R.C. § 2915.02(A)(2) prohibits any person from, among other things, promoting or engaging in conduct that facilitates any game of chance conducted for profit or any scheme of chance. Thus, a station that broadcasts an advertisement for an illegal game or contest may be deemed to be promoting or facilitating the illegal game in violation of this subsection. A violation is a misdemeanor of the first degree, punishable by a fine of not more than $1,000 and/or imprisonment for not more than 180 days. If the offender has previously been convicted of any gambling offense, a violation is a felony of the fifth degree. In addition, advertising an illegal game or contest would likely violate federal law and FCC regulations which, generally, prohibit broadcasting advertisements about illegal games, contests or lotteries. The FCC could impose a fine on the station for such violation, and the violation would be considered by the FCC in the course of the station's license renewal.

8. What types of organizations qualify as charitable organizations under Ohio's gambling laws?

R.C. § 2915.01(H) through (M) contain a series of important definitions. Generally, a "charitable organization" means (i) any organization that has received a determination letter from the IRS that is currently in effect and that states that the organization is exempt from federal income taxation under § 501(a) and described in § 501(c)(3) of the Internal Revenue Code or (ii) a veteran's, fraternal, volunteer rescue service, volunteer firefighter's or sporting organization that is exempt from federal income taxation under § 501(c)(4), (c)(7), (c)(8), (c)(10) or (c)(19) of the Internal Revenue Code.

To qualify as a charitable organization, an organization must have been in continuous operations in Ohio for at least two (2) years.

Other limitations also apply. For example:

- A **veteran's organization** must be an individual post or state headquarters, or auxiliary unit, of a national veteran's organization which has been incorporated as a nonprofit corporation and has received a letter from the state headquarters of the national organization indicating that the post or unit is in good standing with the parent organization. The national veteran's organization must have been in continuous existence for at least five (5) years and be organized by an act of Congress, or have at least 5,000 national dues paying members.
- A **volunteer firefighter's organization** must exclusively provide financial support to a volunteer fire department or company recognized by a county, municipality or township.
- A **fraternal organization** must be a branch, lodge or chapter of a national or state organization (other than a high school or college fraternity) that is not organized for profit and that exists exclusively for the common business or sociality of its members, and that has been in continuous existence in Ohio for at least five (5) years.

9. How does a station determine whether a sponsor is a qualified charitable organization?

The first step is to inquire whether the sponsor has a current annual bingo license from the Ohio Attorney General. Since only charitable organizations which meet the various definitional tests of R.C. § 2915.01(H) may be issued a license, evidence of a current license should be sufficient. If the sponsor does not have a bingo license, the sponsor should be asked to provide evidence of qualifications, including nonprofit and tax exempt status, purposes and activities, date of organization and period of existence.

10. May a station advertise a raffle conducted by a group of businesses that will donate the proceeds to a charitable organization?

Probably not, because the raffle would likely be viewed as illegal. R.C. § 2915.092 strictly limits who may conduct a legal raffle to the entities specified in that section, and R.C. § 2915.01(P) broadly defines the activities which may be deemed to constitute "conduct" of a game to include backing, promoting, organizing, managing, carrying on or sponsoring such game. By airing the advertisement, the station could violate R.C. § 2915.02(A)(2) (see question 7 above).

11. May a station broadcast an advertisement for the sale of tickets by the local public high school band boosters for a raffle to support the school band?

It depends. If the sponsor of the raffle is the school, the raffle is legal under R.C. § 2915.092 and may be advertised. If the sponsor is the booster organization, then it must qualify as a charitable organization in order for the advertisement to be legal. A school booster organization should qualify as a charitable organization if it has an IRS determination letter and has been in existence for two years.

12. May a station broadcast an advertisement or promotion for bingo operated by a local church?

Yes, so long as the church has obtained a state charitable bingo license.

13. May a station broadcast an advertisement or promotion for a church festival that will include (i) various casino games played for money, (ii) wagering on a videotaped horse race or (iii) automated electronic poker tables?

Yes, subject to the three following paragraphs and if the church festival does not have craps for money or roulette for money and its other games and operations comply with R.C. § 2915.02(D).

However, wagering on a videotaped horse race at a "Night at the Races" fund-raising event sponsored by a charitable organization was determined to be an illegal scheme of chance, when the person making the wager was assigned a horse selected randomly by the charitable organization. In that instance, the patrons had no opportunity to exercise their skill or knowledge in choosing the horses. 2006 OHIO ATT'Y GEN. OP., No. 2006-45.

Also, a charitable organization was prohibited from using at a festival sponsored by the organization an automated electronic poker table that enabled players to play poker against each other for a fee, even though there were no awards of prizes or money to the players; the automated electronic poker table was determined to be a "slot machine" under R.C. 2915.01(QQ), thus not a "game of chance" but instead a "scheme of chance" under R.C. 2915.01(C), and therefore an illegal activity under R.C. 2915.02(D). 2013 OHIO ATT'Y GEN. OP., No. 2013-027.

Similarly, a charitable organization was prohibited from using at a festival it conducted an automated electronic poker table that enabled players to play poker against each other for money, when the charitable organization kept a percentage of the total amount of money wagered at the table, and awarded prizes or money to the players. 2013 OHIO ATT'Y GEN. OP., No. 2013-030.

14. At half-time of next week's high school basketball game, attendees' names will be drawn to participate in a half-court shot contest with prizes to be given away. May this contest be advertised or promoted on air since attendees pay an admission fee to get into the game?

Probably yes. Under Ohio law, the shooting contest should be viewed as a game of skill, which is legal, as opposed to a game of chance, which is not legal. State v. Gavlek, 1983 WL 4590, *2 (Ohio App. 7 Dist. 1983) (recognizing football, baseball and golf as games of skill despite the inherent element of luck or chance).

Here, while contestants are selected by chance, the contest is determined by athletic skill. In addition, it can be argued that there is no consideration because attendees pay the admission charge with no expectation of winning a prize. In addition, if the contest is conducted by the school, the drawing component of the game may be a permitted raffle under R.C. § 2915.092.

15. The local hardware store wants to promote a contest it is sponsoring—if a participant can predict the top five finishers at next week's NASCAR race, the participant will be eligible for a drawing to win $100,000. To enter the contest, the participant must complete an entry form at the store. May this contest be advertised or promoted on air? Does it make a difference if an entry form can be obtained by mail or the Internet without going to the store?

The answer is problematic since the contest is being conducted by a commercial organization and the participants must go to the sponsor's place of business to participate. The contest must be analyzed as a lottery to determine whether the elements of chance and consideration are present.

In this situation, the element of chance is probably present. Courts typically find chance to be present where a prize is awarded "without regard to any man's choice or will," and where "human reason, foresight, sagacity or design" does not enable a participant to know or determine the outcome. Fisher v. State, 14 Ohio App. 355 (1921). In contrast to the game in question 14 which involved athletic skill, here outcome is determined by predicting the top five finishers of an automobile race and a drawing, both of which are beyond the participant's control. Westerhaus Co. v. City of Cincinnati, 165 Ohio St 327 (1956); Great Atlantic & Pacific Tea Co. v. Cook, 15 Ohio Misc. 181 (1968).

The element of consideration may also be present. Ohio courts have recognized that a lottery exists where a participant was required to pass through a check-out line on a commercial premises in order to obtain a token to participate. State v. Bader, 1922 WL 2019 (1922). Furthermore, where participants are not required to pass through a check-out and merely must enter the premises, the promotion may still be subject to Ohio lottery laws because the element of advertising and increased patronage have been found to supply sufficient consideration for purposes of the Ohio lottery statutes. 1967 OHIO ATT'Y GEN. OP., No. 67-064. (But see question 7 in Part I of the Guide discussing contests, giveaways, and promotions conducted on premises of a retail permit holder.)

While those Ohio decisions and the Ohio Attorney General opinion have not been overturned, many popular promotional games in which many or most contestants participate at retail locations are regularly conducted and advertised and do not result in any enforcement action. In these games, consumers may participate without buying any product and typically may also obtain an entry by mail, visiting a website or other means, without going to the sponsor's business. On-the-air contests which merely require a listener or viewer to call the station have not been viewed as including the element of consideration. See FCC v. American Broadcasting Co., 347 U.S. 284 (1954). Similarly, the cost of obtaining and/or sending an entry form by mail or the Internet should not be deemed consideration.

If the sponsor holds a retail liquor permit, the contest must also be analyzed under Ohio's liquor laws (see Part I of this Guide and the answer to question 17 below).

16. A company is running a promotion to encourage people to purchase its product or service by a certain date which will automatically register them to win a prize. Are there any restrictions on advertising this promotion?

The answer depends on the terms of the promotion. The first issue is whether the promotion includes the element of consideration. On the one hand, the promotion to

encourage customers to purchase the product or service in hopes of winning the prize may be considered a "scheme of chance" under Ohio law because the customer must give valuable consideration (purchase the product or service) for the chance to win the prize. If the company was not a charitable organization and would profit in some way from the promotion, R.C. § 2915.02 could forbid its promotion or advertisement. Another issue is whether the promotion could be considered a "raffle" (see the answer to question 5 above).

A 1985 Ohio Attorney General opinion (OHIO ATT'Y GEN. OP., No. 85-013) concluded that this type of promotion was not a scheme of chance because the participants did not give valuable consideration for the chance to win the prize. In that case, a military credit union conducted a sweepstakes whereby persons who obtained loans from the credit union were eligible for a chance to win prizes. The Attorney General concluded that because the participants did not, in all probability, give valuable consideration for a chance to win the prize (emphasis added), the promotion was not a scheme of chance within the meaning of R.C. § 2915.01(C).

Under different facts, however, a promotion may be deemed to be illegal. For example, assume that a retailer runs a promotion where everyone who purchases a TV during a certain period of time is automatically entered in a drawing for a cash prize. The Ohio Attorney General has informally advised the OAB's Ohio legal counsel that it considers this to be a raffle and, because the raffle is not being conducted by a charitable organization as required by R.C. § 2915.092, the raffle is illegal.

A 2013 Ohio Attorney General opinion, however, seems to reach a different conclusion. In OHIO ATT'Y GEN. OP., No. 2013-012, the Attorney General determined that an Ohio insurance company was not conducting an illegal raffle when its automobile insurance policies granted policyholders the opportunity to be selected randomly for cash prizes, unless there was evidence that the predominant purpose for the sale of the policies was to promote drawings for the cash prizes. Further, the Attorney General stated that the insurance company was not operating an illegal scheme of chance or game of chance, unless there was evidence that the predominant purpose for the sale of the policies was to circumvent Ohio gambling laws. In this case, language within an insurance policy provided that the policyholder was eligible for a $5,000 cash award if the policy was active as of an eligibility date and had been in effect, with no lapse in coverage, for at least 180 days preceding the eligibility date. The insurance company would identify, four times each year, the policies that satisfied the requirements, randomly select a policy number from the eligible policies and award the winning policyholder $5,000. The Attorney General opined that while the lottery elements of chance and prize were present, the policyholder did not pay consideration for a chance to win a prize; rather, the consideration paid by the policyholder was for automobile insurance. The Attorney General concluded this was a legitimate promotion of the sale of insurance as opposed to a promotion utilized to legitimize illegal gambling, and that the predominant purpose of the promotion was to sell policies rather than to sell chances to win prizes.

The Attorney General informally advised the OAB's Ohio legal counsel that because the possible winners were existing customers (who were continuing to pay for their insurance), the consideration was not being paid by the policyholders for a chance to win the prize. The Attorney General further noted that the yearly amount of cash prizes awarded dwarfed the amount of premiums the insurance company received. Finally, the Attorney General also determined that the insurance company was not conducting a raffle because the

insurance company did not sell "tickets" to promote the cash prizes (which seems inconsistent with the informal advice given with respect to the TV retailer promotion discussed above).

It is important to note that the Attorney General emphasized that it was not determining whether the insurance company's promotion would be found by a court to be an illegal scheme of chance, game of chance or raffle. While Ohio Attorney General opinions are persuasive authority to be considered by a court, those opinions are not binding on the court. Accordingly, this opinion, like the military credit union opinion, should be read as being limited to its facts. It is uncertain as to whether the Ohio Attorney General or a court would reach a similar conclusion if the company running the promotion was not an insurance company, credit union or other entity subject to extensive regulation by governmental agencies (although the two Attorney General opinions discussed above did not mention the regulated aspects of the credit union or insurance business.)

17. May advertisements for casino parties (other than bingo) sponsored by or conducted at hotels and other places of public accommodation be broadcast?

It is not clear whether such events can be advertised.

In addition to restrictions which apply to holders of retail liquor permits (see Part I of this Guide), R.C. § 2915.04 prohibits a person from making a bet or playing a game of chance or scheme of chance at a hotel, restaurant, tavern, store, arena, hall or other place of public accommodation, and prohibits the owner or operator of any such establishment from recklessly permitting those premises from being used for such public gambling.

The legality of such events will turn on whether players provide consideration to participate. As explained above, the public policy of Ohio reflected in its gambling statutes and Constitution prohibits most forms of gambling which involve a profit motive. Any casino-type event should be carefully reviewed.

18. May an out-of-state casino located in a state where such gambling is legal be advertised in Ohio?

Probably yes. In 1999, the United States Supreme Court held that § 1304 of the FCGAA could not be applied to prohibit the broadcast of advertisements by radio and television stations for private casino gambling located in states where such gambling is legal. Greater New Orleans Broadcasting Ass'n v. United States, 527 U.S. 173 (1999). As noted above, R.C. § 2915.02(C) does not prohibit conduct in connection with gambling expressly permitted by law. While there are no legal authorities on this point, the language is broad enough to include activities which are expressly permitted by the laws of other states.

19. May advertisements for online gambling be broadcast in Ohio?

Probably no. While there are no legal authorities on this point, R.C. § 2915.02(C) may not be broad enough to encompass Internet gambling. In casino gambling, an Ohio resident must travel to another state to participate. The Ohio resident does not leave the state to engage in online gambling so there is a question as to where the activity is being conducted, even though the operator may be conducting business from a jurisdiction where gambling is legal.

In addition, the Ohio Attorney General has publicly taken positions against the legality of online gambling.

20. Are there any restrictions on advertising horse racing?

Yes. Horse racing is authorized by the Ohio State Racing Commission which regulates the approval of permits for horse racing. R.C. § 3769.06. To date, the Racing Commission has not promulgated any rules which govern the advertising of horse racing. Instead, it regulates the "telecast, *for wagering purpose*s, of audio and visual signals of live horse races." R.C. § 3769.25 (Emphasis added). At the federal level, Congress has made an explicit policy choice to give states the primary responsibility for determining what forms of gambling are permissible within their borders. 15 U.S.C.A. § 3001 (1978) (Interstate Horse Racing Act) has no provisions related to advertising.

21. Are there special requirements relating to contests or sweepstakes sponsored by radio and television stations?

The FCC has a specific regulation (47 C.F.R. § 73.1216) for a broadcast licensee that broadcasts or advertises information about a contest it conducts. (The FCC defines "contest" very broadly to include any scheme in which a prize is offered or awarded, based on chance, diligence, knowledge or skill, to the public.) A station that broadcasts information about a contest it is conducting is required to fully and accurately disclose all the "material terms" of the contest. The FCC defines "material terms" to typically include, at a minimum, information such as: how to enter; eligibility restrictions; entry deadlines; whether and when prizes will be awarded and, if so, the nature, number and value of the prizes; how and when winners will be selected; the chances of winning; and tie-breaking procedures (if any).

All the "material terms" must be disclosed when the contest is first announced either (i) through an initial broadcast and then periodic broadcasts such that all material terms are announced a "reasonable" number of times on air during the contest or (ii) through written disclosures on that station's Internet website, the licensee's website or, if neither the station nor the licensee has a website, any website that is publicly accessible. If a station discloses the material terms of the contest on the Internet, the station must (i) establish a conspicuous link or tab to material contest terms on the home page of the website, (ii) announce over the air periodically the availability of the material terms on the website and identify the website address where the material terms are posted with information sufficient for a consumer to find such terms easily and (iii) maintain the material contest terms on the website for at least 30 days after the contest has concluded. In addition to these disclosures, a station should have a written copy of the rules governing the contest available to the public at the station.

The contest must be conducted in accordance with the terms that are disclosed. The FCC routinely fines stations for failing to comply with the FCC's station-conducted contest regulation. Of course, it is also important to evaluate all promotions to ensure that they do not run afoul of lottery laws.

Finally, stations should consult their legal counsel or accountants regarding any tax withholding, filing or other tax-related obligations of the stations in connection with distributing prizes to winners of station-conducted contests.

22. Are "Internet cafes" or "sweepstake parlors" legal and can they be advertised?

"Internet cafes" or "sweepstake parlors," generally speaking, are establishments where patrons purchase prepaid cards for telephone or internet access time, receive "sweepstake points" for purchasing that time, and then use the prepaid cards and the sweepstake points to play slot machine-like games for a chance to win cash prizes.

R.C. § 2915.01(BBB) defines "sweepstakes" to mean any game, contest, advertising scheme or plan, or other promotion where consideration is not required for a person to enter to win or become eligible to receive any prize, the determination of which is based upon chance (but it does not include legal bingo, lotteries conducted by the Ohio Lottery Commission or casino gaming as authorized by R.C. Chapter 3772). R.C. § 2915.02(A)(5) provides that no person shall conduct, or participate in the conduct of, a sweepstakes with the use of a "sweepstakes terminal device" (defined in R.C. § 2915.01(AAA)) at a "sweepstakes terminal device facility" (defined in R.C. § 2915.01(AAA)(2)(d)) and give any cash, gift cards, plays on games of chance, state lottery tickets, firearms, tobacco, alcoholic beverages, or a redeemable voucher for any such item, or any prize or redeemable voucher for a prize, the wholesale value of which is in excess of $10.00 and which is awarded as a single entry, for playing or participating. R.C. § 2915.02(A)(6) provides that no person shall conduct, or participate in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility without first obtaining a certificate of registration from the Ohio Attorney General and annually, thereafter, obtaining a certificate of compliance. R.C. § 2915.02(G) provides a person may apply to the Ohio Attorney General for a certificate of compliance that the person is not operating a sweepstakes terminal device facility.

Accordingly, any establishment which conducts sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility without the required Ohio Attorney General registration required under R.C. § 2915.02(A)(6) or the certificate of compliance required under R.C. § 2915.02(G) is in violation of Ohio law. Further because R.C. § 2915.01(P) defines "conduct" broadly and to include promoting any sweepstakes, a station, which had run an advertisement for such an establishment, could be found also to be in violation of Ohio gambling laws.

23. May advertisements for fantasy leagues and contests be broadcast in Ohio?

As more fully described below, an advertisement can be broadcast in Ohio for a fantasy contest, provided that the fantasy contest operator has been licensed by the OCCC. As of March 2020, the OCCC has licensed five fantasy contest operators: Fantasy Golf's OG, the Original GolfGame; StatHero; DraftKings; FanDuel; and Yahoo Fantasy Sports.

31 U.S.C.S. § 5363 provides that no person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling, credit, electronic fund transfers, checks, or the proceeds of any other form of a financial transaction. However, 31 U.S.C.S. § 5362(1)(E)(ix) provides that the terms "bet" or "wager" do not include participation in any fantasy sports game or contest in which (if the game or contest involves a team or teams) no fantasy sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization (as those terms are defined in 28 U.S.C.S. § 3701) and that meets the following conditions: (a) all prizes and awards offered to winning participants are established and made known to the participants in advance of the game

or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants, (b) all winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by cumulating statistical results of the performance of individuals in multiple real-world sporting or other events, and (c) no winning outcome is based (1) on the score, point spread, or any performance of any single real-world team or any combination of such teams or (2) solely on any single performance of an individual in any single real-world sporting or other event.

Effective March 22, 2018, R.C. § 3774.01(C) became effective which defines the phrase "fantasy contest," for purposes of Ohio law, to mean a simulated game or contest with an entry fee that satisfies all of the following conditions: (a) the value of all prizes and awards offered to winning fantasy contest players is established and made known to the players in advance of the contest, (b) all winning outcomes reflect the relative knowledge and skill of the fantasy contest players and are determined predominantly by accumulated statistical results of the performance of managing rosters of athletes whose performance directly corresponds with the actual performance of athletes in professional sports competitions, (c) winning outcomes are not based on randomized or historical events, or on the score, point spread, or any performance of any single actual team or combination of teams or solely on any single performance of an individual in any single actual event, and (d) the game or contest does not involve horses or horseracing.

R.C. § 3774.09 provides that fantasy contests offered in accordance with R.C. Chapter 3774 and the rules adopted by the OCCC are exempt from R.C. Chapter 2915 (the Ohio gambling laws).

R.C. § 3774.06(B)(3) provides that a fantasy contest operator operating in Ohio shall not employ false, deceptive or misleading advertising, or advertising that is not based upon fact.

R.C. § 3772.03(L) provides that the OCCC may adopt rules related to the operation of fantasy contests. Effective September 3, 2019, the OCCC adopted rules governing advertisements of fantasy contests. OAC Rule 3772-74-01(B)(1) defines the term "advertisement" to mean any notice or communication to the public or any information concerning the fantasy contest-related business designed to solicit or entice fantasy contest players to participate in fantasy contests of a fantasy contest operator through broadcasting, publication or any other means of dissemination.

OAC Rule 3772-74-16(A) provides that fantasy contest operator advertisements shall (i) accurately depict any representations made concerning the fantasy contest player's chances of winning, the average number or percent of fantasy contest players who win, and the average net winnings of fantasy contest players, (ii) include information on playing responsibly and seeking assistance for compulsive behavior or shall direct consumers to a reputable source for such information (if the advertisement is not of sufficient size or duration to reasonably permit inclusion of such information, that advertisement shall refer to a website or application that does prominently include such information) and (iii) clearly and conspicuously state all material or limiting terms or provide a reference where all material or limiting terms may be found (the reference material shall be publicly available and shall, itself, state the terms clearly and conspicuously).

OAC Rule 3772-74-16(B) provides that fantasy contest operator advertisements shall not (a) prominently depict anyone who is under the age of 18, (ii) depict or imply the

endorsement of any university, college, high school, youth sporting league, event or athlete or (iii) depict fantasy contests that are not compliant with fantasy contest law.

24. Is the advertising of betting on sports legal in Ohio?

In 2018, the United States Supreme Court struck down the Professional and Amateur Sports Protection Act (the "PASPA") which made it unlawful for a state to, among other things, advertise or promote any gambling "schemes" based on competitive sporting events. This decision paved the way for states to legalize sports betting and, consequently, to provide a new advertising revenue stream for radio and television stations.

While some states have legalized sports betting, Ohio has yet to do so. There is some question about whether an amendment to the Ohio Constitution is required in order to permit sports betting. Until this Constitutional issue is resolved and/or the legislation is passed by the Ohio General Assembly and signed by the Governor, sports betting, and the advertising of Ohio-based sports betting, is illegal in Ohio.

25. May an out-of-state sportsbook operator located in a state where sports wagering is legal be advertised in Ohio?

Probably yes. As discussed in Question 18 above, (i) in 1999, the United States Supreme Court held that § 1304 of the FCGAA could not be applied to prohibit the broadcast of advertisements by radio and television stations for private casino gambling located in states where such gambling is legal, (ii) R.C. § 2915.02(C) does not prohibit conduct in connection with gambling expressly permitted by law and (iii) while there are no legal authorities on this point, the language in R.C. § 2915.02(C) is broad enough to include activities which are expressly permitted by the laws of other states, including sports wagering.

While the Greater New Orleans Broadcasting case discussed in Question 18 above only addressed brick-and-mortar *casino* gambling, the same principles that were at issue in that case would likely be applicable to a brick-and-mortar sportsbook operation that is legal in another state (such as Pennsylvania or Indiana) and wishes to advertise in Ohio.

Of course, given the recent vintage of the 2018 PASPA case discussed in Question 24 above, sports wagering—and the advertising thereof—remains an evolving area of the law, and stations considering the advertising of sportsbook operators located outside of the state of Ohio should consult with their legal counsel.

Consumer Products and Transactions

CONSUMER PRODUCTS AND TRANSACTIONS

1. Are radio and television stations liable under Ohio law for false or inaccurate statements made in advertisements of consumer transactions broadcast by them?

Generally no, if the station's employees are not actually aware that an advertisement violates the law.

The Ohio Consumer Sales Practices Act, R.C. Chapter 1345 (the "OCSPA"), governs the relationship between consumers and entities engaged in consumer transactions. The OCSPA places certain restrictions on "suppliers" of consumer transactions, including a prohibition on unfair, deceptive or unconscionable sales practices. R.C. §§ 1345.02 and 1345.03. A "supplier" is defined as a "seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer." R.C. § 1345.01(C).

A radio or television station is not a supplier when it merely broadcasts an advertisement. Further, R.C. § 1345.12(B) expressly exempts broadcasters from the requirements of the OCSPA as long as they have no knowledge (defined as "actual awareness" in R.C. § 1345.01(E)) that the information disseminated or reproduced for others violates Chapter 1345. Thus, broadcasters do not appear to generally have a duty under the OCSPA to verify the accuracy of statements, including product claims made in advertisements for others.

The OCSPA may, however, be applicable to promotions conducted by a station. It is also not clear whether this section protects a station if the station produces the advertisement or the copy for an ad, rather than merely airs an advertisement prepared by others. If a claim under the OCSPA is asserted against a broadcaster, there may be a factual question regarding what the station's employees knew. Therefore, it is recommended that broadcasters familiarize themselves with Ohio's consumer protection laws and regulations.

Broadcasters should also keep in mind that Federal law gives the FCC the power to suspend a broadcaster's license where it has *knowingly* transmitted "false or deceptive signals or communications." 47 U.S.C. § 303(m)(1)(D)(1).

In addition, R.C. § 1345.02(C) provides that, in construing what constitutes an unfair or deceptive consumer sales act or practice, a court shall give "due consideration and great weight" to orders, rules and guides of the Federal Trade Commission ("FTC"), as well as federal court interpretations of the Federal Trade Commission Act. The FTC may issue a cease and desist order to an advertiser it deems to be engaging in false or misleading advertising.

In 2004 and 2005, deceptive weight loss advertising was an FTC enforcement priority, and the FTC released a *Reference Guide for Media on Bogus Weight Loss Claim Detection*, which applies to non-prescription products such as over-the-counter drugs, dietary supplements, creams, wraps, devices, patches and similar products, and is available online. While broadcasters' compliance is voluntary, the FTC Chairman at the time suggested that the FTC may consider legal action against stations that broadcast deceptive weight loss ads.

The FTC on its website at http://www.ftc.gov/tips-advice/business-center/advertising-and-marketing has advertising and marketing legal resources available to broadcasters.

To summarize, while broadcasters are generally not required under Federal or Ohio law to investigate the accuracy of advertisements they air, advertisers must be able to substantiate their claims. If an advertising claim seems "too good to be true," it is good practice for the broadcaster to request supporting documentation from the advertiser and to consult with the station's legal counsel before running the advertisement.

2. What generally constitutes a deceptive or unconscionable act or practice in a consumer transaction under Ohio law?

Under R.C. § 1345.02(B), it is a deceptive act or practice for a supplier to represent, among other things, any of the following:

- The consumer good/service has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have.
- The consumer good/service is of a particular standard, quality, grade, style prescription or model, if it is not.
- The consumer good/service is new or unused, if it is not.
- The consumer good/service is available for a reason that does not exist.
- A specific price advantage exists, if it does not.
- The consumer good/service has or does not have a warranty or other rights or remedies, if the representation is false.

Under R.C. § 1345.03(B), it is an unconscionable act or practice when a supplier does any of the following:

- Knowingly takes advantage of the inability of a consumer to reasonably protect the consumer's interest because of the consumer's physical or mental infirmities, ignorance, illiteracy or inability to understand the language of an agreement,
- Knowing at the time of the consumer transaction that the price for property or services is substantially in excess of the price at which similar property or services is readily obtainable in similar transactions by like customers,
- Knowing at the time of the consumer transaction of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction,
- Knowing at the time of the consumer transaction that there is no reasonable probability of payment of the obligation in full by the consumer,
- Requiring the consumer to enter into a consumer transaction on terms the supplier knows are substantially one-sided in favor of the supplier,
- Knowingly making a misleading statement of opinion on which the consumer is likely to rely to the consumer's detriment, or

- Without justification, refusing to make a refund in cash or by check for a returned item, unless the supplier had conspicuously posted, at the time of the sale, a sign stating the supplier's refund policy.

3. Are there specific statements that must be made in certain types of advertisements?

OAC Rule 109:4-3-02(B) provides that advertisements broadcast on radio, television or an online or digital medium must be preceded or immediately followed by a conspicuously clear oral or written statement of material exclusions, reservations, limitations, modifications or conditions. Oral disclosures in audio or audiovisual advertisements must be spoken with sufficient deliberateness, clarity, and volume so as to afford a consumer a reasonable opportunity to hear and understand them. Written disclosures in audiovisual advertisements should appear in a form and for a duration sufficient to afford a consumer a reasonable opportunity to read and understand them.

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

- In the case of a motor vehicle, the amount of any additional charge for features displayed in the advertisement;
- In the case of clothing, any additional charge for sizes above or below a certain size;
- In the case of floor covering, any additional charge for room sizes above or below a certain size;
- In the case of consumer goods/services sold from more than one outlet under a supplier's control, which outlets within the advertisement's coverage area (i) have or do not have features mentioned in the advertisement and (ii) charge rates higher than the rate mentioned in the advertisement;
- In the case of consumer goods/services sold from outlets not under the supplier's control, a statement that the item is only available from participating independent dealers;
- If an advertised price is available only during certain periods, that fact must be stated along with the days and hours when such price is available;
- If more than one item is featured and the advertised price applies only if all items are purchased (for example, a table and chairs), that fact must be stated;
- If a minimum or maximum amount must be purchased to receive an advertised price, that fact must be stated;
- If the advertised price includes a trade-in, that fact must be stated;
- Any additional charges for delivery or mail orders must be disclosed; and

- If the advertisement offers a rebate that requires repeat purchases by the consumer, that information must be disclosed, including the required number of purchases, the amount of each purchase, the period during which the purchases need to be made and any other actions required by the consumer to redeem the rebate.

On any online or digital medium, the material exclusions, reservations, limitations, modifications or conditions should be as near to, and if possible on the same screen, as the offer (see OAC Rule 109:4-3-02(D)).

4. May an advertisement use the word "free" or other words of similar import?

Yes, but only in conformity with OAC Rule 109:4-3-04. This Rule provides, among other things, that:

- The word "free" is not to be used if the cost of the offer is passed on to the consumer by raising the regular (base) price of the goods or services that must be purchased in connection with the "free" offer.
- All terms and conditions upon which receipt of "free" consumer goods/services are contingent must be set forth clearly and conspicuously at the outset of the offer.
- The regular quality of the consumer goods/services cannot be reduced.
- Continuous or repeated "free" offers are prohibited, but nondeceptive, "combination" offers in which two or more items of goods/services are offered as a single unit for a single price are permitted.

Further, a station should be aware of 16 C.F.R. § 251.1 (set forth in the Appendices), which provides similar federal law restrictions on the use of the word "free."

5. Are there any special rules governing prizes?

Yes. OAC Rule 109:4-3-06(A) states that it is a deceptive act or practice for a supplier, in connection with a consumer transaction, to notify a consumer or prospective consumer that he or she has won, been selected, or is eligible, to win a prize or receive anything of value if the receipt of the prize or thing of value is conditioned upon the person listening to or observing a sales promotion or entering into a consumer transaction *unless* the supplier clearly and conspicuously discloses at such time that an attempt will be made to induce the person to undertake a monetary obligation, and the market value of the prize or thing of value.

Further, OAC Rule 109:4-3-06(D) states that a supplier cannot notify a consumer or prospective consumer that he or she has won a prize or will receive anything of value, if such is not the case, or has been selected, or is eligible, to win a prize or receive anything of value, if the receipt of the prize or thing of value is conditioned upon the payment of a service, handling, mailing or similar charge or unless the supplier has clearly and conspicuously disclosed all conditions necessary to win the prize or receive anything of value.

6. Are there any special rules governing motor vehicle advertising?

Yes. The Ohio Attorney General has promulgated rules specific to the sale of motor vehicles. "Motor vehicle" is broadly defined in R.C. § 4501.01(B) and includes automobiles, motor homes, recreational vehicles and motorcycles. A motor vehicle may also be considered a "good" within the meaning of the rules, and, therefore, the general provisions also may be applicable. OAC Rule 109:4-3-01.

Under OAC Rule 109:4-3-16(B), it is a deceptive and unfair practice for a dealer, manufacturer, advertising association or advertising group in connection with the advertisement or sale of a motor vehicle to:

- 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.
- Misrepresent the size, inventory or nature of the dealer's business including the expertise of the dealer or a dealer's, manufacturer's, advertising association's or advertising group's ability or capacity to offer price reductions.
- Advertise in a way which could create in the mind of a reasonable consumer a false impression as to any material aspect of the advertised vehicle, or to convey or permit an erroneous impression as to which vehicles are offered for sale at which prices.
- Advertise any motor vehicle for sale at a specific price or on specific terms if the dealer is not in possession of, or has not ordered, said vehicle unless the advertisement clearly and conspicuously discloses that the specific price applies to a vehicle which must be ordered.
- 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.[2]
- Misrepresent the availability of an advertised motor vehicle, or fail to clearly and conspicuously disclose, in any advertisement, that a particular advertised vehicle is not available in stock and must be ordered.
- 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 a 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.
- Use the terms "MSRP," "list" or "sticker" in any advertisement except in reference to the manufacturer's suggested retail price.
- 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.

[2] A dealer is required to show and make available its vehicles as advertised regardless of whether the consumer knew about or relied upon such advertisements. Motzer Dodge Jeep Eagle v. Ohio Attorney General, 95 Ohio App.3d 183 (Butler Cty. 1994).

- Represent, state or imply in any advertisement that the purchase price is a “savings,” “discount” or like words unless it is a “savings” or “discount” from the “list” or “sticker.”
- 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.
- Fail to disclose, in any advertisement, the model, year and, for current and previous model year vehicles, the fact that the vehicle is used.
- Advertise a price of a motor vehicle unless it includes all costs to the consumer except tax, title and registration fees, and a documentary service charge. 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.
- Advertise the price such dealer will pay for any trade-in vehicle unless (i) the price of motor vehicles offered for sale are 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 (ii) the advertised trade-in price will be paid for all vehicles regardless of their condition or age, unless additional conditions are clearly and conspicuously disclosed in the advertisement.
- Advertise the price to be paid for trade-in vehicles as a range of prices.
- Fail to disclose the beginning and ending dates of any sale or other offer for the sale of a motor vehicle. If the dealer states the specific quantity of vehicles available for sale, the dealer is required to disclose only the beginning date of the sale and may disclose the ending date by use of the phrase “while supply lasts.” A dealer is not required to list a beginning date for a sale, if such sale begins on the date the advertisement appears.
- 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.
- 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 of the vehicle.
- Advertise the price of a new motorcycle or other similar type of new vehicle that is not subject to the Automobile Information Disclosure Act of 1958, without clearly and conspicuously disclosing (i) that the advertised price includes a freight charge and enumerates the amount of the charge or (ii) 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 (i) or (ii) 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 manufacturer may be deemed to be engaging in deceptive and unfair acts or practices in connection with the sale of a motor vehicle if it:

- Advertises the price of a vehicle and represents or implies that it 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.
- Advertises the price of a vehicle unless the advertised price includes all charges to be paid by the consumer including freight, handling and dealer preparation or 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.
- Advertises, represents or offers a rebate, interest reduction or similar program 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.

Finally, the rules state that, in advertising a closed-end credit (purchase) transaction on radio or television, a dealer, manufacturer or advertising association or group must comply with Regulation Z of the federal Truth-In-Lending Act and must clearly and conspicuously disclose 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.). OAC Rule § 109:4-3-16(D).

The Ohio Attorney General has issued "Guidelines for Motor Vehicle Advertising," which can be found at http://www.ohioattorneygeneral.gov/Files/Publications-Files in the in the "Business and Nonprofit Section."

Advertisements of leases must comply with Regulation M of the federal Truth-In-Lending Act, and must clearly and conspicuously disclose the fact that the transaction is a lease, the amount due at lease inception, the number of payments and the monthly payment.[3] OAC Rule § 109:4-3-16(D); see 15 U.S.C. § 1667c.[4]

7. Are there restrictions on the locations at which motor vehicles can be displayed?

Yes. Generally speaking, motor vehicles may not be displayed for sale or offered for sale anywhere except at a licensed motor vehicle dealer. R.C. 4517.02.

[3] "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." § 109:4-3-16(D).

[4] Federal law requires, among other things, clear and conspicuous disclosure that "the transaction advertised is a lease; the total amount of any initial payments required on or before consummation of the lease or delivery of the property, whichever is later; that a security deposit is required; the number, amount, and timing of scheduled payments; and with respect to a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term." 15 U.S.C. § 1667c(a).

There are several exceptions to this general rule:

1) At a motor vehicle show (as defined in R.C. 4517.22), the primary purpose of which is the display of multiple competitive makes and models. R.C. 4517.22(B) (set forth in Appendices herein).

2) At a manufacturer's display at which only a single make of vehicle may be displayed. Written permission from the Ohio Bureau of Motor Vehicles must be sought 30 days prior to such a display by a manufacturer of motor vehicles, and no sales activity may take place in connection with such a display. R.C. 4517.22(E) (set forth in Appendices herein).

3) At an annual county fair according to the provisions of R.C. 4517.22(K) (set forth in Appendices herein).

4) At a location other than the dealer's established place of business, provided that the purpose of the display is to promote or benefit a charitable or civic purpose, not more than six vehicles are displayed, and the other provisions of R.C. 4517.221 (set forth in Appendices herein) are complied with.

8. Are there any restrictions on advertising the sale of fireworks?

The FCC has taken no position on the advertising of fireworks and, generally, the advertising of fireworks is a matter of state law assuming that the fireworks which are being advertised are legal under the Federal Hazardous Substance Act (the "FHSA"). If a station aired an advertisement for the sale of fireworks and those fireworks were subsequently found to be illegal under the FHSA, then the station could be found liable for aiding and abetting the sale of illegal fireworks or possibly a FTC claim for false, misleading or deceptive advertising.

There are no provisions in the Ohio Revised Code or the Ohio Administrative Code which prohibit the advertising of the sale of fireworks. A retailer of fireworks must be licensed with the Ohio Division of State Fire Marshal, and a station should confirm that a specific retailer is so licensed prior to running an advertisement for that retailer. Also, because, under R.C. § 3743.45(A), the purchaser must transport the fireworks out of the State of Ohio within 48 hours of purchase, the advertisement cannot indicate or imply otherwise.

Lastly, the Ohio Division of State Fire Marshal has informed the OAB Ohio Info-Line, that there can be no Internet sales of fireworks or sales of commercial grade fireworks; accordingly, the advertisement cannot indicate or imply otherwise.

Despite the fact that there are no State of Ohio laws or regulations prohibiting the advertising of the sale of fireworks, stations should be aware that cities and townships may have ordinances which prohibit any person from advertising the sale of fireworks.

9. Are there any restrictions on advertising the sale of firearms?

While the sale of firearms is regulated by federal law, no federal laws specifically apply to broadcast stations. Instead, federal law applies to persons and entities that engage in firearms transactions. At the state level, R.C. §§ 2923.11 through 2923.25 govern the possession of firearms in Ohio, but there are no provisions in the Ohio Revised Code or

the Ohio Administrative Code which prohibit the advertising of the sale of firearms.

Although neither federal nor Ohio laws place any affirmative duty on broadcasters, it is good policy to confirm whether a potential advertiser of firearms is appropriately licensed. If they are not so licensed, broadcasters should consider whether it is prudent to run the advertisement, especially given the geographic restrictions unlicensed sellers of firearms face.

Additionally, a station may wish to consult with its legal counsel regarding the content of the advertisement and the potential public relations implications of airing a firearms advertisement in its target market.

10. Are there any special rules governing other consumer transaction advertisements?

Yes. Other rules specifically regulate:

- Bait advertising/unavailability of goods – OAC Rule 109:4-3-03
- New for used – OAC Rule 109:4-3-08
- Failure to deliver; substitution of goods or services – OAC Rule 109:4-3-09
- Price comparisons – OAC Rule 109:4-3-12
- Motor vehicle repairs and services – OAC Rule 109:4-3-13
- Insulation – OAC Rule 109:4-3-14
- Motor vehicle rust inhibitor – OAC Rule 109:4-3-15
- Distress sale – OAC Rule 109:4-3-17

Selected Ohio Liquor Control Commission Rules

SELECTED OHIO LIQUOR CONTROL COMMISSION RULES

All information in this section is excerpted from the Ohio Administrative Code as of April 24, 2013.

§ 4301:1-1-44 Advertising (effective June 4, 2004)

(A) Definitions. For purposes of this rule:

(1) "Advertisement" means any written or verbal statement, illustration, or depiction created to induce sales through a combination of letters, pictures, objects, lighting effects, illustrations, or other similar means. "Advertisement" does not include a label on an alcoholic beverage container.

(2) "Sign" means a lettered board or placard placed in the interior of or in the exterior windows of a permit premises to advertise the business transacted within or the alcoholic beverages sold by the permit holder, by displaying the brand name, trade name, designation, or other emblem indicating the manufacturer, supplier, or wholesale distributor of such alcoholic beverages.

(B) Manufacturers, suppliers, and wholesale distributors of alcoholic beverages, and retail permit holders are permitted to advertise their products in Ohio via print or electronic media or signage. Advertisements may include the retail price of alcoholic beverages.

(C) Manufacturers and suppliers of spirituous liquor may advertise their products in Ohio, and such advertisements may contain the statement that spirituous liquor may be purchased in original containers for consumption off the premises where sold, together with the prices established and published by the division.

(D) Prohibited and permitted activities.

(1) No billboard advertisement of any brand of alcoholic beverage is permitted within five hundred feet of any church, school, or public playground. No advertisement shall be permitted on any public or non-public elementary or secondary school property.

(2) No advertisement shall condone or encourage excessive use of alcoholic beverages, nor shall any advertising portray intoxication.

(3) No advertisement shall represent, portray, or make any reference to children.

(4) No advertisement shall represent, portray, or make any reference to Santa Claus.

(5) Manufacturers, suppliers, and wholesale distributors of alcoholic beverages may send direct mail advertisements to a retail permit holder or the general public. In the use of direct mail advertisements, manufacturers, suppliers, and wholesale distributors may refer to retail prices.

(6) The advertisement of any alcoholic beverage shall not contain any statement that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter tends to create a misleading impression.

(E) Unless otherwise permitted, no manufacturer, supplier, or wholesale distributor of alcoholic beverages may sponsor or participate in any advertising for or with any retail permit holder.

(F) Except as provided for in this paragraph, no manufacturer, supplier, or wholesale distributor of alcoholic beverages shall state in any way or give the name or address of any permit holder where the alcoholic beverages handled by such manufacturer, supplier, or wholesale distributor may be obtained or purchased. A manufacturer, supplier, or wholesale distributor may state or give the name or address of a permit holder where the alcoholic beverages handled by such manufacturer, supplier, or wholesale distributor may be obtained or purchased when the manufacturer, supplier, or wholesale distributor meets all of the following requirements. The manufacturer, supplier, or wholesale distributor:

(1) Is responding to a direct inquiry from a consumer received by telephone, mail, an electronic inquiry, or in person.

(2) Provides the names of two or more unaffiliated retail permit holders.

(3) Provides written text only, graphics or images being prohibited.

(4) Lists only the following information about the unaffiliated retail permit holders: the name of the retail permit holder, the permit premises address, web site address, electronic mail address, and telephone number.

(5) Provides no other information about the retail permit holders. This prohibition includes but is not limited to product prices, a description of the retail permit holder's services, and links to a retail permit holder's web site.

(6) Provides the information on each retail permit holder in identical format, and

(7) Pays all costs for the production of the provision of the information. The manufacturer, supplier, or wholesale distributor may not accept compensation or any other thing of value for the provision of the information.

(G) Signs or advertisements on a permit premises.

(1) Electric or neon signs, advertising any individual brand of alcoholic beverage, may be displayed in the exterior windows or interior of any retail permit premises, provided that not more than two such signs may be displayed in all of the exterior windows of the retail permit premises.

(2) Signs or advertisements, other than electric or neon, advertising an individual brand of alcoholic beverage, may be displayed within the permit premises or in the exterior windows of a retail permit premises without limitation as to size or number.

§ 4301:1-1-45 Contests, prizes, sales incentive programs, rebates, or other promotions (effective September 5, 2015)

(A) Unless authorized under Revised Code Chapters 4301. or 4303., or rules promulgated thereunder, no merchandise or thing of value shall be given away in connection with the purchase of an alcoholic beverage.

(B) A manufacturer or supplier of alcoholic beverages, their registered solicitor, or a third party acting on behalf of the manufacturer or supplier, excluding a wholesale distributor or retail permit holder, may offer contests, prizes, sales incentive programs, rebates, or other promotions. Contests, prizes, sales incentive programs, rebates, or other promotions may not be used by a wholesale distributor or retail permit holder to reduce the price of the alcoholic beverage at the point of sale.

(1) A manufacturer or supplier of alcoholic beverages, their registered solicitor, or a third party acting on behalf of the manufacturer or supplier, a wholesale distributor, or a retail permit holder may notify the consumer of a contest, prize, sales incentive program, mail in rebate, or other promotion through printed or other media or methods.

(2) The entry forms and the point-of-sale materials for a contest, prize, sales incentive program, mail in rebate, or other promotion may be distributed by the manufacturer or supplier of alcoholic beverages, their registered solicitor, a third party acting on behalf of the manufacturer or supplier, or a wholesale distributor for display and dissemination at the premises of a wholesale distributor or retail permit holder.

(3) In no event shall any contest, prize, sales incentive program, mail in rebate, or other promotion be made with the financial assistance of any wholesale distributor or retail permit holder. No manufacturer or supplier shall require a wholesale distributor or retail permit holder to participate in a contest, prize, sales incentive program, mail in rebate, or other promotion, or be subject to any quota or other arrangement that requires the wholesale distributor or retail permit holder to purchase products of the manufacturer or supplier in order to distribute the entry forms or point-of-sale materials for the contest, prize, sales incentive program, mail in rebate, or other promotion.

(4) At no time shall any manufacturer or supplier establish any quota or numerical amount of entry or mail in rebate forms or mail in rebate or point-of-sale materials that must be distributed by the wholesale distributor to any specific class or type of retail permit holder.

(5) No manufacturer, supplier, or wholesale distributor shall discriminate between permit holders within the same permit class, based upon size or purchases of a particular brand, when distributing entry or mail in rebate forms or point-of-sale materials nor in any way restrict or limit participation in such promotions to one or more specific retail permit holders.

(C) Should any of the contests, prizes, sales incentive programs, mail in rebates or other promotions offered by the manufacturer or supplier be determined to be in violation of any federal law or rule, or state law or rule, the manufacturer or supplier shall be solely responsible and liable for the violation. In the event of such violation by the manufacturer or supplier, the wholesale distributor or retail permit holder shall be held harmless by the manufacturer or supplier, and shall not be deemed in violation of the state law.

(D) (1) No employee, or member of the employee's immediate family, of the manufacturer, supplier, wholesale distributor, or retail permit holder shall be eligible to receive any prize or award from the contest, prize, sales incentive program, or other promotion. Employees, and members of the employee's immediate family, of the manufacturer, supplier, wholesale distributor, or retail permit holder are eligible to apply for and receive a mail in rebate, provided that they meet the same requirements as any other consumer.

(2) Except as provided in this rule, the manufacturer or supplier shall respond directly to the consumer about the contest, prize, sales incentive program, mail in rebate or other promotion.

(3) Except as provided in this rule, no prize, award, or mail in rebate shall be made by or awarded through any retail or wholesale permit holder.

(4) No purchase of alcoholic beverages shall be required to participate in a contest, prize, sales incentive program, or other promotion; however, the purchase of alcoholic beverages may be required to participate in a mail in rebate. No rebate amount given to a consumer shall meet or exceed the retail price of the alcoholic beverage purchased by the consumer to participate in the mail-in rebate. Manufacturers, suppliers, their registered solicitors, or a third party acting on behalf of the manufacture or supplier may provide rebates only on the alcoholic beverage products that they manufacture or represent.

(5) Alcoholic beverages shall not be a prize or be given to any participant in any contest, prize, sales incentive program, mail in rebate offer, or other promotion. No contest, prize, sales incentive program, mail in rebates or other promotion of any kind shall reduce the cost of an alcoholic beverage at the point of sale.

(6) No one under the age of twenty-one shall be permitted to participate in or be awarded a prize, award, or mail in rebate from a contest, prize, sales incentive program, rebate, or other promotion.

(D) (1) Except as provided in this rule, a participant in a contest, prize sales incentive program, mail in rebate, or other promotion shall not receive a prize, award, or mail in rebate at the point-of-sale or from any retail permit holder or wholesale distributor. Prizes, awards, or rebates may be claimed by mail or other means that are not located at a retail permit holder's or wholesale distributor's permit premises or on the same parcel of property.

(2) A manufacturer or supplier of alcoholic beverages, the registered solicitor of a manufacturer or supplier, or a third party acting on behalf of the manufacturer or supplier, excluding a wholesale distributor or retail permit holder when offering a mail in rebate:

(a) May require a participant to purchase a specific non-alcoholic item in addition to the purchase of an alcoholic beverage.

(b) May require proof that the non-alcoholic item was purchased from a retail permit holder.

(c) Shall not restrict such mail in rebates to one or more specific retail permit holders nor require the purchase of an alcoholic beverage or non-alcoholic item to be made at one or more specific retail permit holder's premises in order to participate in the mail in rebate.

(d) May provide rebates only on the alcoholic beverage products that they manufacture or represent. No rebate amount given to a consumer shall meet or exceed the retail price of the alcoholic beverage purchased by the consumer to participate in the mail-in rebate.

(E) The entry form for the contest, prize, sales incentive program, or other promotion form may be attached by the manufacturer or supplier to any container of alcoholic beverage, or to any carrier or packaging containing such product, only if other methods of entry are readily available to the consumer at the place of purchase, without requiring the purchase of such product. A mail in rebate form may be attached by the manufacturer or supplier to any container of alcoholic beverage, or to any carrier or packaging containing such product, without making other methods of entry available, if a purchase of the alcoholic beverage is required to receive the mail in rebate.

§ 4301:1-1-46 Miscellaneous restrictions (effective January 1, 2016)

(A) No beer or intoxicating liquor shall be sold or served to occupants of automobiles, for consumption therein, and no "curb service" shall be furnished by any permit holder.

(B) No retail permit holder shall sell any alcoholic beverages to other permit holders or any other persons for the purpose of resale. No retail permit holder shall loan, exchange, transfer, allocate, or deliver any alcoholic beverages to another permit holder or to another permit premises. A retail permit holder may transfer alcoholic beverages from a permit premises where the permit is not renewed, the right to sell alcoholic beverages has been cancelled in any manner by law, or the operations have ceased permanently, to another permit premises for which that retail permit holder holds the permit, or to another permit premises for which the retail permit holder receiving the alcoholic beverages has, in the opinion of the superintendent, substantially the same principals as the retail permit holder transferring the alcoholic beverages, but only upon receiving written consent from the division of liquor control. The retail permit holder requesting to transfer the product shall provide a written request for consent to the division, which shall include proof that the retail permit holder offered the wholesale distributor the alcoholic beverages and that the wholesale distributor declined to repurchase the alcoholic beverages, and proof of ownership of the inventory.

(C) No deliveries of beer, or wine and mixed beverages to retail permit holders shall be made by anyone who is not a bona fide employee of the B-1, B-2, B-4, B-5, A-1, A-2, or A-4 permit holder making the sale, except such deliveries may be made as provided by section 4301.60 of the Revised Code.

(D) No alcoholic beverage shall be given away with the purchase of merchandise or any thing of value. An alcoholic beverage may be packaged with a nonalcoholic item without increasing the price of the alcoholic beverage.

(E) (1) A retail permit holder shall not be prohibited by this rule, rule 4301:1-1-45 of the Administrative Code, or any other rule of the liquor control commission from conducting a program to prevent alcoholic beverage sales to underage individuals. Under the program, the retail permit holder may give the consumer an item that is not an alcoholic beverage, which costs less than three dollars, for failure on the part of the retail permit holder, their employee, or agent, to require the presentation of identification prior to the consumer's purchase of an alcoholic beverage.

(2) The retail permit holder shall conduct this program only for the purpose of requiring the presentation of an operator's license, chauffeur's license, or an identification card, issued pursuant to sections 4507.50 to 4507.52 of the Revised Code, showing that the consumer is of legal age to purchase alcoholic beverages.

(F) Notwithstanding the provisions of rule 4301:1-1-03 of the Administrative Code, A-2, B-2, B-5, and retail permit holders may calculate and advertise retail wine case prices as ten per cent off the retail single bottle minimum price.

(G) Prohibition against sales at wholesale to persons who are not retail permit holders.

(1) No wholesale distributor shall knowingly sell alcoholic beverages at wholesale to a person who is not a retail permit holder.

(2) A wholesale distributor must verify that the person to whom they are selling alcoholic beverages at wholesale is a retail permit holder and shall be deemed to have knowledge of the fact that the person to whom it sold alcoholic beverages is not a retail permit holder when that person was never issued a retail permit or when that person's retail permit was cancelled, revoked, or not renewed by the division of liquor control and evidence of that cancellation, revocation, or non-renewal is made available by the division.

(3) A wholesale distributor shall be deemed not to have knowledge of the fact that a person to whom it sold alcoholic beverages at wholesale is not a retail permit holder when that person has been granted a stay order by the liquor control commission or a court of competent jurisdiction and the wholesale distributor has not been provided evidence that the stay order has been modified or dissolved by the commission or the court issuing the stay order. Electronic transmission of a notice to all licensed wholesalers shall constitute sufficient evidence of a wholesale distributor's knowledge of the modification or dissolution of a stay order.

§ 4301:1-1-50 Limitations on happy hours and similar retail price reductions. (effective January 1, 2016)

(A) No liquor permit holder, and no agent or employee of a liquor permit holder, shall:

(1) Offer to sell, furnish, or deliver to any person or group of persons:

(a) Two or more servings of an alcoholic beverage upon the placing of an order for an individual serving of an alcoholic beverage;

(b) An unlimited number of servings of alcoholic beverages during any set period of time for a fixed price;

(c) Any alcoholic beverage after nine p.m. at a price less than the regularly-charged price, as established by the schedule of prices required in paragraph (B) of this rule.

(2) Encourage or allow any game or contest that involves the drinking of alcoholic beverages or the awarding of alcoholic beverages as a prize.

(3) Increase the volume of alcoholic beverages contained in a serving without increasing proportionately the price charged for such serving.

(B) All permit holders authorized to sell for on-premises consumption shall maintain on their permit premises a schedule of prices for all drinks of alcoholic beverages to be sold, furnished, delivered, or consumed thereon. Scheduled prices shall be effective for not less than one calendar month, dating from twelve p.m. on the first day of each month. Prior to nine p.m., permit holders may sell, furnish, or deliver, or allow the consumption of any alcoholic beverage at a price less than the regularly-charged price, as established by the aforementioned schedule of prices. Permit holders who do so may designate this time as happy hour periods.

§ 4301:1-1-71 Sponsorship of athletic events or tournaments, concerts, shows, or entertainment (effective August 27, 2007)

(A) Nothing contained in rule 4301:1-1-44 of the Administrative Code or other rule of the commission as applied to persons engaged in the business of manufacturing alcoholic beverages shall prohibit such persons from sponsoring athletic events or tournaments, provided that no participant of said athletic event or tournament is a minor and an amateur.

(B) Nothing contained in this rule or rule 4301:1-1-44 of the Administrative Code shall prohibit the sponsorship of radio or television broadcasts of athletic events or tournaments by persons engaged in the business of manufacturing alcoholic beverages.

(C) An alcoholic beverage manufacturer may sponsor an athletic event or tournament being conducted by a charitable organization, which is not a liquor permit holder (other than a temporary liquor permit), even though a retail permit holder is also a sponsor of the event or tournament. A retail permit holder may sponsor a charitable organization's athletic event or tournament, even if an alcoholic beverage manufacturer is also a sponsor, under the same conditions as stated above.

(D) An alcoholic beverage manufacturer may sponsor events, concerts, shows, or entertainment that are not athletic in nature and that are conducted by nonprofit or charitable organizations, which are not liquor permit holders other than temporary liquor permits.

(E) An alcoholic beverage manufacturer may sponsor events, concerts, shows, or entertainment at a liquor permit premises, provided that: the primary purpose of the permit premises is to provide events, concerts, shows, and other entertainment to the general public, and is not to sell alcoholic beverages.

(F) An alcoholic beverage manufacturer may purchase a license for trademarked or copyrighted material from a charitable organization that is a retail liquor permit holder. Payment to the organization must reflect the fair market value of the license rights received.

(G) Sponsorship of any event, concert, show, entertainment, or tournament, or the purchase of license rights by an alcoholic beverage manufacturer shall not be contingent on the purchase of alcoholic beverages or retail advertising specialties.

(H) For purposes of this rule, “charitable organization” means an organization that has received a determination letter from the federal internal revenue service that is currently in effect stating that the organization is exempt from federal income taxation pursuant to subsection 501(a) and described in subsection 501(c) of the Internal Revenue Code.

Federal Statutes Prohibiting Electronic Advertising of Certain Tobacco Products

FEDERAL STATUTES PROHIBITING ELECTRONIC ADVERTISING OF CERTAIN TOBACCO PRODUCTS

15 U.S.C. § 1335 Unlawful advertisements on medium of electronic communication (effective September 21, 1973)

After January 1, 1971, it shall be unlawful to advertise cigarettes and little cigars on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission.

15 U.S.C. § 4402 Smokeless tobacco warning (effective June 22, 2009)

(c) Television and radio advertising

It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.

Selected Ohio Rules Regarding Medical Marijuana Advertising

SELECTED OHIO RULES REGARDING MEDICAL MARIJUANA ADVERTISING

§ 3796:5-7-01 Advertising (effective May 6, 2017)

(A) For purposes of this rule, "advertisement" means any written or verbal statement, illustration, or depiction created to induce sales through the use of or a combination of letters, pictures, objects, lighting effects, illustrations, or other similar means. An "advertisement" includes brochures, promotional and other marketing materials. An advertisement with a high likelihood of reaching persons under the age of eighteen is prohibited.

(B) The state of Ohio has a compelling interest in ensuring that any advertisement or marketing campaigns related to or involving medical marijuana does not encourage, promote, or otherwise create any impression that marijuana is legal or acceptable to use in a manner except as specifically authorized by Chapter 3796. of the Revised Code or the rules promulgated in accordance with Chapter 3796. of the Revised Code, or that recreational marijuana use has any potential health or therapeutic benefits, or that recreational marijuana use or possession is somehow not illegal.

(C) A cultivator, processor, or testing laboratory shall not use a name, logo, sign, or other advertisement unless the name, logo sign, or other advertisement has been submitted to the department and the applicable advertisement fee has been paid. Materials submitted to the department shall include, but are not limited to, the following:

(1) A brief description of the format, medium, and length of the distribution;

(2) A verification that an actual patient is not being used on the advertisement;

(3) Verification that an official translation of a foreign language advertisement is accurate;

(4) Annotated references to support statements related to effectiveness of treatment; and

(5) A final copy of the advertisement, including a video where applicable, in a format acceptable to the department.

(D) Until September 8, 2019, the department shall have fifteen business days to review materials submitted under paragraph (C) of this rule. Beginning September 9, 2019, the department shall have ten business days to review materials submitted under paragraph (C) of this rule.

(1) After the department has reviewed the proposed advertisement submitted in accordance with paragraph (C) of this rule, the department may do any of the following:

(a) Require a specific disclosure be made in the advertisement in a clear and conspicuous manner if the advertisement would be false or misleading without such disclosure;

(b) Make recommendations with respect to changes that are necessary to protect the public health, safety and welfare; or

(c) Prohibit the use of the advertisement.

(2) If the department does not complete one of the actions permitted under paragraph (D)(1) of this rule within the applicable review period, the submitted materials may be used in accordance with this chapter. However, failure by the department to act within the applicable review period does not constitute a waiver of its authority to undertake any of the actions permitted by this rule and the rules promulgated pursuant to Chapter 3796. of the Revised Code, if it is subsequently determined that the submitted material violates any provision of this chapter.

(E) No cultivator, processor, or testing laboratory shall place or maintain, or cause to be placed or maintained, an advertisement of medical marijuana or medical marijuana products, including paraphernalia, in any of the following ways:

(1) Within five hundred feet of the perimeter of a prohibited facility, a game arcade where admission is not restricted to persons aged twenty-one years or older, or a business where the placement of the advertisement targets or is attractive to children, as determined by the department;

(2) On a billboard;

(3) On a radio or television broadcast, including a system for transmitting visual images and sound that are reproduced on screens, and includes broadcast, cable, on-demand, satellite, or internet programming.

(4) On any handheld or other portable sign;

(5) With respect to public places, on a handbill, leaflet or flyer directly handed, deposited, fastened, thrown, scattered, cast, or otherwise distributed to any person;

(6) Left upon any private property without the consent of the property owners;

(7) On or in a vehicle, public transit vehicle, or public transit shelter; or

(8) On or in a publicly-owned or operated property.

(F) An advertisement for a cultivator, processor, or testing laboratory, regardless of the medium, shall not:

(1) Include any image bearing a resemblance to a cartoon character, fictional character whose target audience is children or youth, or pop culture icon;

(2) Market, distribute, offer, sell, license, or cause to be marketed, distributed, offered, sold, or licensed, any apparel or other merchandise related to the sale of medical marijuana, to an individual under eighteen years of age;

(3) Suggest or otherwise indicate that the product or entity in the advertisement has been approved or endorsed by the department, the state of Ohio or any person or entity associated with the state of Ohio;

(4) Advertise in a manner that is inconsistent with the medicinal and approved use of medical marijuana;

(5) Encourage the use of medical marijuana for a condition other than a qualifying medical condition; or

(6) Contain any statement, design, representation, picture, or illustration that is:

(a) False or misleading;

(b) A departure from the medical marijuana registered name, including marijuana leaves, slang terms, and similar references;

(c) Disparaging to a competitor's products;

(d) Obscene or indecent; or

(e) Related to the safety or efficacy of medical marijuana, unless supported by substantial evidence or substantial clinical data.

(G) A cultivator, processor, or testing laboratory may develop a website or otherwise establish a web presence advertising the name, business address, contact information, and services provided by a cultivator, processor, or testing laboratory. A cultivator, processor, or testing laboratory operating a website shall require age affirmation of at least eighteen years of age by the user before access to the website is granted. A cultivator, processor, or testing laboratory that establishes any type of web presence shall not:

(1) Allow for direct engagement between consumers or user-generated content or reviews;

(2) Provide a medium for website users to transmit website content to individuals under the age of eighteen;

(3) Target a consumer group with a high likelihood of reaching individuals under the age of eighteen;

(4) Display or otherwise post content that has not been submitted to the department under paragraph (C) of this rule;

(5) Transact business or otherwise facilitate a sales transaction to consumers or businesses; or

(6) Maintain a web presence that would otherwise violate rule 3796:5-7-01 of the Administrative Code.

(H) A cultivator, processor, or testing laboratory shall not do any of the following:

(1) Display external signage larger than sixteen inches in height by eighteen inches in width that is not attached to the entity's permanent structure;

(2) Illuminate a sign advertising a medical marijuana product or strain at any time;

(3) Sell or otherwise distribute clothing, apparel or wearable accessories, unless such sale or distribution is to an employee for purposes of identification while at the licensed facility;

(4) Advertise medical marijuana brand names or utilize graphics related to medical marijuana on the exterior of the building in which the cultivator, processor, or testing laboratory is operating; and

(5) Display medical marijuana, medical marijuana products, or medical marijuana paraphernalia that is visible from the exterior of the facility.

(6) This rule, as it pertains to advertisements, does not apply to noncommercial message.

§ 3796:6-3-24 Advertising, marketing, and signage (effective September 8, 2017)

(A) For purposes of this rule "advertisement" means any written or verbal statement, illustration, or depiction created to induce sales through a combination of letters, pictures, objects, lighting effects, illustrations, or other similar means. An "advertisement" includes brochures, promotional material and other marketing materials. An advertisement that renders medical marijuana or medical marijuana products attractive to children is prohibited.

(B) The state of Ohio has a compelling interest in ensuring that any advertisement or marketing campaigns related to or involving medical marijuana does not encourage, promote, or otherwise create any impression that marijuana is legal or acceptable to use in a manner except as specifically authorized under Chapter 3796. of the Revised Code, or the rules promulgated in accordance with Chapter 3796. of the Revised Code, or that recreational marijuana use has any potential health or therapeutic benefits, or that recreational marijuana use or possession is somehow legal.

(C) A dispensary shall not use a name, logo, sign or advertisement unless the name, logo, sign or advertisement has been submitted to the state board of pharmacy and the applicable advertising approval fee has been paid. Materials submitted to the board shall include, but are not limited to:

(1) A brief description of the format, medium and length of the distribution;

(2) Verification that an actual patient is not being used on the advertisement;

(3) Verification that an official translation of a foreign language advertisement is accurate;

(4) Annotated references to support statements related to effectiveness of treatment; and

(5) A final copy of the advertisement, including a video where applicable, in a format acceptable to the board.

(D) Until September 8, 2019, the state board of pharmacy shall have fifteen business days to review materials submitted under paragraph (C) of this rule. Beginning September 9, 2019, the board shall have ten business days to review materials submitted under paragraph (C) of this rule.

(1) After the state board of pharmacy reviews the proposed advertisement, the board may:

(a) Require a specific disclosure be made in the advertisement in a clear and conspicuous manner if the advertisement would be false or misleading without such a disclosure;

(b) Make recommendations with respect to changes that are necessary to protect the public health, safety, and welfare; or

(c) Prohibit the use of the advertisement.

(2) If the state board of pharmacy does not complete one of the actions permitted under paragraph (D)(1) of this rule within the applicable review period, the submitted materials may be used in accordance with this division. Failure by the board to act within the applicable review period, however, does not constitute a waiver of its authority to undertake any of the actions permitted by this rule and the rules promulgated pursuant to Chapter 3796. of the Revised Code, if it is subsequently determined that the submitted material violates any provision of this Chapter 3796. of the Revised Code or this division.

(E) No dispensary shall place or maintain, or cause to be placed or maintained, an advertisement of medical marijuana or medical marijuana products, including paraphernalia, in any form or through any medium:

(1) Within five hundred feet of the perimeter of a prohibited facility, a community addiction services provider as defined under section 5119.01 of the Revised Code, a game arcade admission to which is not restricted to persons aged twenty-one years or older, or any other location where the placement of the advertisement targets or is attractive to children, as determined by the state board of pharmacy;

(2) On a billboard;

(3) On a radio or television broadcast;

(a) A radio or television broadcast includes a system for transmitting sound alone or visual images and sound; and

(b) Includes broadcast, cable, on-demand, satellite, or internet programming;

(4) On any handheld or other portable sign;

(5) With respect to public places, on a handbill, leaflet, or flyer directly handed, deposited, fastened, thrown, scattered, cast, or otherwise distributed to any person;

(6) Left upon any private property without the consent of the property owners;

(7) On or in a public transit vehicle or public transit shelter; or

(8) On or in a publicly-owned or operated property.

(F) An advertisement for a dispensary, regardless of the medium, shall not:

(1) Include any image bearing a resemblance to a cartoon character, fictional character whose target audience is children or youth, or pop culture icon;

(2) Market, distribute, offer, sell, license or cause to be marketed, distributed, offered sold or licensed, any apparel or other merchandise related to the sale of marijuana, to an individual under eighteen years of age.

(3) Contain any statement, design, representation, picture or illustration that is:

(a) False or misleading;

(b) A departure from the medical marijuana registered name, including, marijuana leaves, slang terms, and similar references;

(c) Disparaging to a competitor's products;

(d) Obscene or indecent; or

(e) Related to the safety or efficacy of marijuana, unless supported by substantial evidence or substantial clinical data.

(4) Suggest or otherwise indicate that the product or entity in the advertisement has been approved or endorsed by the department of commerce, the state board of pharmacy, the state of Ohio or any person or entity associated with the state of Ohio; or

(5) Encourage the use of medical marijuana for a condition other than a qualifying medical condition.

(G) A dispensary may develop a website or otherwise establish a web presence advertising the name, business address, contact information, and services provided by a dispensary. A dispensary operating a website shall require age affirmation of at least eighteen years of age by the user before access to the website is granted. A dispensary that establishes any type of web presences shall not:

(1) Allow for direct engagement between consumers or user-generated content or reviews;

(2) Provide a medium for website users to transmit website content to individuals under the age of eighteen;

(3) Display or otherwise post content that has not been submitted to the state board of pharmacy pursuant to paragraph (C) of this rule;

(4) Facilitate sales transactions to any patient, caregiver, or medical marijuana entity;

(5) Target a consumer audience under the age of eighteen; or

(6) Maintain a web presence in violation of Chapter 3796. of the Revised Code or this division;

(H) A dispensary shall not:

(1) Display external signage larger than sixteen inches in height by eighteen inches in width that is not attached to the entity's permanent structure;

(2) Illuminate a sign advertising medical marijuana at any time;

(3) Sell or otherwise distribute clothing, apparel, or wearable accessories, unless such sale or distribution is to an employee for purposes of identification while working for the licensed entity;

(4) Advertise medical marijuana brand names or use graphics related to medical marijuana on the exterior of the building in which the dispensary is operating; and

(5) Display medical marijuana or paraphernalia that is visible from the exterior of the dispensary.

(I) No dispensary shall license or otherwise expressly authorize any third party to use or advertise in a manner prohibited by this division.

(J) This rule, as it pertains to advertisements, does not apply to a noncommercial message.

Selected Ohio Constitution Provisions and Gambling Statutes

SELECTED OHIO CONSTITUTION PROVISIONS AND GAMBLING STATUTES

This is an excerpt from the Ohio Constitution as of April 24, 2013.

§ 15.06 Lotteries, charitable bingo, casinos (effective May 4, 2010)

Except as otherwise provided in this section, lotteries, and the sale of lottery tickets, for any purpose whatever, shall forever be prohibited in this State.

(A) The General Assembly may authorize an agency of the state to conduct lotteries, to sell rights to participate therein, and to award prizes by chance to participants, provided that the entire net proceeds of any such lottery are paid into a fund of the state treasury that shall consist solely of such proceeds and shall be used solely for the support of elementary, secondary, vocational, and special education programs as determined in appropriations made by the General Assembly.

(B) The General Assembly may authorize and regulate the operation of bingo to be conducted by charitable organizations for charitable purposes.

(C) (1) Casino gaming shall be authorized at four casino facilities (a single casino at a designated location within each of the cities of Cincinnati, Cleveland, and Toledo, and within Franklin County) to create new funding for cities, counties, public school districts, law enforcement, the horse racing industry and job training for Ohio's workforce.

(2) A thirty-three percent tax shall be levied and collected by the state on all gross casino revenue received by each casino operator of these four casino facilities. In addition, casino operators, their operations, their owners, and their property shall be subject to all customary non-discriminatory fees, taxes, and other charges that are applied to, levied against, or otherwise imposed generally upon other Ohio businesses, their gross or net revenues, their operations, their owners, and their property. Except as otherwise provided in section 6(C), no other casino gaming-related state or local fees, taxes, or other charges (however measured, calculated, or otherwise derived) may be, directly or indirectly, applied to, levied against, or otherwise imposed upon gross casino revenue, casino operators, their operations, their owners, or their property.

(3) The proceeds of the tax on gross casino revenue collected by the state shall be distributed as follows:

(a) Fifty-one percent of the tax on gross casino revenue shall be distributed among all eighty-eight counties in proportion to such counties' respective populations at the time of such distribution. If a county's most populated city, as of the 2000 United States census bureau census, had a population greater than 80,000, then fifty percent of that county's distribution will go to said city.

(b) Thirty-four percent of the tax on gross casino revenue shall be distributed among all eighty-eight counties in proportion to such counties' respective public school district student populations at the time of such distribution.

Each such distribution received by a county shall be distributed among all public school districts located (in whole or in part) within such county in proportion to each school district's respective student population who are residents of such county at the time of such distribution to the school districts. Each public school district shall determine how its distributions are appropriated, but all distributions shall only be used to support primary and secondary education.

(c) Five percent of the tax on gross casino revenue shall be distributed to the host city where the casino facility that generated such gross casino revenue is located.

(d) Three percent of the tax on gross casino revenue shall be distributed to fund the Ohio casino control commission.

(e) Three percent of the tax on gross casino revenue shall be distributed to an Ohio state racing commission fund to support purses, breeding programs, and operations at all existing commercial horse racetracks permitted as of January 1, 2009. However, no funding under this division shall be distributed to operations of an Ohio commercial horse racetrack if an owner or operator of the racetrack holds a majority interest in an Ohio casino facility or in an Ohio casino license.

(f) Two percent of the tax on gross casino revenue shall be distributed to a state law enforcement training fund to enhance public safety by providing additional training opportunities to the law enforcement community.

(g) Two percent of the tax on gross casino revenue shall be distributed to a state problem gambling and addictions fund which shall be used for the treatment of problem gambling and substance abuse, and related research.

Tax collection, and distributions to public school districts and local governments, under sections 6(C)(2) and (3), are intended to supplement, not supplant, any funding obligations of the state. Accordingly, all such distributions shall be disregarded for purposes of determining whether funding obligations imposed by other sections of this Constitution are met.

(4) There is hereby created the Ohio casino control commission which shall license and regulate casino operators, management companies retained by such casino operators, key employees of such casino operators and such management companies, gaming-related vendors, and all gaming authorized by section 6(C), to ensure the integrity of casino gaming.

Said commission shall determine all voting issues by majority vote and shall consist of seven members appointed by the governor with the advice and consent of the senate. Each member of the commission must be a resident of Ohio. At least one member of the commission must be experienced in law enforcement and criminal investigation. At least one member of the commission must be a certified public accountant experienced in accounting and auditing. At least one member of the commission must be an attorney admitted to the practice of law in Ohio. At

least one member of the commission must be a resident of a county where one of the casino facilities is located. Not more than four members may be affiliated with the same political party. No commission member may have any affiliation with an Ohio casino operator or facility.

Said commission shall require each initial licensed casino operator of each of the four casino facilities to pay an upfront license fee of fifty million dollars ($50,000,000) per casino facility for the benefit of the state, for a total of two hundred million dollars ($200,000,000). The upfront license fee shall be used to fund state economic development programs which support regional job training efforts to equip Ohio's workforce with additional skills to grow the economy.

To carry out the tax provisions of section 6(C), and in addition to any other enforcement powers provided under Ohio law, the tax commissioner of the State and the Ohio casino control commission, or any person employed by the tax commissioner or said commission for that purpose, upon demand, may inspect books, accounts, records, and memoranda of any person subject to such provisions, and may examine under oath any officer, agent, or employee of that person.

(5) Each initial licensed casino operator of each of the four casino facilities shall make an initial investment of at least two hundred fifty million dollars ($250,000,000) for the development of each casino facility for a total minimum investment of one billion dollars ($1,000,000,000) statewide. A casino operator: (a) may not hold a majority interest in more than two of the four licenses allocated to the casino facilities at any one time; and (b) may not hold a majority interest in more than two of the four casino facilities at any one time.

(6) Casino gaming authorized in section 6(C) shall be conducted only by licensed casino operators of the four casino facilities or by licensed management companies retained by such casino operators. At the discretion of each licensed casino operator of a casino facility: (a) casino gaming may be conducted twenty-four hours each day; and (b) a maximum of five thousand slot machines may be operated at such casino facility.

(7) Each of the four casino facilities shall be subject to all applicable state laws and local ordinances related to health and building codes, or any related requirements and provisions. Notwithstanding the foregoing, no local zoning, land use laws, subdivision regulations or similar provisions shall prohibit the development or operation of the four casino facilities set forth herein, provided that no casino facility shall be located in a district zoned exclusively residential as of January 1, 2009.

(8) Notwithstanding any provision of the Constitution, statutes of Ohio, or a local charter and ordinance, only one casino facility shall be operated in each of the cities of Cleveland, Cincinnati, and Toledo, and in Franklin County.

(9) For purposes of this section 6(C), the following definitions shall be applied: "Casino facility" means all or any part of any one or more of the following properties (together with all improvements situated thereon) in Cleveland, Cincinnati, Toledo, and Franklin County:

(a) Cleveland:

Being an approximate 61 acre area in Cuyahoga County, Ohio, as identified by the Cuyahoga County Auditor, as of 02/27/09, as tax parcel numbers 004-28-001, 004- 29-004A, 004-29-005, 004-29-008, 004-29-009, 004-29-010, 004-29-012, 004-29- 013, 004-29-014, 004-29-020, 004-29-018, 004-29-017, 004-29-016, 004-29-021, 004-29-025, 004-29-027, 004-29-026, 004-28-008, 004-28-004, 004-28-003, 004- 28-002, 004-28-010, 004-29-001, 004-29-007 and 004-04-017 and all lands and air rights lying within and/or above the public rights of way adjacent to such parcels.

Being an approximate 8.66 acre area in Cuyahoga County, Ohio, being that parcel identified by the Cuyahoga County Auditor, as of 02/27/09, as tax parcel number 101-21-002 and all lands and air rights lying within and/or above the public rights of way adjacent to such parcel.

Being an approximate 2.56 acre area in Cuyahoga County, Ohio, being that parcel identified by the Cuyahoga County Auditor, as of 02/27/09, as tax parcel number 101-21-002 and all lands and air rights lying within and/or above the public rights of way adjacent to such parcel.

Being an approximate 7.91 acre area in Cuyahoga County, Ohio, being that parcel identified by the Cuyahoga County Auditor, as of 02/27/09, as tax parcel number 101-23-050A and all lands and air rights lying within and/or above the public rights of way adjacent to such parcel.

All air rights above the parcel located in Cuyahoga County, Ohio identified by the Cuyahoga County Auditor, as of 02/27/09, as tax parcel number 101-22-003.

Being an approximate 1.55 acre area in Cuyahoga County, Ohio, as identified by the Cuyahoga County Auditor, as of 02/27/09, as tax parcel numbers 122-18-010, 122-18-011 and 122-18-012 and all lands and air rights lying within and/or above the public rights of way adjacent to such parcels.

Being an approximate 1.83 acre area in Cuyahoga County, Ohio, as identified by the Cuyahoga County Auditor, as of 02/27/09, as tax parcel numbers 101-30-002 and 101-30-003 and all lands and air rights lying within and/or above the public rights of way adjacent to such parcels.

Consisting of floors one through four, mezzanine, basement, sub-basement, Parcel No. 36-2, Item III, Parcels First and Second, Item V, Parcel A, and Item VI, Parcel One of the Higbee Building in Cuyahoga County, Ohio, as identified by the Cuyahoga County Auditor, as of 2/29/09, as tax parcel numbers 101-23-002 and 101-23-050F and all lands and air rights lying within and/or above the public rights of way adjacent to such parcels.

(b) Franklin County:

Being an approximate 113.794 acre area in Franklin County, Ohio, as identified by the Franklin County Auditor, as of 01/19/10, as tax parcel number 140-003620-00.

(c) Cincinnati:

Being an approximate 20.4 acre area in Hamilton County, Ohio, being identified by the Hamilton County Auditor, as of 02/27/09, as tax parcel numbers 074-0002-0009-00, 074-0001-0001-00, 074-0001-0002-00, 074-0001-0003-00, 074-0001-0004-00, 074-0001-0006-00, 074-0001-0008-00, 074-0001-0014-00, 074-0001-0016-00, 074-0001-0031-00, 074-0001-0039-00, 074-0001-0041-00, 074-0001-0042-00, 074-0001-0043-00, 074-0002-0001-00, 074-0004-0001-00, 074-0004-0002-00, 074-0004-0003-00 and 074-0005-0003-00.

(d) Toledo:

Being an approximate 44.24 acre area in the City of Toledo, Lucas County, Ohio, as identified by the Lucas County Auditor, as of 03/05/09, as tax parcel numbers 18-76138 and 18-76515.

"Casino gaming" means any type of slot machine or table game wagering, using money, casino credit, or any representative of value, authorized in any of the states of Indiana, Michigan, Pennsylvania and West Virginia as of January 1, 2009, and shall include slot machine and table game wagering subsequently authorized by, but shall not be limited by subsequent restrictions placed on such wagering in, such states. Notwithstanding the aforementioned definition, "casino gaming" does not include bingo, as authorized in article XV, section 6 of the Ohio Constitution and conducted as of January 1, 2009, or horse racing where the pari-mutuel system of wagering is conducted, as authorized under the laws of Ohio as of January 1, 2009.

"Casino operator" means any person, trust, corporation, partnership, limited partnership, association, limited liability company or other business enterprise that directly holds an ownership or leasehold interest in a casino facility. "Casino operator" does not include an agency of the state, any political subdivision of the state, or any person, trust, corporation, partnership, limited partnership, association, limited liability company or other business enterprise that may have an interest in a casino facility, but who is legally or contractually restricted from conducting casino gaming.

"Gross casino revenue" means the total amount of money exchanged for the purchase of chips, tokens, tickets, electronic cards, or similar objects by casino patrons, less winnings paid to wagerers.

"Majority interest" in a license or in a casino facility (as the case may be) means beneficial ownership of more than fifty percent (50%) of the total fair market value of such license or casino facility (as the case may be). For purposes of the foregoing, whether a majority interest is held in a license or in a casino facility (as the case may be) shall be determined in accordance with the rules for constructive ownership of stock provided in Treas. Reg. § 1.409A-3(i)(5)(iii) as in effect on January 1, 2009.

"Slot machines" shall include any mechanical, electrical, or other device or machine which, upon insertion of a coin, token, ticket, or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, makes individual prize determinations for individual participants in cash, premiums, merchandise, tokens, or any thing of value, whether the payoff is made automatically from the machine or in any other manner.

"Table game" means any game played with cards, dice, or any mechanical, electromechanical, or electronic device or machine for money, casino credit, or any representative of value.

(10) The General Assembly shall pass laws within six months of the effective date of section 6(C) to facilitate the operation of section 6(C).

(11) Each provision of section 6(C) is intended to be independent and severable, and if any provision of section 6(C) is held to be invalid, either on its face or as applied to any person or circumstance, the remaining provisions of section 6(C), and the application thereof to any person or circumstance other than those to which it is held invalid, shall not be affected thereby. In any case of a conflict between any provision of section 6(C) and any other provision contained in this Constitution, the provisions of section 6(C) shall control.

(12) Notwithstanding the provisions of section 6(C)(11), nothing in this section 6(C) (including, without limitation, the provisions of sections 6(C)(6) and 6(C)(8)) shall restrict or in any way limit lotteries authorized under section 6(A) of this article or bingo authorized under section 6(B) of this article. The provisions of this section 6(C) shall have no effect upon activities authorized under sections 6(A) and/or (6)(B) of this article.

The remaining information in this section is excerpted from the Ohio Revised Code as of April 24, 2013.

§ 2915.01 Gambling definitions (effective September 4, 2013)

As used in this chapter:

(A) "Bookmaking" means the business of receiving or paying off bets.

(B) "Bet" means the hazarding of anything of value upon the result of an event, undertaking, or contingency, but does not include a bona fide business risk.

(C) "Scheme of chance" means a slot machine unless authorized under Chapter 3772. of the Revised Code, lottery unless authorized under Chapter 3770. of the Revised Code, numbers game, pool conducted for profit, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine, or a pool not conducted for profit. "Scheme of chance" includes the use of an electronic device to reveal the results of a game entry if valuable consideration is paid, directly or indirectly, for a chance to win a prize. Valuable consideration is deemed to be paid for a chance to win a prize in the following instances:

(1) Less than fifty per cent of the goods or services sold by a scheme of chance operator in exchange for game entries are used or redeemed by participants at any one location;

(2) Less than fifty per cent of participants who purchase goods or services at any one location do not accept, use, or redeem the goods or services sold or purportedly sold;

(3) More than fifty per cent of prizes at any one location are revealed to participants through an electronic device simulating a game of chance or a "casino game" as defined in section 3772.01 of the Revised Code;

(4) The good or service sold by a scheme of chance operator in exchange for a game entry cannot be used or redeemed in the manner advertised;

(5) A participant pays more than fair market value for goods or services offered by a scheme of chance operator in order to receive one or more game entries;

(6) A participant may use the electronic device to purchase additional game entries;

(7) A participant may purchase additional game entries by using points or credits won as prizes while using the electronic device;

(8) A scheme of chance operator pays out in prize money more than twenty per cent of the gross revenue received at one location; or

(9) A participant makes a purchase or exchange in order to obtain any good or service that may be used to facilitate play on the electronic device.

As used in this division, "electronic device" means a mechanical, video, digital, or electronic machine or device that is capable of displaying information on a screen or other mechanism and that is owned, leased, or otherwise possessed by any person conducting a scheme of chance, or by that person's partners, affiliates, subsidiaries, or contractors.

(D) "Game of chance" means poker, craps, roulette, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, but does not include bingo.

(E) "Game of chance conducted for profit" means any game of chance designed to produce income for the person who conducts or operates the game of chance, but does not include bingo.

(F) "Gambling device" means any of the following:

(1) A book, totalizer, or other equipment for recording bets;

(2) A ticket, token, or other device representing a chance, share, or interest in a scheme of chance or evidencing a bet;

(3) A deck of cards, dice, gaming table, roulette wheel, slot machine, or other apparatus designed for use in connection with a game of chance;

(4) Any equipment, device, apparatus, or paraphernalia specially designed for gambling purposes;

(5) Bingo supplies sold or otherwise provided, or used, in violation of this chapter.

(G) "Gambling offense" means any of the following:

(1) A violation of section 2915.02, 2915.03, 2915.04, 2915.05, 2915.06, 2915.07, 2915.08, 2915.081, 2915.082, 2915.09, 2915.091, 2915.092, 2915.10, or 2915.11 of the Revised Code;

(2) A violation of an existing or former municipal ordinance or law of this or any other state or the United States substantially equivalent to any section listed in division (G)(1) of this section or a violation of section 2915.06 of the Revised Code as it existed prior to July 1, 1996;

(3) An offense under an existing or former municipal ordinance or law of this or any other state or the United States, of which gambling is an element;

(4) A conspiracy or attempt to commit, or complicity in committing, any offense under division (G)(1), (2), or (3) of this section.

(H) Except as otherwise provided in this chapter, "charitable organization" means either of the following:

(1) An organization that is, and has received from the internal revenue service a determination letter that currently is in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(2) A volunteer rescue service organization, volunteer firefighter's organization, veteran's organization, fraternal organization, or sporting organization that is exempt from federal income taxation under subsection 501(c)(4), (c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code.

To qualify as a "charitable organization," an organization shall have been in continuous existence as such in this state for a period of two years immediately preceding either the making of an application for a bingo license under section 2915.08 of the Revised Code or the conducting of any game of chance as provided in division (D) of section 2915.02 of the Revised Code.

(I) "Religious organization" means any church, body of communicants, or group that is not organized or operated for profit and that gathers in common membership for regular worship and religious observances.

(J) "Veteran's organization" means any individual post or state headquarters of a national veteran's association or an auxiliary unit of any individual post of a national veteran's association, which post, state headquarters, or auxiliary unit is incorporated as a nonprofit corporation and either has received a letter from the state headquarters of the national veteran's association indicating that the individual post or auxiliary unit is in good standing with the national veteran's association or has received a letter from the national veteran's association indicating that the state headquarters is in good standing with the national veteran's association. As used in this division, "national veteran's association" means any veteran's association that has been in continuous existence as such for a period of at least five years and either is incorporated by an act of the United States congress or has a national dues-paying membership of at least five thousand persons.

(K) "Volunteer firefighter's organization" means any organization of volunteer firefighters, as defined in section 146.01 of the Revised Code, that is organized and operated exclusively to provide financial support for a volunteer fire department or a volunteer fire company and that is recognized or ratified by a county, municipal corporation, or township.

(L) "Fraternal organization" means any society, order, state headquarters, or association within this state, except a college or high school fraternity, that is not organized for profit, that is a branch, lodge, or chapter of a national or state organization, that exists exclusively for the common business or sodality of its members.

(M) "Volunteer rescue service organization" means any organization of volunteers organized to function as an emergency medical service organization, as defined in section 4765.01 of the Revised Code.

(N) "Charitable bingo game" means any bingo game described in division (O)(1) or (2) of this section that is conducted by a charitable organization that has obtained a license pursuant to section 2915.08 of the Revised Code and the proceeds of which are used for a charitable purpose.

(O) "Bingo" means either of the following:

(1) A game with all of the following characteristics:

(a) The participants use bingo cards or sheets, including paper formats and electronic representation or image formats, that are divided into twenty-five spaces arranged in five horizontal and five vertical rows of spaces, with each space, except the central space, being designated by a combination of a letter and a number and with the central space being designated as a free space.

(b) The participants cover the spaces on the bingo cards or sheets that correspond to combinations of letters and numbers that are announced by a bingo game operator.

(c) A bingo game operator announces combinations of letters and numbers that appear on objects that a bingo game operator selects by chance, either manually or mechanically, from a receptacle that contains seventy-five objects at the beginning of each game, each object marked by a different combination of a letter and a number that corresponds to one of the seventy-five possible combinations of a letter and a number that can appear on the bingo cards or sheets.

(d) The winner of the bingo game includes any participant who properly announces during the interval between the announcements of letters and numbers as described in division (O)(1)(c) of this section, that a predetermined and preannounced pattern of spaces has been covered on a bingo card or sheet being used by the participant.

(2) Instant bingo, punch boards, and raffles.

(P) "Conduct" means to back, promote, organize, manage, carry on, sponsor, or prepare for the operation of bingo or a game of chance, a scheme of chance, or a sweepstakes.

(Q) "Bingo game operator" means any person, except security personnel, who performs work or labor at the site of bingo, including, but not limited to, collecting money from participants, handing out bingo cards or sheets or objects to cover spaces on bingo cards or sheets, selecting from a receptacle the objects that contain the combination of letters and numbers that appear on bingo cards or sheets, calling out the combinations of letters and numbers, distributing prizes, selling or redeeming instant bingo tickets or cards, supervising the operation of a punch board, selling raffle tickets, selecting raffle tickets from a receptacle and announcing the winning numbers in a raffle, and preparing, selling, and serving food or beverages.

(R) "Participant" means any person who plays bingo.

(S) "Bingo session" means a period that includes both of the following:

(1) Not to exceed five continuous hours for the conduct of one or more games described in division (O)(1) of this section, instant bingo, and seal cards;

(2) A period for the conduct of instant bingo and seal cards for not more than two hours before and not more than two hours after the period described in division (S)(1) of this section.

(T) "Gross receipts" means all money or assets, including admission fees, that a person receives from bingo without the deduction of any amounts for prizes paid out or for the expenses of conducting bingo. "Gross receipts" does not include any money directly taken in from the sale of food or beverages by a charitable organization conducting bingo, or by a bona fide auxiliary unit or society of a charitable organization conducting bingo, provided all of the following apply:

(1) The auxiliary unit or society has been in existence as a bona fide auxiliary unit or society of the charitable organization for at least two years prior to conducting bingo.

(2) The person who purchases the food or beverage receives nothing of value except the food or beverage and items customarily received with the purchase of that food or beverage.

(3) The food and beverages are sold at customary and reasonable prices.

(U) "Security personnel" includes any person who either is a sheriff, deputy sheriff, marshal, deputy marshal, township constable, or member of an organized police department of a municipal corporation or has successfully completed a peace officer's training course pursuant to sections 109.71 to 109.79 of the Revised Code and who is hired to provide security for the premises on which bingo is conducted.

(V) "Charitable purpose" means that the net profit of bingo, other than instant bingo, is used by, or is given, donated, or otherwise transferred to, any of the following:

(1) Any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(2) A veteran's organization that is a post, chapter, or organization of veterans, or an auxiliary unit or society of, or a trust or foundation for, any such post, chapter, or organization organized in the United States or any of its possessions, at least seventy-five per cent of the members of which are veterans and substantially all of the other members of which are individuals who are spouses, widows, or widowers of veterans, or such individuals, provided that no part of the net earnings of such post, chapter, or organization inures to the benefit of any private shareholder or individual, and further provided that the net profit is used by the post, chapter, or organization for the charitable purposes set forth in division (B)(12) of section 5739.02 of the Revised Code, is used for awarding scholarships to or for attendance at an institution mentioned in division (B)(12) of section 5739.02 of the Revised Code, is donated to a governmental agency, or is used for nonprofit youth activities, the purchase of United States or Ohio flags that are donated to schools, youth groups, or other bona fide nonprofit organizations, promotion of patriotism, or disaster relief;

(3) A fraternal organization that has been in continuous existence in this state for fifteen years and that uses the net profit exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, if contributions for such use would qualify as a deductible charitable contribution under subsection 170 of the Internal Revenue Code;

(4) A volunteer firefighter's organization that uses the net profit for the purposes set forth in division (K) of this section.

(W) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as now or hereafter amended.

(X) "Youth athletic organization" means any organization, not organized for profit, that is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are twenty-one years of age or younger by means of sponsoring, organizing, operating, or contributing to the support of an athletic team, club, league, or association.

(Y) "Youth athletic park organization" means any organization, not organized for profit, that satisfies both of the following:

(1) It owns, operates, and maintains playing fields that satisfy both of the following:

(a) The playing fields are used at least one hundred days per year for athletic activities by one or more organizations, not organized for profit, each of which is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are eighteen years of age or younger by means of sponsoring, organizing, operating, or contributing to the support of an athletic team, club, league, or association.

(b) The playing fields are not used for any profit-making activity at any time during the year.

(2) It uses the proceeds of bingo it conducts exclusively for the operation, maintenance, and improvement of its playing fields of the type described in division (Y)(1) of this section.

(Z) "Bingo supplies" means bingo cards or sheets; instant bingo tickets or cards; electronic bingo aids; raffle tickets; punch boards; seal cards; instant bingo ticket dispensers; and devices for selecting or displaying the combination of bingo letters and numbers or raffle tickets. Items that are "bingo supplies" are not gambling devices if sold or otherwise provided, and used, in accordance with this chapter. For purposes of this chapter, "bingo supplies" are not to be considered equipment used to conduct a bingo game.

(AA) "Instant bingo" means a form of bingo that shall use folded or banded tickets or paper cards with perforated break-open tabs, a face of which is covered or otherwise hidden from view to conceal a number, letter, or symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners, and may also include games in which some winners are determined by the random selection of one or more bingo numbers by the use of a seal card or bingo blower. In all "instant bingo" the prize amount and structure shall be predetermined. "Instant bingo" does not include any device that is activated by the insertion of a coin, currency, token, or an equivalent, and that contains as one of its components a video display monitor that is capable of displaying numbers, letters, symbols, or characters in winning or losing combinations.

(BB) "Seal card" means a form of instant bingo that uses instant bingo tickets in conjunction with a board or placard that contains one or more seals that, when removed or opened, reveal predesignated winning numbers, letters, or symbols.

(CC) “Raffle” means a form of bingo in which the one or more prizes are won by one or more persons who have purchased a raffle ticket. The one or more winners of the raffle are determined by drawing a ticket stub or other detachable section from a receptacle containing ticket stubs or detachable sections corresponding to all tickets sold for the raffle. “Raffle” does not include the drawing of a ticket stub or other detachable section of a ticket purchased to attend a professional sporting event if both of the following apply:

(1) The ticket stub or other detachable section is used to select the winner of a free prize given away at the professional sporting event; and

(2) The cost of the ticket is the same as the cost of a ticket to the professional sporting event on days when no free prize is given away.

(DD) “Punch board” means a board containing a number of holes or receptacles of uniform size in which are placed, mechanically and randomly, serially numbered slips of paper that may be punched or drawn from the hole or receptacle when used in conjunction with instant bingo. A player may punch or draw the numbered slips of paper from the holes or receptacles and obtain the prize established for the game if the number drawn corresponds to a winning number or, if the punch board includes the use of a seal card, a potential winning number.

(EE) “Gross profit” means gross receipts minus the amount actually expended for the payment of prize awards.

(FF) “Net profit” means gross profit minus expenses.

(GG) “Expenses” means the reasonable amount of gross profit actually expended for all of the following:

(1) The purchase or lease of bingo supplies;

(2) The annual license fee required under section 2915.08 of the Revised Code;

(3) Bank fees and service charges for a bingo session or game account described in section 2915.10 of the Revised Code;

(4) Audits and accounting services;

(5) Safes;

(6) Cash registers;

(7) Hiring security personnel;

(8) Advertising bingo;

(9) Renting premises in which to conduct a bingo session;

(10) Tables and chairs;

(11) Expenses for maintaining and operating a charitable organization's facilities, including, but not limited to, a post home, club house, lounge, tavern, or canteen and any grounds attached to the post home, club house, lounge, tavern, or canteen;

(12) Payment of real property taxes and assessments that are levied on a premises on which bingo is conducted;

(13) Any other product or service directly related to the conduct of bingo that is authorized in rules adopted by the attorney general under division (B)(1) of section 2915.08 of the Revised Code.

(HH) "Person" has the same meaning as in section 1.59 of the Revised Code and includes any firm or any other legal entity, however organized.

(II) "Revoke" means to void permanently all rights and privileges of the holder of a license issued under section 2915.08, 2915.081, or 2915.082 of the Revised Code or a charitable gaming license issued by another jurisdiction.

(JJ) "Suspend" means to interrupt temporarily all rights and privileges of the holder of a license issued under section 2915.08, 2915.081, or 2915.082 of the Revised Code or a charitable gaming license issued by another jurisdiction.

(KK) "Distributor" means any person who purchases or obtains bingo supplies and who does either of the following:

(1) Sells, offers for sale, or otherwise provides or offers to provide the bingo supplies to another person for use in this state;

(2) Modifies, converts, adds to, or removes parts from the bingo supplies to further their promotion or sale for use in this state.

(LL) "Manufacturer" means any person who assembles completed bingo supplies from raw materials, other items, or subparts or who modifies, converts, adds to, or removes parts from bingo supplies to further their promotion or sale.

(MM) "Gross annual revenues" means the annual gross receipts derived from the conduct of bingo described in division (O)(1) of this section plus the annual net profit derived from the conduct of bingo described in division (O)(2) of this section.

(NN) "Instant bingo ticket dispenser" means a mechanical device that dispenses an instant bingo ticket or card as the sole item of value dispensed and that has the following characteristics:

(1) It is activated upon the insertion of United States currency.

(2) It performs no gaming functions.

(3) It does not contain a video display monitor or generate noise.

(4) It is not capable of displaying any numbers, letters, symbols, or characters in winning or losing combinations.

(5) It does not simulate or display rolling or spinning reels.

(6) It is incapable of determining whether a dispensed bingo ticket or card is a winning or nonwinning ticket or card and requires a winning ticket or card to be paid by a bingo game operator.

(7) It may provide accounting and security features to aid in accounting for the instant bingo tickets or cards it dispenses.

(8) It is not part of an electronic network and is not interactive.

(OO) (1) "Electronic bingo aid" means an electronic device used by a participant to monitor bingo cards or sheets purchased at the time and place of a bingo session and that does all of the following:

(a) It provides a means for a participant to input numbers and letters announced by a bingo caller.

(b) It compares the numbers and letters entered by the participant to the bingo faces previously stored in the memory of the device.

(c) It identifies a winning bingo pattern.

(2) "Electronic bingo aid" does not include any device into which a coin, currency, token, or an equivalent is inserted to activate play.

(PP) "Deal of instant bingo tickets" means a single game of instant bingo tickets all with the same serial number.

(QQ) (1) "Slot machine" means either of the following:

(a) Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player who gives the thing of value in the hope of gain;

(b) Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player to conduct bingo or a scheme or game of chance.

(2) "Slot machine" does not include a skill-based amusement machine or an instant bingo ticket dispenser.

(RR) "Net profit from the proceeds of the sale of instant bingo" means gross profit minus the ordinary, necessary, and reasonable expense expended for the purchase of instant bingo supplies, and, in the case of instant bingo conducted by a veteran's, fraternal, or sporting organization, minus the payment by that organization of real property taxes and assessments levied on a premises on which instant bingo is conducted.

(SS) "Charitable instant bingo organization" means an organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and is a charitable organization as defined in this section. A "charitable instant bingo organization" does not include a charitable organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and that is created by a veteran's organization, a fraternal organization, or a sporting organization in regards to bingo conducted or assisted by a veteran's organization, a fraternal organization, or a sporting organization pursuant to section 2915.13 of the Revised Code.

(TT) "Game flare" means the board or placard that accompanies each deal of instant bingo tickets and that has printed on or affixed to it the following information for the game:

(1) The name of the game;

(2) The manufacturer's name or distinctive logo;

(3) The form number;

(4) The ticket count;

(5) The prize structure, including the number of winning instant bingo tickets by denomination and the respective winning symbol or number combinations for the winning instant bingo tickets;

(6) The cost per play;

(7) The serial number of the game.

(UU) (1) "Skill-based amusement machine" means a mechanical, video, digital, or electronic device that rewards the player or players, if at all, only with merchandise prizes or with redeemable vouchers redeemable only for merchandise prizes, provided that with respect to rewards for playing the game all of the following apply:

(a) The wholesale value of a merchandise prize awarded as a result of the single play of a machine does not exceed ten dollars;

(b) Redeemable vouchers awarded for any single play of a machine are not redeemable for a merchandise prize with a wholesale value of more than ten dollars;

(c) Redeemable vouchers are not redeemable for a merchandise prize that has a wholesale value of more than ten dollars times the fewest number of single plays necessary to accrue the redeemable vouchers required to obtain that prize; and

(d) Any redeemable vouchers or merchandise prizes are distributed at the site of the skill-based amusement machine at the time of play.

A card for the purchase of gasoline is a redeemable voucher for purposes of division (UU)(1) of this section even if the skill-based amusement machine for the play of which the card is awarded is located at a place where gasoline may not be legally distributed to the public or the card is not redeemable at the location of, or at the time of playing, the skill-based amusement machine.

(2) A device shall not be considered a skill-based amusement machine and shall be considered a slot machine if it pays cash or one or more of the following apply:

(a) The ability of a player to succeed at the game is impacted by the number or ratio of prior wins to prior losses of players playing the game.

(b) Any reward of redeemable vouchers is not based solely on the player achieving the object of the game or the player's score;

(c) The outcome of the game, or the value of the redeemable voucher or merchandise prize awarded for winning the game, can be controlled by a source other than any player playing the game.

(d) The success of any player is or may be determined by a chance event that cannot be altered by player actions.

(e) The ability of any player to succeed at the game is determined by game features not visible or known to the player.

(f) The ability of the player to succeed at the game is impacted by the exercise of a skill that no reasonable player could exercise.

(3) All of the following apply to any machine that is operated as described in division (UU)(1) of this section:

(a) As used in division (UU) of this section, "game" and "play" mean one event from the initial activation of the machine until the results of play are determined without payment of additional consideration. An individual utilizing a machine that involves a single game, play, contest, competition, or tournament may be awarded redeemable vouchers or merchandise prizes based on the results of play.

(b) Advance play for a single game, play, contest, competition, or tournament participation may be purchased. The cost of the contest, competition, or tournament participation may be greater than a single noncontest, competition, or tournament play.

(c) To the extent that the machine is used in a contest, competition, or tournament, that contest, competition, or tournament has a defined starting and ending date and is open to participants in competition for scoring and ranking results toward the awarding of redeemable vouchers or merchandise prizes that are stated prior to the start of the contest, competition, or tournament.

(4) For purposes of division (UU)(1) of this section, the mere presence of a device, such as a pin-setting, ball-releasing, or scoring mechanism, that does not contribute to or affect the outcome of the play of the game does not make the device a skill-based amusement machine.

(VV) "Merchandise prize" means any item of value, but shall not include any of the following:

(1) Cash, gift cards, or any equivalent thereof;

(2) Plays on games of chance, state lottery tickets, bingo, or instant bingo;

(3) Firearms, tobacco, or alcoholic beverages; or

(4) A redeemable voucher that is redeemable for any of the items listed in division (VV)(1), (2), or (3) of this section.

(WW) "Redeemable voucher" means any ticket, token, coupon, receipt, or other noncash representation of value.

(XX) "Pool not conducted for profit" means a scheme in which a participant gives a valuable consideration for a chance to win a prize and the total amount of consideration wagered is distributed to a participant or participants.

(YY) "Sporting organization" means a hunting, fishing, or trapping organization, other than a college or high school fraternity or sorority, that is not organized for profit, that is affiliated with a state or national sporting organization, including but not limited to, the league of Ohio sportsmen, and that has been in continuous existence in this state for a period of three years.

(ZZ) "Community action agency" has the same meaning as in section 122.66 of the Revised Code.

(AAA) (1) "Sweepstakes terminal device" means a mechanical, video, digital, or electronic machine or device that is owned, leased, or otherwise possessed by any person conducting a sweepstakes, or by that person's partners, affiliates, subsidiaries, or contractors, that is intended to be used by a sweepstakes participant, and that is capable of displaying information on a screen or other mechanism. A device is a sweepstakes terminal device if any of the following apply:

(a) The device uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries.

(b) The device utilizes software such that the simulated game influences or determines the winning of or value of the prize.

(c) The device selects prizes from a predetermined finite pool of entries.

(d) The device utilizes a mechanism that reveals the content of a predetermined sweepstakes entry.

(e) The device predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed.

(f) The device utilizes software to create a game result.

(g) The device reveals the prize incrementally, even though the device does not influence the awarding of the prize or the value of any prize awarded.

(h) The device determines and associates the prize with an entry or entries at the time the sweepstakes is entered.

(2) As used in this division and in section 2915.02 of the Revised Code:

(a) "Enter" means the act by which a person becomes eligible to receive any prize offered in a sweepstakes.

(b) "Entry" means one event from the initial activation of the sweepstakes terminal device until all the sweepstakes prize results from that activation are revealed.

(c) "Prize" means any gift, award, gratuity, good, service, credit, reward, or any other thing of value that may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

(d) "Sweepstakes terminal device facility" means any location in this state where a sweepstakes terminal device is provided to a sweepstakes participant, except as provided in division (G) of section 2915.02 of the Revised Code.

(BBB) "Sweepstakes" means any game, contest, advertising scheme or plan, or other promotion where consideration is not required for a person to enter to win or become eligible to receive any prize, the determination of which is based upon chance. "Sweepstakes" does not include bingo as authorized under this chapter, pari-mutuel wagering as authorized by Chapter 3769. of the Revised Code, lotteries conducted by the state lottery commission as authorized by Chapter 3770. of the Revised Code, and casino gaming as authorized by Chapter 3772. of the Revised Code.

2915.02 Gambling (effective September 4, 2013)

(A) No person shall do any of the following:

(1) Engage in bookmaking, or knowingly engage in conduct that facilitates bookmaking;

(2) Establish, promote, or operate or knowingly engage in conduct that facilitates any game of chance conducted for profit or any scheme of chance;

(3) Knowingly procure, transmit, exchange, or engage in conduct that facilitates the procurement, transmission, or exchange of information for use in establishing odds or determining winners in connection with bookmaking or with any game of chance conducted for profit or any scheme of chance;

(4) Engage in betting or in playing any scheme or game of chance as a substantial source of income or livelihood;

(5) Conduct, or participate in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility and either:

(a) Give to another person any item described in division (VV)(1), (2), (3), or (4) of section 2915.01 of the Revised Code as a prize for playing or participating in a sweepstakes; or

(b) Give to another person any merchandise prize, or a redeemable voucher for a merchandise prize, the wholesale value of which is in excess of ten dollars and which is awarded as a single entry for playing or participating in a sweepstakes. Redeemable vouchers shall not be redeemable for a merchandise prize that has a wholesale value of more than ten dollars.

(6) Conduct, or participate in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility without first obtaining a current annual "certificate of registration" from the attorney general as required by division (F) of this section;

(7) With purpose to violate division (A)(1), (2), (3), (4), (5), or (6) of this section, acquire, possess, control, or operate any gambling device.

(B) For purposes of division (A)(1) of this section, a person facilitates bookmaking if the person in any way knowingly aids an illegal bookmaking operation, including, without limitation, placing a bet with a person engaged in or facilitating illegal bookmaking. For purposes of division (A)(2) of this section, a person facilitates a game of chance conducted for profit or a scheme of chance if the person in any way knowingly aids in the conduct or operation of any such game or scheme, including, without limitation, playing any such game or scheme.

(C) This section does not prohibit conduct in connection with gambling expressly permitted by law.

(D) This section does not apply to any of the following:

(1) Games of chance, if all of the following apply:

(a) The games of chance are not craps for money or roulette for money.

(b) The games of chance are conducted by a charitable organization that is, and has received from the internal revenue service a determination letter that is currently in effect, stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code.

(c) The games of chance are conducted at festivals of the charitable organization that are conducted not more than a total of five days a calendar year, and are conducted on premises owned by the charitable organization for a period of no less than one year immediately preceding the conducting of the games of chance, on premises leased from a governmental unit, or on premises that are leased from a veteran's or fraternal organization and that have been owned by the lessor veteran's or fraternal organization for a period of no less than one year immediately preceding the conducting of the games of chance.

A charitable organization shall not lease premises from a veteran's or fraternal organization to conduct a festival described in division (D)(1)(c) of this section if the veteran's or fraternal organization already has leased the premises twelve times during the preceding year to charitable organizations for that purpose. If a charitable organization leases premises from a veteran's or fraternal organization to conduct a festival described in division (D)(1)(c) of this section, the charitable organization shall not pay a rental rate for the premises per day of the festival that exceeds the rental rate per bingo session that a charitable organization may pay under division (B)(1) of section 2915.09 of the Revised Code when it leases premises from another charitable organization to conduct bingo games.

(d) All of the money or assets received from the games of chance after deduction only of prizes paid out during the conduct of the games of chance are used by, or given, donated, or otherwise transferred to, any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(e) The games of chance are not conducted during, or within ten hours of, a bingo game conducted for amusement purposes only pursuant to section 2915.12 of the Revised Code.

No person shall receive any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, for operating or assisting in the operation of any game of chance.

(2) Any tag fishing tournament operated under a permit issued under section 1533.92 of the Revised Code, as "tag fishing tournament" is defined in section 1531.01 of the Revised Code;

(3) Bingo conducted by a charitable organization that holds a license issued under section 2915.08 of the Revised Code.

(E) Division (D) of this section shall not be construed to authorize the sale, lease, or other temporary or permanent transfer of the right to conduct games of chance, as granted by that division, by any charitable organization that is granted that right.

(F) Any person desiring to conduct, or participate in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility shall first register with the office of the attorney general and obtain an annual certificate of registration by providing a filing fee of two hundred dollars and all information as required by rule adopted under division (H) of this section. Not later than the tenth day of each month, each sweepstakes terminal device operator shall file a sweepstakes terminal device monthly report with the attorney general and provide a filing fee of fifty dollars and all information required by rule adopted under division (H) of this section. All information provided to the attorney general under this division shall be available to law enforcement upon request.

(G) A person may apply to the attorney general, on a form prescribed by the attorney general, for a certificate of compliance that the person is not operating a sweepstakes terminal device facility. The form shall require the person to include the address of the business location where sweepstakes terminal devices will be used and to make the following certifications:

(1) That the person will not use more than two sweepstakes terminal devices at the business location;

(2) That the retail value of sweepstakes prizes to be awarded at the business location using sweepstakes terminal devices during a reporting period will be less than three per cent of the gross revenue received at the business location during the reporting period;

(3) That no other form of gaming except lottery ticket sales as authorized under Chapter 3770. of the Revised Code will be conducted at the business location or in an adjoining area of the business location;

(4) That any sweepstakes terminal device at the business location will not allow any deposit of any money, coin, or token, or the use of any credit card, debit card, prepaid card, or any other method of similar payment to be used, directly or indirectly, to participate in a sweepstakes;

(5) That notification of any prize will not take place on the same day as a participant's sweepstakes entry; and

(6) That the person consents to provide any other information to the attorney general as required by rule adopted under division (H) of this section.

The filing fee for a certificate of compliance is two hundred fifty dollars. The attorney general may charge up to an additional two hundred fifty dollars for reasonable expenses resulting from any investigation related to an application for a certificate of compliance.

A certificate of compliance is effective for one year. The certificate holder may reapply for a certificate of compliance. A person issued a certificate of compliance shall file semiannual reports with the attorney general stating the number of sweepstakes terminal devices at the business location and that the retail value of prizes awarded at the business location using sweepstakes terminal devices is less than three per cent of the gross revenue received at the business location.

(H) The attorney general shall adopt rules setting forth:

(1) The required information to be submitted by persons conducting a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility as described in division (F) of this section; and

(2) The requirements pertaining to a certificate of compliance under division (G) of this section, which shall provide for a person to file a consolidated application and a consolidated semiannual report if a person has more than one business location.

The attorney general shall issue a certificate of registration or a certificate of compliance to all persons who have successfully satisfied the applicable requirements of this section. The attorney general shall post online a registry of all properly registered and certified sweepstakes terminal device operators.

(I) The attorney general may refuse to issue an annual certificate of registration or certificate of compliance to any person or, if one has been issued, the attorney general may revoke a certificate of registration or a certificate of compliance if the applicant has provided any information to the attorney general as part of a registration, certification, monthly report, semiannual report, or any other information that is materially false or misleading, or if the applicant or any officer, partner, or owner of five per cent or more interest in the applicant has violated any provision of this chapter.

(J) The attorney general may take any necessary and reasonable action to determine a violation of this chapter, including requesting documents and information, performing inspections of premises, or requiring the attendance of any person at an examination under oath.

(K) Whoever violates this section is guilty of gambling, a misdemeanor of the first degree. If the offender previously has been convicted of any gambling offense, gambling is a felony of the fifth degree. Notwithstanding this division, failing to file a sweepstakes terminal device monthly report as required by division (F) of this section or the semiannual report required by division (G) of this section is a misdemeanor of the first degree.

§ 2915.092 Raffle drawings (effective June 11, 2012)

(A) (1) Subject to division (A)(2) of this section, a charitable organization, a public school, a chartered nonpublic school, a community school, or a veteran's organization, fraternal organization, or sporting organization that is exempt from federal income taxation under subsection 501(a) and is described in subsection 501(c)(3), 501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code may conduct a raffle to raise money for the organization or school and does not need a license to conduct bingo in order to conduct a raffle drawing that is not for profit.

(2) If a charitable organization that is described in division (A)(1) of this section, but that is not also described in subsection 501(c)(3) of the Internal Revenue Code, conducts a raffle, the charitable organization shall distribute at least fifty per cent of the net profit from the raffle to a charitable purpose described in division (V) of section 2915.01 of the Revised Code or to a department or agency of the federal government, the state, or any political subdivision.

(B) Except as provided in division (A) or (B) of this section, no person shall conduct a raffle drawing that is for profit or a raffle drawing that is not for profit.

(C) Whoever violates division (B) of this section is guilty of illegal conduct of a raffle. Except as otherwise provided in this division, illegal conduct of a raffle is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (B) of this section, illegal conduct of a raffle is a felony of the fifth degree.

Excerpts From Ohio Consumer Sales Practices Act

EXCERPTS FROM OHIO CONSUMER SALES PRACTICES ACT

All information in this section is excerpted from the Ohio Revised Code as of May 9, 2011.

§ 1345.01 Consumer sales practices definitions (effective August 31, 2012)

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

(A) "Consumer transaction" means a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things. "Consumer transaction" does not include transactions between persons, defined in sections 4905.03 and 5725.01 of the Revised Code, and their customers, except for transactions involving a loan made pursuant to sections 1321.35 to 1321.48 of the Revised Code and transactions in connection with residential mortgages between loan officers, mortgage brokers, or nonbank mortgage lenders and their customers; transactions involving a home construction service contract as defined in section 4722.01 of the Revised Code; transactions between certified public accountants or public accountants and their clients; transactions between attorneys, physicians, or dentists and their clients or patients; and transactions between veterinarians and their patients that pertain to medical treatment but not ancillary services.

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

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

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

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

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

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

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

(H) (1) "Loan officer" means an individual who for compensation or gain, or in anticipation of compensation or gain, takes or offers to take a residential mortgage loan application; assists or offers to assist a buyer in obtaining or applying to obtain a residential mortgage loan by, among other things, advising on loan terms, including rates, fees, and other costs; offers or negotiates terms of a residential mortgage loan; or issues or offers to issue a commitment for a residential mortgage loan. "Loan officer" also includes a loan originator as defined in division (E)(1) of section 1322.01 of the Revised Code.

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

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

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

(a) A person that holds that person out as being able to assist a buyer in obtaining a mortgage and charges or receives from either the buyer or lender money or other valuable consideration readily convertible into money for providing this assistance;

(b) A person that solicits financial and mortgage information from the public, provides that information to a mortgage broker or a person that makes residential mortgage loans, and charges or receives from either of them money or other valuable consideration readily convertible into money for providing the information;

(c) A person engaged in table-funding or warehouse-lending mortgage loans that are residential mortgage loans.

(2) "Mortgage broker" does not include a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; a subsidiary of such a bank, savings bank, savings and loan association, or credit union; an affiliate that (a) controls, is controlled by, or is under common control with, such a bank, savings

bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration; or an employee of any such entity.

(K) "Nonbank mortgage lender" means any person that engages in a consumer transaction in connection with a residential mortgage, except for a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; a subsidiary of such a bank, savings bank, savings and loan association, or credit union; or an affiliate that (1) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (2) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration.

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

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

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

§ 1345.02 Unfair or deceptive consumer sales practices prohibited (effective April 6, 2017)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1345.03 Unconscionable acts or practices (effective April 6, 2017)

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

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

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

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

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

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

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

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

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

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

§ 1345.12 Applicability of chapter-exceptions (effective August 11, 1978)

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

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

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

(C) Claims for personal injury or death.

Selected Provision of
Code of Federal Regulations

SELECTED PROVISION OF CODE OF FEDERAL REGULATIONS

16 C.F.R. § 251.1 Guide Regarding use of Word "Free" (effective November 10, 1991)

(a) General.

(1) The offer of "Free" merchandise or service is a promotional device frequently used to attract customers. Providing such merchandise or service with the purchase of some other article or service has often been found to be a useful and valuable marketing tool.

(2) Because the purchasing public continually searches for the best buy, and regards the offer of "Free" merchandise or service to be a special bargain, all such offers must be made with extreme care so as to avoid any possibility that consumers will be misled or deceived. Representative of the language frequently used in such offers are "Free", "Buy 1-Get 1 Free", "2-for-1 Sale", "50% off with purchase of Two", "1¢ Sale", etc. (Related representations that raise many of the same questions include "__ Cents-Off", "Half-Price Sale", "1/2 Off", etc. See the Commission's "Fair Packaging and Labeling Regulation Regarding 'Cents-Off' and Guides Against Deceptive Pricing.")

(b) Meaning of "Free".

(1) The public understands that, except in the case of introductory offers in connection with the sale of a product or service (See paragraph (f) of this section), an offer of "Free" merchandise or service is based upon a regular price for the merchandise or service which must be purchased by consumers in order to avail themselves of that which is represented to be "Free". In other words, when the purchaser is told that an article is "Free" to him if another article is purchased, the word "Free" indicates that he is paying nothing for that article and no more than the regular price for the other. Thus, a purchaser has a right to believe that the merchant will not directly and immediately recover, in whole or in part, the cost of the free merchandise or service by marking up the price of the article which must be purchased, by the substitution of inferior merchandise or service, or otherwise.

(2) The term regular when used with the term price, means the price, in the same quantity, quality and with the same service, at which the seller or advertiser of the product or service has openly and actively sold the product or service in the geographic market or trade area in which he is making a "Free" or similar offer in the most recent and regular course of business, for a reasonably substantial period of time, i.e., a 30-day period. For consumer products or services which fluctuate in price, the "regular" price shall be the lowest price at which any substantial sales were made during the aforesaid 30-day period. Except in the case of introductory offers, if no substantial sales were made, in fact, at the "regular" price, a "Free" or similar offer would not be proper.

(c) Disclosure of conditions. When making "Free" or similar offers all the terms, conditions and obligations upon which receipt and retention of the "Free" item are contingent should be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood. Stated differently, all of the terms, conditions and obligations should appear in close conjunction

with the offer of “Free” merchandise or service. For example, disclosure of the terms of the offer set forth in a footnote of an advertisement to which reference is made by an asterisk or other symbol placed next to the offer, is not regarded as making disclosure at the outset. However, mere notice of the existence of a “Free” offer on the main display panel of a label or package is not precluded provided that (1) the notice does not constitute an offer or identify the item being offered “Free”, (2) the notice informs the customer of the location, elsewhere on the package or label, where the disclosures required by this section may be found, (3) no purchase or other such material affirmative act is required in order to discover the terms and conditions of the offer, and (4) the notice and the offer are not otherwise deceptive.

(d) Supplier’s responsibilities. Nothing in this section should be construed as authorizing or condoning the illegal setting or policing of retail prices by a supplier. However, if the supplier knows, or should know, that a “Free” offer he is promoting is not being passed on by a reseller, or otherwise is being used by a reseller as an instrumentality for deception, it is improper for the supplier to continue to offer the product as promoted to such reseller. He should take appropriate steps to bring an end to the deception, including the withdrawal of the “Free” offer.

(e) Resellers’ participation in supplier’s offers. Prior to advertising a “Free” promotion, a supplier should offer the product as promoted to all competing resellers as provided for in the Commission’s “Guides for Advertising Allowances and Other Merchandising Payments and Services.” In advertising the “Free” promotion, the supplier should identify those areas in which the offer is not available if the advertising is likely to be seen in such areas, and should clearly state that it is available only through participating resellers, indicating the extent of participation by the use of such terms as “some”, “all”, “a majority”, or “a few”, as the case may be.

(f) Introductory offers.

(1) No “Free” offer should be made in connection with the introduction of a new product or service offered for sale at a specified price unless the offeror expects, in good faith, to discontinue the offer after a limited time and to commence selling the product or service promoted, separately, at the same price at which it was promoted with the “Free” offer.

(2) In such offers, no representation may be made that the price is for one item and that the other is “Free” unless the offeror expects, in good faith, to discontinue the offer after a limited time and to commence selling the product or service promoted, separately, at the same price at which it was promoted with a “Free” offer.

(g) Negotiated sales. If a product or service usually is sold at a price arrived at through bargaining, rather than at a regular price, it is improper to represent that another product or service is being offered “Free” with the sale. The same representation is also improper where there may be a regular price, but where other material factors such as quantity, quality, or size are arrived at through bargaining.

(h) Frequency of offers. So that a “Free” offer will be special and meaningful, a single size of a product or a single kind of service should not be advertised with a “Free” offer in a trade area for more than 6 months in any 12-month period. At least 30 days should elapse before another such offer is promoted in the same trade area. No more than three such

offers should be made in the same area in any 12-month period. In such period, the offeror's sale in that area of the product in the size promoted with a "Free" offer should not exceed 50 percent of the total volume of his sales of the product, in the same size, in the area.

(i) Similar terms. Offers of "Free" merchandise or services which may be deceptive for failure to meet the provisions of this section may not be corrected by the substitution of such similar words and terms as "gift", "given without charge", "bonus", or other words or terms which tend to convey the impression to the consuming public that an article of merchandise or service is "Free".

Selected Ohio Revised Code Provisions Governing Displays of Motor Vehicles

SELECTED OHIO REVISED CODE PROVISIONS GOVERNING DISPLAYS OF MOTOR VEHICLES

§ 4517.22 Motor vehicle shows (effective March 23, 2015)

(A) As used in this section:

(1) "General market area" means the contiguous geographical area established by a motor vehicle show sponsor that is based upon the size of the show and that does not unreasonably exclude any licensed new motor vehicle dealer.

(2) "Gross vehicle weight" means the unladen weight of a motor vehicle fully equipped.

(3) "Livestock trailer" means a new or used trailer designed by its manufacturer to be used to transport horses or to transport animals generally used for food or in the production of food, including cattle, sheep, goats, rabbits, poultry, swine, and any other animals included by the director of agriculture in rules adopted under section 901.72 of the Revised Code.

(4) "Major livestock show" means any show of livestock that is held at the Ohio state fairgrounds, is national in scope, and that continues for more than ten consecutive days.

(5) "Motor vehicle show" means a display of new motor vehicles that lasts not more than ten days by more than one new motor vehicle dealer dealing in competitive types of motor vehicles and that is authorized by the registrar of motor vehicles primarily to allow the general public an opportunity to compare and inspect a variety of makes and models simultaneously, test drive vehicles, and gain an understanding of new technology and available features.

(6) "Truck" has the same meaning as in section 4511.01 of the Revised Code.

(B) Any group of licensed new motor vehicle dealers may display motor vehicles at a motor vehicle show within the general market area assigned by the sponsor if, not less than thirty days before the planned opening date of the motor vehicle show, the sponsor executes and files with the registrar an affidavit, in a form prescribed by the registrar, that certifies that all requirements of this section have been or will be met, as applicable.

If the registrar approves the affidavit, the registrar shall grant the sponsor permission to conduct the motor vehicle show. If the registrar determines that there is a deficiency in the affidavit, the registrar shall inform the sponsor of the deficiency as soon possible after the registrar receives the affidavit so that the sponsor has the opportunity to remedy the deficiency. The registrar also shall describe with specificity the measures the sponsor is required to take in order to cure the deficiency. The sponsor shall return the corrected affidavit to the registrar not later than before the planned opening date of the motor vehicle show in order for the sponsor to be eligible to hold the show. If the registrar finds that the deficiency has been cured in the corrected affidavit, the registrar shall grant the sponsor permission to conduct the motor vehicle show. If the registrar finds that the deficiency has not been cured, the registrar shall deny the sponsor permission to conduct the motor vehicle show.

(C) No contracts shall be signed, deposits taken, or sales consummated at the location of a motor vehicle show.

(D) Any sponsor of a motor vehicle show or the sponsor's representative shall offer by mail an invitation to all new motor vehicle dealers dealing in competitive types of motor vehicles in the general market area to participate and display motor vehicles in the show. The sponsor or representative may offer a similar invitation to manufacturers or distributors. A copy of each invitation shall be retained by the sponsor for one year after the show.

(E) A manufacturer or distributor may hold in any public place a motor vehicle show at which only one motor vehicle is displayed, but no such single unit show shall be held unless the manufacturer or distributor executes and files with the registrar not less than thirty days before the show an affidavit, in a form prescribed by the registrar, that certifies that all requirements of this section have been or will be met, as applicable, and subsequently receives approval of that affidavit from the registrar.

(F) The registrar shall not grant permission for any motor vehicle show to be held, unless it is proven to the registrar's satisfaction that no attempt is being made to circumvent the provisions of sections 4517.01 to 4517.45 of the Revised Code.

(G) Nothing contained in this section shall be construed as prohibiting the taking of orders for nonmotorized recreational vehicles as defined in section 4501.01 of the Revised Code at sports or camping shows.

(H) No motor vehicle dealer, motor vehicle leasing dealer, motor vehicle auction owner, or distributor licensed under sections 4517.01 to 4517.45 of the Revised Code shall display a motor vehicle at any place except the dealer's, owner's, or distributor's licensed location, unless the dealer, owner, or distributor first obtains permission from the registrar and complies with the applicable rules of the motor vehicle dealers board or the display is authorized pursuant to section 4517.221 of the Revised Code.

(I) Nothing contained in this section shall be construed as prohibiting the display of, the taking of orders for, or the sale of, livestock trailers at livestock and agricultural shows, including county fairs. Notwithstanding section 4517.03 of the Revised Code, livestock trailers may be sold at livestock and agricultural shows, including county fairs, as permitted by this division.

(J) Notwithstanding any provision of this section to the contrary, for a period not to exceed thirty days, contracts may be signed, deposits taken, and sales consummated at the location of a motor vehicle show where the motor vehicles involved are horse trailers or towing vehicles that are trucks and have a gross vehicle weight of more than three-quarters of a ton, the motor vehicle show is being held as part of or in connection with a major livestock show, the licensed new motor vehicle dealers involved have complied with the applicable requirements of this section, and the registrar has granted permission for the motor vehicle show in accordance with division (F) of this section.

(K) (1) Notwithstanding division (H) of this section, if, pursuant to division (B) of this section, the registrar has granted a show representative permission to hold a motor vehicle show at the annual fair of a county or independent agricultural society and if the society files a certification under division (K)(2) of this section, a new motor

vehicle dealer may display motor vehicles at that annual fair even if no other new motor vehicle dealer displays competitive makes and models at the fair.

(2) To obtain a waiver under division (K)(1) of this section, a county or independent agricultural society shall certify all of the following:

(a) That an invitation was sent to all new motor vehicle dealers within the county where the fair is held;

(b) That the terms of the invitation were reasonable and nondiscriminatory;

(c) That only one new motor vehicle dealer accepted the invitation.

(L) (1) Until six months after the effective date of this amendment, whoever violates this section or section 4517.221 of the Revised Code is guilty of a misdemeanor of the fourth degree.

(2) The board shall adopt rules establishing the amount of a penalty for a violation of this section or section 4517.221 of the Revised Code, which shall not exceed one thousand dollars for each violation.

(3) Beginning six months after the effective date of this amendment, after finding, pursuant to adjudication conducted in accordance with Chapter 119. of the Revised Code, that a person has violated this section or section 4517.221 of the Revised Code, the board may order the person to pay an administrative penalty described in division (L)(2) of this section for each violation in accordance with the rule adopted by the board.

(4) For purposes of the administrative penalties described in divisions (L)(2) and (3) of this section, each sale that occurs in violation of this section or section 4517.221 of the Revised Code and each day that a violation occurs or continues to occur constitutes a separate violation.

(5) All penalties collected pursuant to division (L)(3) of this section shall be paid to the title defect rescission fund established in section 1345.52 of the Revised Code.

§ 4517.221 Display of new motor vehicles at locations other than dealership (effective March 23, 2015)

(A) As used in this section:

(1) “Charitable or civic purpose” means either of the following:

(a) A purpose described in section 501(c)(3) of the Internal Revenue Code;

(b) A benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, or civic objective, or any objective that benefits law enforcement personnel, firefighters, or other persons who protect the public safety.

"Charitable or civic purpose" is not limited to those purposes for which contributions are tax deductible under section 170 of the Internal Revenue Code.

(2) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended.

(B) (1) Notwithstanding any provision of section 4517.22 of the Revised Code to the contrary and except as provided in division (B)(2) of this section, a licensed new motor vehicle dealer that satisfies the requirements of this section may display new motor vehicles at a location other than the dealer's established place of business to provide the general public an opportunity to review and inspect the dealer's product line, including safety features and new technology.

(2) No licensed motor vehicle dealer shall display new motor vehicles at the annual fair sponsored by a county or agricultural society unless the sponsor complies with the provisions of division (B) of section 4517.22 of the Revised Code.

(C) For a display under this section by a licensed new motor vehicle dealer within the area of responsibility assigned to that dealer by a manufacturer, the dealer shall satisfy the following conditions:

(1) The purpose of the display is to promote or benefit a charitable or civic purpose.

(2) The dealer displays not more than six vehicles that may be available for test drive during the display.

(3) The dealer files both of the following with the registrar of motor vehicles within three business days prior to the display and in a form prescribed by the registrar:

(a) Evidence of the area of responsibility assigned to the dealer by the manufacturer;

(b) An affidavit that affirms all of the following:

(i) That the location of the display is within the area of responsibility assigned to the dealer by a manufacturer;

(ii) The beginning and end date of the display;

(iii) That not more than six vehicles will be displayed;

(iv) That to the best of the dealer's knowledge, no other dealer will display a vehicle at the location during the dates of the display;

(v) That no contracts will be signed, deposits taken, or sales consummated at the location of the display;

(vi) The charitable or civic purpose promoted or benefited by the display.

(D) For a display under this section by a new motor vehicle dealer outside the area of responsibility assigned to that dealer by a manufacturer, the dealer shall satisfy the following conditions:

(1) The purpose of the display is to promote or benefit a charitable or civic purpose.

(2) The dealer displays not more than six vehicles.

(3) The dealer files an affidavit with the registrar in a form prescribed by the registrar and within three business days prior to the display that affirms all of the following:

(a) That the location of the display is not within the area of responsibility assigned to the dealer by a manufacturer;

(b) That the dealer has provided every dealer selling the same line-make within the area of responsibility where the display will occur with notice of the dealer's intent to display and each of those dealers has agreed to allow the display to occur;

(c) The beginning and end date of the display;

(d) That not more than six vehicles will be on display;

(e) That no test drives will occur and the vehicles will remain stationary;

(f) That to the best of the dealer's knowledge, no other dealer will display a vehicle at the location during the dates of the display;

(g) That the dealer has not displayed a vehicle pursuant to division (D) of this section for more than six days during the calendar year and that the current display will not result in the dealer exceeding the six-day maximum;

(h) That no contracts will be signed, deposits taken, or sales consummated at the location of the display.

(E) No licensed new motor vehicle dealer shall display for more than six days per calendar year outside the area of responsibility assigned to that dealer by a manufacturer.

(F) (1) No licensed new motor vehicle dealer shall display outside the area of responsibility assigned to that dealer by a manufacturer if a dealer handling the same line-make within the area of responsibility objects to the display.

(2) A licensed motor vehicle dealer who displays outside the area of responsibility assigned to that dealer by a manufacturer bears the burden of proving that no dealer of the same line-make within the area objected to the display.

(3) A licensed motor vehicle dealer who files an affidavit under division (D) of this section shall maintain any documentation that is evidence of consent to display in that area for one year following the last day of the display.

(G) A licensed new motor vehicle dealer who files an affidavit under division (C) or (D) of this section shall maintain a copy of that affidavit for one year following the last day of the display.

(H) Delivery of a previously ordered vehicle does not constitute a display under this section.

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