

PROPOSED RULEMAKING

OFFICE OF ATTORNEY GENERAL

[37 PA. CODE CH. 301]

Automotive Industry Trade Practices

The Office of Attorney General (OAG), through its Public Protection Division, proposes to amend 37 Pa. Code by amending Chapter 301 (relating to automotive industry trade practices) to read as set forth in Annex A.

A. Effective Date

This proposed rulemaking will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on this proposed rulemaking, the primary contact is Sarah Frasch, Chief Deputy Attorney General, Bureau of Consumer Protection, and the secondary contact is John Abel, Senior Deputy Attorney General, Bureau of Consumer Protection, Pennsylvania Office of Attorney General, Strawberry Square, 15th Floor, Harrisburg, PA 17120, (717) 787-9707. This proposed rulemaking is available on the OAG web site at www.attorneygeneral.gov.

C. Statutory Authority

This proposed rulemaking is authorized under section 3.1 of the Unfair Trade Practices and Consumer Protection Law (act) (73 P.S. § 201-3.1), regarding the statutory rulemaking authority of the OAG.

D. Purpose and Background

This proposed rulemaking is designed to improve, enhance and update the OAG's unfair or deceptive acts or practices regulations. The specific purpose of this proposed rulemaking is described in more detail under the summary of proposed rulemaking.

E. Summary of Proposed Rulemaking

1. Introduction

The OAG enforces and administers the act. The OAG has determined that it is necessary for the enforcement and the administration of the act to amend the existing automotive industry trade practices regulations to provide adequate protections to consumers regarding the inspection of motor vehicles and the written disclosure of certain attributes of a motor vehicle's roadworthiness.

2. Policy and Determination

The OAG has long taken the policy position that certain unfair or deceptive automotive industry market trade practices constitute unfair methods of competition and unfair or deceptive acts or practices in violation of the act.

Through the experience of investigation and litigation, the OAG has identified that motor vehicle dealers are increasingly utilizing electronic means to advertise the sale of particular motor vehicles and motor vehicle goods and services, a practice which is not explicitly captured in the automotive industry trade practices regulations' current definition of "advertisement." The OAG has further identified that the disclosures and inspections which motor vehicle dealers are currently required to perform are insufficient to fully inform consumers that they are purchasing motor vehicles bearing certain unsafe conditions. The OAG has determined that this proposed rule-

making under the act will remedy these vacuums under the laws of the Commonwealth.

3. Automotive Industry Trade Practices

The OAG has adopted the staff recommendation to make certain amendments to the Automotive Industry Trade Practices regulations. First, § 301.1 (relating to definitions) is proposed to be amended to include electronic means in the definition of "advertisement." Second, § 301.2(5) (relating to advertising and sales presentation requirements) is proposed to be amended to include an additional condition which the advertiser or seller of a motor vehicle must disclose if they know or should know it exists in the motor vehicle: "Any other material condition which substantially impairs vehicle use or safety." Paragraph (5) is additionally proposed to be amended to require that this disclosure be provided in writing.

Third, § 301.2(5.1) is proposed to be added. It requires a certified inspection mechanic designated by the selling motor vehicle dealer to inspect a motor vehicle not more than 30 days after it enters the motor vehicle dealer's inventory and, thereafter, not more than 30 days after each time the motor vehicle accumulates 500 miles before advertising it or offering it for sale. This section does not apply to sales of motor vehicles between two motor vehicle dealers.

Finally, § 301.4(9.1) (relating to general provisions—motor vehicle dealer) is proposed to be added and clarifies that compliance with § 301.2(5) is still required notwithstanding any use of the term "AS IS" under § 301.4(9). The selling motor vehicle dealer must describe the vehicle as being sold "AS-IS," and list in writing any conditions listed in § 301.2(5) present in the vehicle.

These amendments have been prepared in light of comments previously submitted by interested parties, the Pennsylvania Automotive Association and the Independent Automobile Dealers Association of Pennsylvania.

4. Basic Policy Choice

"The operative provision of the Unfair Trade Practices and Consumer Protection Law provides: 'Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce...are hereby declared unlawful.'" See 73 P.S. § 201-3. *Gabriel v. O'Hara*, 368 Pa. Super. 383, 391, 534 A.2d 488, 492 (1987). The operative provision of the act provides the Legislature's basic policy choice which guides the OAG's proposed rulemaking. The OAG proposes that Chapter 301 be amended to read as set forth in Annex A.

F. Paperwork

Generally, this proposed rulemaking will not increase paperwork and will not create new paperwork requirements. This proposed rulemaking will have a de minimis impact on paperwork for class action representatives purporting to settle and release OAG claims under the act.

G. Benefits, Costs and Compliance

Through this proposed rulemaking, consumers will be further protected from unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce by unscrupulous businesses. The clear articulation of this unfair or deceptive trade practices regulation will make the regulation easier to understand by the public and will facilitate compliance.

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. This proposed rulemaking will impose no significant new costs on the private sector or the general public.

H. Sunset Review

The OAG is not establishing a sunset date for these regulations because they are needed for the OAG to carry out its statutory authority and because the OAG will periodically review these regulations for their effectiveness.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 28, 2023, the OAG submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Judiciary Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the OAG, the General Assembly and the Governor.

J. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Bureau of Consumer Protection, Office of Attorney General, Strawberry Square, 15th Floor, Harrisburg, PA 17120 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted. A public hearing occurred on September 11, 2018, under section 3.1 of the act.

Comments also may be submitted by e-mail to consumers@attorneygeneral.gov. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

MICHELLE A. HENRY,
Attorney General

Fiscal Note: 59-001. No fiscal impact; recommends adoption.

Annex A

TITLE 37. LAW

PART V. [BUREAU OF CONSUMER PROTECTION] UNFAIR TRADE PRACTICES

CHAPTER 301. AUTOMOTIVE INDUSTRY TRADE PRACTICES

§ 301.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Advertisement—An oral, written or graphic statement which offers for sale a particular motor vehicle or motor vehicle goods and services or which indicates the availability of a motor vehicle or motor vehicle goods and

services, including a statement or representations made in a newspaper, periodical, pamphlet, circular, other publication or on radio or television; contained in a notice, handbill, sign, billboard, poster, bill, catalog or letter; **placed on a web site, in a mobile application, on a social media outlet or on any other electronic platform;** or printed on or contained in a tag or label which is attached to merchandise.

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§ 301.2. Advertising and sales presentation requirements.

With respect to an advertisement or sales presentation offering or making available for sale a new or used motor vehicle or maintenance service or repair on a new or used motor vehicle, the following will be considered unfair methods of competition and unfair or deceptive acts or practices:

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(5) The representation in an advertisement or sales presentation that a motor vehicle or motor vehicle goods or services are of a particular style, model, standard, quality or grade if they are of another or if the representation conflicts with a written notice or disclosure required under this chapter. For the purposes of this chapter, a motor vehicle which is offered for sale is represented to be roadworthy, and the advertiser or seller shall disclose **in writing** prior to sale the following conditions if the advertiser or seller knows or should know that the conditions exist in the motor vehicle:

- (i) Frame bent, cracked or twisted.
- (ii) Engine block or head cracked.
- (iii) Vehicle unable to pass State inspection.
- (iv) Transmission damaged, defective or so deteriorated as to require replacement.
- (v) Vehicle flood damaged.
- (vi) Differential damaged, defective or so deteriorated as to require replacement.

(vii) Any other material condition which substantially impairs vehicle use or safety.

(5.1) Except as to a sale of a motor vehicle to another motor vehicle dealer, the advertisement or offering of a motor vehicle for sale unless a certified inspection mechanic designated by the selling motor vehicle dealer has inspected the motor vehicle in accordance with 67 Pa. Code Chapter 175 (relating to vehicle equipment and inspection):

(i) Not more than 30 days after the motor vehicle comes into the inventory of the selling motor vehicle dealer or advertiser; and

(ii) Not more than 30 days after each time the motor vehicle accumulates 500 miles while in the inventory of the selling motor vehicle dealer or advertiser.

(6) The making of a representation or statement of a fact in an advertisement or sales presentation if the advertiser or salesperson knows or should know that the representation or statement is false and misleading or if the advertiser or salesperson does not have sufficient information upon which a reasonable belief in the truth of the representation could be based.

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§ 301.4. General provisions—motor vehicle dealer.

(a) With regard to a motor vehicle dealer, the following will be considered unfair methods of competition and unfair or deceptive acts or practices:

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(9.1) If a motor vehicle is not roadworthy at the time the motor vehicle is offered for sale, using the term “AS-IS” as set forth in this section does not satisfy the written disclosure requirement in § 301.2(5) (relating to advertising and sales presentation requirements). The written contract required under subsection (a)(1) for the sale of a motor vehicle must instead include, in a clear and conspicuous manner on the face of the document,

information that the motor vehicle is sold “AS-IS” and a list of the conditions, as set forth in § 301.2(5), present in the motor vehicle.

(10) Failing to forward to the proper Commonwealth agency amounts and forms tendered by a purchaser, such as sales tax and transfer and registration fees, within the time prescribed by law.

(b) If the sales presentation and agreement of sale has been effected in a language other than English, the written information, notice and disclosures required by subsection (a) shall be given in the principal language in which the sale was transacted as well as English.

[Pa.B. Doc. No. 23-636. Filed for public inspection May 12, 2023, 9:00 a.m.]