

County Council of Cuyahoga County, Ohio

Ordinance No. O2014-0026

Sponsored by: County Executive FitzGerald/Fiscal Officer/ Department of Consumer Affairs	An Ordinance enacting Title 13, Chapter 1301 of the Cuyahoga County Code to establish the Cuyahoga County Consumer Protection Code, and declaring the necessity that this Ordinance become immediately effective.
---	--

WHEREAS, Council deems it necessary to adopt regulations governing the County's Department of Consumer Affairs; and

WHEREAS, the need to promote honest and fair business practices; and the protection of the citizens of and visitors to Cuyahoga County from unfair and deceptive practices and acts in the best interest of the public;

WHEREAS, the public health, safety and welfare of the residents of the County will best be served by enacting a Cuyahoga County Consumer Protection Code that provides for enforcement by the Department of Consumer Affairs through many means; and

WHEREAS, it is necessary that this Ordinance become immediately effective in order that critical services provided by Cuyahoga County can continue and to continue the usual and daily operations of the County.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. Title 13, Chapter 1301 of the Cuyahoga County Code is hereby enacted as follows:

Title 13: Commercial Regulation

Chapter 1301 Consumer Protection

Section 1301.01: Definitions

As used in the Chapter 1301:

- (A) "Appliances" shall mean any device or instrument operated by electricity, gas or otherwise, and designed for personal, family or household purposes.

- (B) “Consumer” shall mean a person who engages in consumer transaction with a supplier.
- (C) “Consumer Goods” shall mean goods purchased, leased, or rented primarily for personal, family, or household purposes, including courses or instruction or training regardless of the purpose for which they are taken.
- (D) “Credit and Debits” shall mean credit or debits which are primarily for personal, family, or household use.
- (E) “Consumer Transaction” shall mean 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 section 4905.03 and 5725.01 of the Ohio Revised Code, and their customers, except for transactions involving a loan made pursuant to sections 1321.35 and 1321.48 of the Ohio 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 Ohio 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.
- (F) “Department” shall mean the Cuyahoga County Department of Consumer Affairs.
- (G) “Knowledge” shall mean actual awareness, but such actual awareness may be inferred where objective manifestations indicate that the individual involved acted with such awareness.
- (H) “Person” shall mean any individual (including a minor child engaged in a consumer transaction), corporation, government, governmental subdivision or agency, business trust, estate, trust partnership, association, cooperative, or other legal entity.
- (I) “Services” shall mean and includes, but is not limited to, work, labor, consumer transactions, privileges, and all other accommodations which are primarily for personal, family, or household purposes.
- (J) “Supplier” shall mean 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 assignee or purchaser of the loan for value, except as otherwise provided in section 1345.091 of the Ohio Revised Code. For purposes of this section, in a consumer transaction in

connection with a resident mortgage, “seller” means a loan officer, mortgage broker, or nonbank mortgage lender.

- (K) “Unfair or Deceptive Practices” shall mean no person shall engage in any unfair or deceptive consumer trade practice in the sale or any false, falsely disparaging, or misleading oral or written statement, visual description or other misrepresentation of any kind made in the conduct of any consumer transaction; the collection of consumer debts; the offering of sale, lease, rental or loan of consumer goods or services; the offering for sale of products by weight, count or measure. Unfair or deceptive practices include, but are not limited to, those practices defined by this Code, the Ohio Revised Code, and other applicable laws.

Section 1301.02: Filing Consumer Complaints

Any consumer who feels they have been subjected to unfair or deceptive practices may at any time within two years from the date of the alleged violation or within a reasonable time after the consumer discovers or should have discovered the violation, whichever is later, file a complaint in writing with the Cuyahoga County Department of Consumer Affairs. The complaint should state enough details of the incident so as to allow the Department to investigate the circumstances surrounding the incident, and at a minimum, the complaint should state the name and address of the person alleged to have committed the violation, the details of the violation, and any other information the Department deems necessary.

Section 1301.03: Unfair and Deceptive Practices Prohibited

No person shall engage in any unfair or deceptive consumer trade practice in the sale or any false, falsely disparaging, or misleading oral or written statement, visual description or other misrepresentation of any kind made in the conduct of any consumer transaction; the collection of consumer debts; the offering of sale, lease, rental or loan of consumer goods or services; the offering for sale products by weight, count or measure. Unfair or deceptive practices include, but are not limited to, those practices prohibited by this Code, the Ohio Revised Code, and other applicable laws.

Section 1301.04: Enforcement, Orders, and Penalty

- (A) Upon finding a violation of this Chapter, the Department shall expeditiously cause the same to be corrected or where there is evidence of intent to defraud refer evidence of such violation to the County Prosecutor, Ohio Attorney General, Federal Trade Commission, Consumer Financial Protection Bureau, or other appropriate agencies for commencement of a civil action in the name of the county to recover a civil penalty in the amounts prescribed. In lieu of instituting or continuing a cause of action for recovery, such penalty may be released, settled or compromised by the director for good cause found before the matter is referred to the County Prosecutor or other appropriate agency.

- (B) The Department may seek injunctive relief, upon approval of the County Executive, as a means of enforcing this Chapter. Said injunctive relief may include, but is not limited to, a Cease and Desist Order or Assurance of Voluntary Compliance prohibiting the alleged violator from engaging in an unfair or deceptive practice; stipulation for payment of investigative costs; civil penalty; and/or restitution on behalf of the aggrieved consumer(s). Any settlement shall be in writing and made a matter of public record.
- (C) Violation of an assurance entered into pursuant to this section shall be treated as a violation of this Chapter, and shall be subject to all the penalties provided therefor.
- (D) A violation of any provision of this Chapter shall be punishable by the payment of a civil penalty in the sum of not less than one hundred (\$100.00) dollars, nor more than five hundred (\$500.00) dollars per day for each such violation, to be recovered in a civil action.

Section 1301.05: Other Rights and Remedies

Nothing herein shall prevent any person from exercising any right or seeking any private remedy or redress to which one might otherwise be entitled, or from filing any complaint with any other agency.

Section 1301.06: Applicability

Nothing in the Chapter shall be construed to exempt compliance with state and federal laws related to consumer protection. Violation of these laws may be prosecuted as applicable.

Section 1301.07: Deceptive Advertising

- (A) Untrue and misleading advertising.

No person, with intent to sell or in any way dispose of goods or services, or anything offered directly or indirectly to the public for sale or distribution or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated or placed before the public, in the county, an advertisement of any sort regarding goods, services or representation so offered to the public, which contains any assertion, representation or statement which is untrue, deceptive or misleading, or fails to disclose that the quantity is limited, if such is the case.

(B) Failure to advise of inferior merchandise.

No person, with intent to sell or in any way dispose of merchandise which is not of the recognized highest grade for such merchandise, shall fail, neglect or refuse to advise the public of the exact quality of the merchandise offered for sale, correctly stated in terms of the trade usage, plainly discernible upon such merchandise, or in or upon the counter, bin or other receptacle from which it is offered to the public. Without prejudice to the generality of the prohibitions of this section and the applicability thereof, the advertising or representing of merchandise as imperfect, without stating the recognized trade designation of quality, shall be deemed a violation of this section.

(C) Defective, rebuilt or second-hand merchandise.

No person, firm or corporation, in any newspaper, magazine, circular, form letter or any open publication, published, distributed or circulated in the county, or on any billboard, car, label or other advertising medium, or by means of any other method of advertising, shall advertise, call attention to or give publicity to the sale of any merchandise, which merchandise is second-hand, used or rebuilt merchandise, or which merchandise is defective in any manner, or consist of articles, units or parts known as "seconds," or blemished merchandise, or which has been rejected by the manufacturer thereof as not first class, unless there is conspicuously displayed directly in connection with the name and description of such merchandise and each specified article, unit or part thereof, a direct and unequivocal statement, phrase or word which will clearly indicate that such merchandise or each article, unit or part thereof so advertised is second-hand, used, rebuilt, defective, consists of seconds, is blemished merchandise or has been rejected by the manufacturer thereof, as the fact may be.

(D) Use of the word "free" etc.

- (1) It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to use the word "free" or other words of similar import or meaning, except in conformity with this section. It is the express intent of this section to prohibit the practice of advertising or offering goods or services as "free" when in fact the cost of the "free" 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. In the absence of such a base price a "free" offer is in reality a single price for the combination of goods or services offered, and the fiction that any portion of the offer is "free" is inherently deceptive.
- (2) All reference to the word "free" shall include within that term all other words of similar import and meaning. Representative of the word or words in which this section is applicable would be the following: "Free;" "Buy 1, Get 1 Free;" "2 for 1 Sale"; "50% Off with Purchase of 2." Offers of "free" items of goods or services which may be deceptive for failure to meet the provisions of this section may not be corrected by the substitution, for the word "free," of

such similar words and terms as “gift”, “given without charge,” “bonus,” or other words and terms which tend to convey to the consuming public the impression that an item of goods or services is “free.”

- (3) When using the word “free” in a consumer transaction, all the terms, conditions, and obligations upon which receipt and retention of the “free” goods or services are contingent shall be set forth clearly and conspicuously at the outset of the offer. Terms, conditions, and obligations of the offer must be printed in a type size half as large as the word “free,” and all of the terms, conditions, and obligations should appear in close proximity with the offer of “free” goods or services. Disclosures 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.
- (4) Disclosures 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.
- (5) In a consumer transaction in which goods or services are offered as “free” upon the purchase of other goods or services the supplier must insure:
 - (a) That the unit regular price charged for the other goods or services is not increased, or if there is no unit regular price, the unit price charged for the other goods or services is continued for a reasonable period of time;
 - (b) That the regular quality of the other goods or services is not reduced, or if there is no regular quality, the quality level of the other goods and services is continued for a reasonable period of time; and
 - (c) That no other conditions are attached to the offer except for the basic condition that other goods or services must be purchased in order for the consumer to be entitled to the “free” goods or services.
- (6) Only the supplier’s regular price for the goods or services to be purchased may be used as the basis for a “free” offer. It is, therefore, a deceptive act or practice for a supplier to offer “free” goods or services based on a price which exceeds the supplier’s regular price for other goods or services required to be purchased. Likewise, it is a deceptive act or practice for a supplier to make a “free” offer when the price of other goods or services required to be purchased is based on a price being charged by others in the supplier’s trade area for the same or similar goods or services, when, in fact, such price is in excess of the supplier’s regular price.
- (7) "Regular price" means the price at which the goods or services are openly and actively sold by a supplier to the public on a continuing basis for a substantial period of time. A price is not a regular price if:

- (a) It is not the supplier's actual selling price;
 - (b) It is a price which has not been used in the recent past; or
 - (c) It is a price which has been used only for a short period of time.
- (8) "Regular quality" means the quality level at which the goods and services are openly and actively sold by the supplier to the public on a continuing basis for a substantial period of time. A quality level is not a regular quality if:
- (a) It is not the supplier's actual quality level;
 - (b) It is a quality level that has not been used in the recent past; or
 - (c) It is a quality level which has been used only for a short period of time.
- (9) It is recognized that some goods and services are almost never sold at a single regular price, but are instead sold by means of individual negotiated transactions. A supplier of goods or services sold in negotiated transactions is not precluded by this rule from making a "free" offer provided the supplier is able to establish a mean average price immediately prior to the "free" offer, the goods or services are fungible, and the mean average price during the "free" offer does not exceed the mean average price immediately prior thereto.
- (10) Continuous or repeated "free" offers are deceptive acts or practices since the supplier's regular price for goods to be purchased by consumers in order to avail themselves of the "free" goods will, by lapse of time, become the regular price for the "free" goods or services together with the other goods or services required to be purchased. Under such circumstances, therefore, an offer of "free" goods or services is merely illusory and deceptive.
- (11) This section does not preclude the use of nondeceptive, "combination" offers in which two or more items of goods and/or services such as toothpaste and a toothbrush, or soap and deodorant, or clothing and alterations are offered for sale as a single unit at a single stated price, and in which no representation is made that the price is being paid for one item and the other is "free." Similarly, suppliers are not precluded from setting a price for an item of goods or services which also includes furnishing the consumer with a second, distinct item of goods or services at one inclusive price if no representation is made that the latter is free.

(E) Penalties.

Whoever violates any provisions of this may be subject to penalties provided in Section 1301.04. Each fraudulent advertisement for the sale of such designated items or materials constitutes a separate offense.

Section 1301.08: Failure to Deliver; Substitution of Goods or Services.

(A) It shall be a deceptive act or practice in connection with a consumer transaction for a supplier:

(1) To advertise or promise prompt delivery unless, at the time of the advertisement, the supplier has taken reasonable action to insure prompt delivery;

(2) To accept money from a consumer for goods or services ordered by mail, telephone, or otherwise and then permit eight weeks to elapse without:

(a) Making shipment or delivery of the goods or services ordered;

(b) Making a full refund;

(c) Advising the consumer of the duration of an extended delay and offering to send the consumer a refund within two weeks if the consumer so requests; or

(d) Furnishing similar goods or services of equal or greater value as a good faith substitute if the consumer agrees.

(B) When a consumer transaction involves goods it shall be a deceptive act or practice for a supplier to furnish similar goods of equal or greater value when there was no intention to ship, deliver, or install the original goods ordered. The act of a supplier in furnishing similar merchandise of equal or greater value as a good faith substitute does not violate this rule.

(C) For the purposes of this rule, goods or services may not be considered of "equal or greater value" if they are not substantially similar to the goods or services ordered, or are not fit for the purposes intended, or if the supplier normally offers the substituted goods or services at a lower price than the "regular price", as defined in 1301.07(D)(7) of the goods ordered.

(D) Penalties.

Whoever violates any provisions of this may be subject to penalties provided in Section 1301.04. Each fraudulent advertisement for the sale of such designated items or materials constitutes a separate offense.

Section 1301.09: Home Improvements

(A) Definitions.

As used in this Section, certain terms are defined as follows:

- (1) "Advertisement" shall mean a statement promoting home improvement services in a newspaper, periodical, pamphlet, circular, billboard, sign, letterhead, business card or other printed materials or in announcements to the public on radio, television or the Internet. The term shall not include the following:
 - (a) Sponsorship or recognition of sponsorships of civic, charitable or nonprofit events, teams or purposes;
 - (b) Writings or graphics on promotional clothing, pens, pencils or similar items.
 - (2) "Home Improvement" shall mean any repair, alteration, or addition to any one-, two- or three-family residential structure or to any dwelling unit in any type of structure. Home Improvement does not include any of the following:
 - (a) Construction of a new one-, two-, or three-family residential structure;
 - (b) Work performed on the common area of a condominium property;
 - (c) Work performed on a structure that contains four or more dwelling units, except for work on an individual dwelling unit within that structure.
 - (3) "Home Improvement Contract" shall mean an oral or written agreement between a contractor, subcontractor, independent contractor or salesperson for the performance of a home improvement which includes all agreements for labor, services and materials to be furnished and performed under the contract.
 - (4) "Home Improvement Contractor" shall mean any person who owns and operates a home improvement business or who undertakes or agrees to perform any home improvement. The term includes a subcontractor or independent contractor who has contracted with a home improvement contractor.
 - (5) "Warranty" shall mean any warranty or guarantee made with respect to labor, services, products or materials provided under a home improvement contract. Warranty includes a home improvement contractor's warranty and a manufacturer's product warranty.
- (B) Home improvement contract requirements.
- (1) When a home improvement contract is made which involves total cost to the consumer greater than five hundred dollars (\$500.00), or involving an extension of credit to the consumer, no person shall perform any home

improvement unless that person enters into a written contract with the owner. The contract shall include all agreements and conditions related to the home improvement, including all of the following:

- (a) The legal name of the home improvement contractor, address, telephone and facsimile numbers, website and email addresses, including the name, address, telephone and facsimile numbers of the sales representatives or agents who solicited or negotiated the contract for the contractors;
 - (b) The address of the property where the home improvement is to be performed;
 - (c) A detailed description of the home improvement, including the goods and services to be furnished as part of the home improvement;
 - (d) The date or time period the home improvement is to begin and the date or time period it is to be completed;
 - (e) The total cost or other consideration to be paid by the consumer, including all finance charges;
 - (f) Any cost of installation, delivery, or other cost that the total cost does not cover;
 - (g) The dated signatures of consumers and home improvement contractor; and
 - (h) A contract initiated by the home improvement contractor through face-to-face solicitation away from the regular place of business of the contractor shall have the proper notice of cancellation as described in this Section.
- (2) In connection with a home improvement solicitation where there is face-to-face contact between the consumer and home improvement contractor prior to the commencement of the repair or service, a home improvement contractor shall provide proper notice of cancellation that shall appear clearly and conspicuously on the copy of the contract left with the consumer in bold-face, UPPERCASE type of the minimum size of ten points, in substantially the following form and in immediate proximity to the space reserved in the contract for the signature of the consumer:

“YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FOR AN EXPLANATION OF THIS RIGHT.”

Also, before furnishing copies of the notice of cancellation to the consumer, the home improvement contractor shall complete both copies by entering the name of the home improvement contractor and the address of the home improvement contractor, the date of the transaction which is the date the consumer signed the contract and the date, not earlier than the third business day following the date of the transaction, by which the consumer may give notice of cancellation. The completed form, in duplicate, captioned "notice of cancellation", shall be attached to the contract signed by the consumer and be easily detachable, and shall contain in ten-point, boldface type, the following information and statements in the same language as that used in the contract:

NOTICE OF CANCELLATION

(enter date of transaction) (date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date. If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled. If you cancel, you must make available to the seller at your residence, in substantially as good of condition as when received, any goods delivered to you under this contract or sale; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice to (name of seller), at (address of seller's place of business) not later than midnight of (date).

I hereby cancel this transaction (date) and (consumer's signature)

(C) Building permits.

- (1) Before a consumer enters into a home improvement contract, the home improvement contractor shall inform the consumer of all building or construction permits that are required for the home improvement. No home improvement contractor may start work under a home improvement contract until all required building permits have been issued.

- (2) Where midpoint or final inspections are required by law, copies of inspection certificates shall be furnished to the consumer when repairs are completed and before final payment is due or the signing of a completion slip is requested of the consumer.

(D) Warranties.

- (1) A home improvement contractor shall give a consumer a copy of every written warranty made with respect to labor, services, products or materials furnished in connection with a home improvement.
- (2) If a home improvement contractor warrants any labor, service, product or material furnished in connection with a home improvement, the warranty (oral or written) shall be clear and specific and shall clearly specify all of the following:
 - (a) Any warranty conditions or exclusions;
 - (b) Any limitations on the scope or duration of the warranty; and
 - (c) The time period within which the home improvement contractor will perform the warranty obligations after the consumer makes a warranty claim.
- (3) No home improvement contractor may give any warranty which the home improvement contractor does not intend to honor in full, or which the home improvement contractor has reason to believe will not be honored in full.

(E) Prohibited activity.

The following actions are prohibited:

- (1) Prior to commencing work related to the home improvement, failure to enter into a written contract that complies with this Section;
- (2) Making the performance of any home improvement contingent upon a consumer's waiver of any rights this Section provides;
- (3) Charging for any excess cost that the consumer has not approved;
- (4) Representing that repairs, services, or work is necessary when such is not the fact;
- (5) Representing that repairs or work have been performed when such is not the fact;

- (6) Representing that an item of goods or any part thereof that is being inspected or diagnosed for a home improvement is in a dangerous condition, or that its continued use may be harmful, when such is not the fact;
 - (7) Materially understating or mis-stating the estimated cost of the home improvement;
 - (8) Fraudulently misrepresenting any aspect of the transaction or the nature or the quality of the work or materials;
 - (9) Failing to provide the consumer with a written itemized list of repairs performed or services rendered, including a list of parts or materials and a statement of whether they are used, manufactured, or rebuilt, if not new, the cost to the consumer, the amount charged for labor, and the identity of the individual performing the repair or service;
 - (10) Failing to tender to the consumer any replaced parts, unless the parts are to be rebuilt or sold by the contractor, or returned to the manufacturer in connection with a warranted repair or service, and the intended reuse or return is made know to the owner prior to commencing any repair or services;
 - (11) Failing at the time any consumer signs or initials any document to provide the consumer with a copy of the document; or
 - (12) Failing to obtain proper building permits prior to commencing work.
- (F) Contract cancellation; return of payments.
- (1) If a home improvement contractor fails to fulfill any obligation this Section imposes, the consumer may deliver a written notice of that failure to the contractor, specifying the act or omission that constitutes noncompliance and the specific obligation that was not met. The notice shall state that if the contractor does not fulfill the obligation, the consumer has authority to terminate the contract upon the date specified in the notice, to be not less than thirty days after the delivery of the notice.
 - (2) If, under a home improvement contract, a consumer pays a home improvement contractor for any home improvement materials or services before the contractor provides those materials or services to the consumer, the consumer may proceed to cancel the contract and demand return of all payment which the home improvement contractor has not yet expended on the home improvement if any of the following occurs:
 - (a) The home improvement contractor fails to provide the materials or services by a deadline specified in the home improvement contract;

- (b) The home improvement contractor fails to give the consumer notice of an impending delay as required in this Section, or fails to obtain the consumer's agreement to a new performance deadline;
- (c) The consumer believes that the home improvement contractor has failed to provide the material or services in a timely manner, and the home improvement contract specifies no deadline for the contractor to provide the materials or services;
- (d) The home improvement contractor fails to obtain proper building permits;
- (e) The home improvement contractor fails to obtain written authorization from the consumer to perform additional repairs not listed in the original contract; or
- (f) The home improvement contractor fails to provide proper notice of cancellation.

(G) Penalties.

Whoever violates any provisions of this may be subject to penalties provided in Section 1301.04.

Section 1301.10: Layaway Agreements

(A) Definitions.

As used in this Section, certain terms are defined as follows:

- (1) "Cash Price" shall mean the retail selling price for which goods subject to a layaway agreement may be purchased for cash from the seller by the buyer at the time of the execution of the layaway agreement.
- (2) "C.O.D. Transaction" shall mean an agreement by which the seller requires the buyer to pay the full cash price of the goods upon delivery or tender of delivery by the seller, less any down payment made by the buyer. A C.O.D. transaction does not include an agreement by which the seller requires the buyer to pay interim payments before such delivery or tender of delivery.
- (3) "Layaway Agreement" shall mean a written contract for the retail sale of goods negotiated or entered into in the County between a consumer and a supplier, under this or any other name, under which:

- (a) Part or all of the layaway price is payable in one or more payments subsequent to the making of the layaway agreement;
 - (b) The goods are specific existing goods identified from the seller's stock or inventory at the time of the making of the layaway agreement;
 - (c) The seller retains possession of such goods until the layaway price is paid in full;
 - (d) "Layaway agreement" includes a "special order transaction," as defined in subsection (h) hereof. "Layaway agreement" does not include a bona fide C.O.D. transaction, as defined in subsection (2) hereof.
- (4) "Layaway Charge" shall mean means a charge assessed to the buyer for exercising the layaway option.
 - (5) "Layaway Price" shall mean the sum of the cash price, service charges and assessed taxes.
 - (6) "Service Charge" shall mean any fee charged to the buyer in addition to the cash price of the goods, excluding taxes.
 - (7) "Special Order Transaction" shall mean a contract negotiated or entered into for the retail sale of goods under which such goods:
 - (a) Are ordered by the buyer to his or her unique specifications;
 - (b) Are not carried by the seller, either in the seller's showroom or warehouse;
 - (c) Are ordered from a manufacturer or supplier; and
 - (d) Are not resalable by the seller at the sale price negotiated with the buyer; or
 - (e) Have been altered at the request of the buyer so that the goods are no longer salable to the general public.

(B) Execution of agreement.

A layaway agreement shall be in writing, contain all of the agreements of the parties and be signed and dated by all of the parties thereto.

(C) Contents of layaway agreement.

No merchant shall accept payment from a consumer to be applied to the purchase of goods on a layaway plan without first clearly and conspicuously disclosing to the consumer, in a layaway agreement, the following information:

- (1) The full name and post office address of the seller;
- (2) A description of the goods to be purchased on the layaway plan, including, as appropriate, the type of item, the name of the manufacturer, and the brand name, color, size, style and model number of such goods;
- (3) The cash price of such goods;
- (4) A specific itemization of service charges, including, but not limited to, any layaway charge (not to exceed three percent (3%) of the cash price of the goods or five dollars (\$5.00), whichever is greater) and charges for delivery, installation, assembly, repair or other services to the goods, which are separate from the cash price;
- (5) The layaway price;
- (6) The amount of the buyer's down payment, together with a statement of the respective amounts credited for cash or credits, the agreed value of any goods to be traded in and a description of such goods;
- (7) The total sum which remains owing by the buyer to the seller, the number of installment payments, the amount of such payments, the dates by which such payments are due, and any penalties for late payment where the buyer is not in default;
- (8) A clear and concise statement of circumstances constituting buyer default and all consequences of such default, including any imposition of liquidated damages, as permitted under paragraphs (4), (5) and (6) of Section 1301.10(E). The statement shall further include the following:
 - (a) The buyer will not be in default until a required payment remains unpaid for at least thirty (30) days after the scheduled payment date, as provided in paragraph (1) of Section 1301.10(E);
 - (b) Where the layaway agreement contains a liquidated damages clause, the buyer shall not be in default until at least ten (10) days after the seller mails notice of default to the buyer, as provided in paragraph (2) of Section 1301.10(E);

- (c) Where the layaway agreement does not contain a liquidated damages clause, or if the layaway price of the specific goods subject to the layaway arrangement is one hundred dollars (\$100.00) or less, the seller is not required to mail notice of default as a prerequisite to the buyer's default, as provided in paragraph (3) of Section 1301.10(E);
- (d) Upon default, the seller may cancel the layaway agreement as provided in paragraphs (a)-(c) above and in paragraph (4) of Section 1301.10(E); and
- (e) A clear and conspicuous statement of the buyer's right to cancel such layaway agreement as provided in paragraph (6) of Section 1301.10(E).

(D) Duties of seller.

- (1) The seller shall give the buyer an exact copy of the signed layaway agreement at the time the agreement is executed.
- (2) Upon execution of a layaway agreement, the seller shall hold for the buyer, or agree to deliver to the buyer, upon full payment of the layaway price, goods that are identical in every respect to those originally selected by the buyer, provided that the buyer complies with all the terms of the layaway agreement.
- (3) The seller shall bear the risk of loss or damage while holding the goods purchased pursuant to a layaway agreement.
- (4) Whenever a payment is made on a layaway agreement account, the seller shall give the buyer a dated receipt evidencing such payment.
- (5) If the buyer requests the status of the layaway account, the seller, within ten (10) days after such request, shall give the buyer a written statement setting forth:
 - (a) The total cost of the layaway transaction;
 - (b) The total amount paid by the buyer to date; and
 - (c) The balance due to the seller and the date by which remaining payments are due.
- (6) The seller may not increase the layaway price of goods sold under a layaway agreement.
- (7) Upon the seller's breach of any of the seller's duties, the seller shall give to the buyer a full refund in cash or by due bill, at the option of the buyer.

(E) Default by buyer; cancellation of agreement before default.

- (1) No buyer shall be in default under a layaway agreement until a required payment remains unpaid for at least thirty (30) days after the scheduled payment date.
- (2) If the seller's layaway agreement includes a liquidated damages clause as permitted in paragraph (5) of this section, the buyer shall not be in default until at least ten (10) days after the seller mails a notice of the default to the last known address of the buyer. The notice shall be mailed using certified mail, return receipt requested, or by regular mail evidenced by a properly completed and stamped certificate of mailing by regular mail. Such notice shall state:
 - (a) The fact that the buyer has failed to comply with the layaway arrangements;
 - (b) In what manner the buyer has failed to comply with the layaway arrangement;
 - (c) The date upon which the buyer will be in default should payment not be forthcoming;
 - (d) The amount of money which must be paid by the buyer to avoid default; and
 - (e) The exact consequences of the buyer's default.
- (3) If the seller's layaway agreement does not include a liquidated damages clause, or if the layaway price of the specific goods subject to the layaway arrangement is one hundred dollars (\$100.00) or less, no written notice need be sent to the buyer as a prerequisite to the buyer's default.
- (4) Upon the buyer's default, the seller may cancel the layaway agreement and the balance of the monies paid shall be refunded by the seller to the buyer. Where the layaway agreement contains a liquidated damages provision, cancellation shall be in accordance with paragraph (2) of this section, and the seller may recover liquidated damages as permitted in paragraph (5) of this section.
- (5) If the buyer defaults under a layaway agreement, and the agreement contains a liquidated damages provision, the seller may retain as liquidated damages an amount not to exceed the lesser of twenty-five dollars (\$25.00) or ten per cent (10%) of the cash price of the goods subject to the layaway agreement. Any

balance due to the buyer shall be refunded by the seller in cash or by due bill at the option of the buyer.

- (6) The buyer may, at any time before delivery or tender of delivery, and before default, cancel the layaway agreement. In such event, the seller may retain from the refund due the buyer liquidated damages in an amount not to exceed the layaway charge plus the lesser of either twenty-five dollars (\$25.00) or ten per cent (10%) of the cash value of the goods subject to the layaway agreement. The balance shall be refunded by the seller to the buyer in cash or by due bill at the option of the buyer.
- (7) Unless otherwise provided in the layaway agreement, paragraphs (4), (5) and (6) of this section do not apply to a special order transaction.

(F) Penalties.

Whoever violates any provisions of this may be subject to penalties provided in Section 1301.04.

Section 1301.11: Motor Vehicle Repairs

(A) Definitions.

As used in this Section, certain terms are defined as follows:

- (1) "Motor Vehicle Repair Garage" shall mean a business or individual regularly engaged in the repair of motor vehicles, except:
 - (a) A business which performs motor vehicle servicing solely to the extent of fueling, checking fluid levels, replacing filters, and other minor servicing functions;
 - (b) A garage or shop engaged exclusively in repairing the motor vehicles of its own fleet.
- (2) "Repair" shall mean mechanical repairs, service, maintenance, alterations, diagnostic testing or body work, or the addition of equipment, supplies, or parts to a motor vehicle.
- (3) "Motor Vehicle Repair Person" shall mean any person who performs repairs, as defined in subsection 2 of this Section, for compensation, other than a person who performs repairs only on his or her own motor vehicles or vehicles or while in the employ of an entity described in paragraphs (1)(a) or (1)(b) of this Section.

(B) Maintenance of records.

Every person who operates a motor vehicle repair garage shall keep records which shall include all work orders, estimates, and invoices of all consumers for whom motor vehicle repairs have been performed. Such records shall be made available for inspection and copying by the Department for not less than two (2) years after their creation. Upon request by a consumer and payment of a reasonable cost therefore, a motor vehicle repair garage shall provide the documents maintained by the motor vehicle repair garage which reflect any transaction to which said customer was a party.

(C) Notice of storage policy.

Each motor vehicle repair garage shall give reasonable notice of its policy on storages charged. It shall be prima facie evidence of such notice if there is posted in a conspicuous place within the motor vehicle garage, a legible sign stating its storage charge policy; provided that no charge shall accrue or be due and payable for a period of forty-eight (48) hours (two business days) from the date of notification to a consumer that the repair of the consumer's motor vehicle has been completed.

(D) Regulations governing motor vehicle repairs or services.

- (1) In connection with a consumer transaction involving a motor vehicle repair or any service on a motor vehicle where the anticipated cost exceeds twenty five dollars (\$25.00) and there has been face-to-face contact at the supplier's place of business during the hours such repairs or services are offered, between the consumer or his representative, prior to the commencement of the repair, no supplier shall fail to inform the consumer of his right to an estimate on a form containing substantially the following language:

ESTIMATE

You have the right to an estimate if the expected cost of repairs or services will be more than twenty-five dollars (\$25.00). Your bill will not be higher than the estimate by more than ten percent (10%) unless you approve a larger amount before repairs are finished. Initial your choice:

Written Estimate: _____

Oral Estimate: _____

No Estimate: _____

- (a) Fail to post a sign in a conspicuous place within that area of the supplier's place of business to which consumers requesting a repair or service are directed by the supplier or to give the consumer a separate form at the time of the initial face-to-face contact and prior to the commencement of any repair or service which clearly and conspicuously contains the following language:

NOTICE

If the expected cost of repair or service is more than twenty-five dollars (\$25.00), you have the right to receive a written estimate or oral estimate before we begin work. Your bill will not be higher than the estimate by more than ten percent (10%) unless you approve a larger amount before repairs are finished. Ohio law requires us to give you a form so that you can choose either a written, oral, or no estimate.

- (b) Fail, where a consumer requests a written estimate of the anticipated cost of repairs or services, to make a bona fide effort during the initial face-to-face contact to provide the written estimate on the form required by paragraph (D)(1) of this Section.
 - (c) Fail, where a consumer requests a written or oral estimate, to give the estimate to the consumer before commencing the repair or service.
- (2) In connection with a consumer transaction involving the performance of either repairs or any service upon a motor vehicle where there has not been face-to-face contact between the consumer or his representative and the supplier or his representative prior to the commencement of the repair or service, no supplier shall:
- (a) Fail to make available to a consumer who makes a supplier-authorized delivery of a motor vehicle for repair or service at the supplier's place of business during non-business hours of the repair or service facility, a form in duplicate with instruction directing the consumer to retain a copy which indicates the identity of the supplier. The form shall contain disclosures in substantially the following language:

ESTIMATE

You have the right to an estimate of the cost of repairs or services which you are requesting. Your bill will not be higher than the estimate by more than ten percent (10%) unless you approve a larger amount before repairs are finished. You can choose the kind of estimate you want to receive by signing your name under one of the following choices and indicating a telephone number where you can be reached if necessary:

Written Estimate: (Customer Signature)

Oral Estimate: (Customer Signature)

No Estimate: (Customer Signature)

Customer Name, Telephone Number, Date

- (b) Fail in all other instances, upon the first contact with the consumer, to inform the consumer of the right to receive a written or oral estimate of the anticipated cost of the repair or service;
 - (c) Fail, where the consumer requests an oral estimate, to give the oral estimate to the consumer before commencing the repair or service;
 - (d) Fail, where the consumer requests a written estimate, to prepare the written estimate, inform the consumer that the estimate is available and upon the consumer's request, give the estimate to the consumer before commencing the repair or service. For purposes of this subsection, a supplier has not authorized delivery of a motor vehicle during non-business hours of the repair or service facility where there has not been communication of that fact to the general public by the supplier or his representative.
 - (e) The forms required by paragraphs (D)(1) and (D)(2) of this Section may be separate or may be incorporated into another form used by the supplier so long as the required disclosures are easily legible and clearly and conspicuously appear on the form. Nothing in this Section shall preclude a supplier from incorporating additional disclosures into the same form.
 - (f) The sign or form required by paragraphs (D)(2) of this Section shall be printed in such a size and manner so that the notice is easily legible. Additional disclosures required by this Section may be incorporated into the sign or form so long as the language required by paragraph (D)(2) of this Section prominently appears as the first listed disclosure. Where anticipated cost of repairs or services, the language in the form required by paragraph (D)(1) and the sign or form required by (D)(2) of this Section may be modified to disclose that fact.
- (3) In any consumer transaction involving the performance of any repair or service upon a motor vehicle, no supplier shall:
- (a) Fail to disclose prior to acceptance of any motor vehicle for inspection, repair, or service, that, in the event the consumer authorized commencement but does not authorize completion of a repair or service, charges will be imposed for disassembly, reassembly, and partially completed work. Any charge so imposed shall be directly related to the actual amount of labor or parts included in the inspection, repair or service;
 - (b) Charge for any repair or service which has not been authorized by the consumer;

- (c) Fail to disclose upon the first contact with the consumer that any charge not directly related to the actual performance of the repair or service will be imposed by the supplier whether or not repairs or services are performed;
- (d) If the motor vehicle will be towed, fail to disclose upon first contact with a consumer the basis upon which charge will be imposed for such towing;
- (e) Charge a consumer an amount which exceeds the quoted estimate by more than ten percent (10%) without the consumer's approval prior to the completion of the repair;
- (f) Materially understate or misstate the estimated cost of the repair;
- (g) Fail to provide the consumer with an itemized list of repairs performed or services rendered, including a list of parts and materials, a statement of whether they are used, re-manufactured or rebuilt, the amount charged for labor, and the identity of the individual performing the repair or service;
- (h) Fail to tender to the consumer any replaced parts, unless the parts to be rebuilt or sold by the supplier or returned to the manufacturer in connection with warranted repair or services, and such intended reuse or return is made known to the consumer prior to commencing any repair or service;
- (i) Fail, at the time of the signing or initialing of any document by a consumer, to provide the consumer with a copy of the document;
- (j) Fail to disclose to the consumer prior to the commencement of any repair or service that any part of the repair or service will be performed by a person other than the supplier or his employees; the nature of the repair which any such person will perform and the identity of that person; and the existence of any warranties or the lack thereof on work performed by such person;
- (k) Fail to give the consumer written notification that delivery to the supplier of the parts required for the repair will be delayed for a period of ten (10) days or more;
- (l) In the case of lengthy repairs, fail to obtain written consent from the consumer to possess said consumer's motor vehicle for a period in excess of thirty (30) calendar days;

- (m) Fail, where an estimate has been requested by a consumer, to obtain oral or written authorization from the consumer for the anticipated cost of any additional, unforeseen, but necessary repairs or services, when the cost of those repairs or services amounts to ten percent (10%) or more (excluding tax) of the original estimate;
- (n) Fail, where the anticipated cost of a repair or service is less than twenty-five dollars (\$25.00), to obtain oral or written authorization from the consumer for the anticipated cost of any additional, unforeseen, but necessary repairs or service, which, if performed, will exceed twenty-five dollars (\$25.00);
- (o) Fail to provide to the consumer upon his request a written, itemized receipt for any motor vehicle or part thereof that is left with, or turned over to, the supplier for repair or service. Such receipt shall include:
 - (i.) The identity of the supplier which will perform the repair or service;
 - (ii.) The name and signature of the supplier or a representative who actually accepts the motor vehicle or any part thereof;
 - (iii.) A description including make and model number or such other features as will reasonably identify the motor vehicle or any part thereof to be repaired or serviced;
 - (iv.) The date on which the motor vehicle or any part thereof was left with or turned over to the supplier.
- (4) In any consumer transaction involving the performance of any repair upon a motor vehicle, no supplier shall:
 - (a) Condition the performance of any repair or service upon a consumer's waiver of any rights provided for in this Section or require the consumer to give any additional security beyond the mechanic's lien authorized by common law;
 - (b) Represent that repairs or services are necessary when such is not the fact;
 - (c) Represent that repairs have been made or services have been performed when such is not the fact;
 - (d) Represent that a motor vehicle or any part thereof which is being inspected or diagnosed for repair or service is in a dangerous condition

or that the consumer's continued use of it may be harmful, when such is not the fact.

- (E) In lieu of complying with the requirements of paragraphs (D)(1) and (D)(2) to (D)(4) of this Section, a supplier may provide a consumer, prior to the commencement of the repair or service, with a written quotation of the price at which the repair or service will be performed, which shall indicate that the quotation shall be binding upon the supplier for a period of five days, provided that the subject of the consumer transaction is made available to the supplier for the repair or service within that period.

Section 1301.12: Private Automated Teller Machine

(A) Definitions.

As used in this Section, certain terms are defined as follows:

- (1) "Private Automated Teller Machine" shall mean a non-financial institution owned device that is cash-dispensing only. The device can reload prepaid cards but cannot accept deposits.
- (2) "Operator" shall mean a person, organization, or a company, including but not limited to one who owns, invests in, or leases an automated teller machine and is responsible for the maintenance, functioning, and operation of such machine, which is located in any building, structure or space whose primary purpose or function is unrelated to banking activities, including, but not limited to supermarkets, restaurants, bars, and convenience stores.
- (3) "Automated Teller Machine Placement Agreement" shall mean an agreement between a merchant and a private automated teller machine operator authorizing the location and providing the terms of operation of a private automated teller machine at a specified site.

(B) Registration of private automated teller machines.

- (1) No private automated teller machine shall be operated in Cuyahoga County without first being registered in accordance with the provisions of this section, except as otherwise expressly provided in this section.
- (2) Every operator of a private automated teller machine operated in the county shall register with the Department of Consumer Affairs. The application form shall contain: the name and serial number of such device; the name, address, telephone, and email address of the operator of such device, specifying in the case of a corporation, limited liability corporation or partnership, the name, address, and telephone number of each officer; location and identification of the private automated teller machine to be registered; proof that the private

automated teller machine is in compliance with all applicable federal and state regulations; such additional facts or evidence as the Department may require in connection with the application for registration.

- (3) The removal of any private automated teller machine from a premises and its relocation to another in Cuyahoga County shall require the re-registration of such machine in accordance with subdivision (2) above, except that such re-registration shall be charged a reduced fee, as provided herein.
- (4) Registrations and renewed registrations shall take effect and expire on dated determined by the Department and shall be valid for a period of one year. However, where the expiration date of the registration of any private automated teller machine falls on a Saturday, Sunday or county holiday, such registration shall be valid for the operation of such device until midnight of the next day on which county offices shall be open for business.
 - (a) The following fees shall be paid to the Cuyahoga County Department of Consumer Affairs upon the registration or the renewal of a registration of a private automated teller machine in accordance with the provision of this Chapter: for the initial registration by the operator of any private automated teller machine in the county, one hundred (\$100) dollars; for each renewal of such registration after the initial registration of such device, fifty (\$50) dollars; for each re-registration, ten (\$10) dollars.
 - (b) With respect to any private automated teller machine placed into operation prior to the effective date of this Section, the operator of such device shall, within ninety (90) days of the effective date of this Section, comply with registration provisions of this section.
- (5) Posted in a conspicuous place on the front of each private automated teller machine a notice in at least 24-point type setting forth:
 - (a) The name and address of the operator of the private automated teller machine;
 - (b) Telephone number where consumers can call to file complaint along with the name and telephone number of the Department of Consumer Affairs; and
 - (c) Every operator of a private automated teller machine shall maintain such records in relation to such device as the Department of Consumer Affairs may require.

(C) No impact on banking regulations; not to supersede state or federal regulations.

This Chapter shall have no impact on or intent to affect banking regulations at state or

federal levels, and shall not be interpreted or construed to modify, amend, supersede, or cancel such regulations.

(D) Exemptions.

Any automated teller machine located in an area within the dominion and control of a banking institution, including any state or federally chartered bank, trust company, savings bank, savings and loan association, or credit union that operates on or more automated teller machines within the county.

(E) Penalties.

Whoever violates any provisions of this may be subject to penalties provided in Section 1301.04. Every day that a violation continues shall constitute a separate and distinct offense.

Section 1301.13: Income Tax Preparers

(A) Definitions.

As used in this Section, certain terms are defined as follows:

- (1) "Assisted Direct Deposit" shall mean a mechanism or agreement through which a consumer's individual income tax refund is deposited in a bank account other than the consumer's bank account, and then the remaining portion of the refund, minus fess, is deposited in the consumer's own bank account.
- (2) "Refund Anticipation Check" shall mean a check or other payment mechanism representing the proceeds of the consumer's individual income tax refund which was issued by a depository institution or other person that received a direct deposit of the consumer's individual income tax refund and for which the consumer must pay a fee or other consideration.
- (3) "Refund Anticipation Loan" shall mean any loan a consumer may receive against his or her anticipated individual income tax refund.
- (4) "Refund Settlement Product" shall mean assisted direct deposit, a refund anticipation check, a refund anticipation loan, or other similar mechanism, agreement, or transaction that allows a consumer to receive an advancement of money against an anticipated individual income tax refund from a person other than local, state or federal government, or allows another person to collect fees from the proceeds of the consumer's individual income tax refund.
- (5) "Tax Preparation Services" shall mean advice or assistance in the preparation

of individual income tax returns.

- (6) "Tax Preparer" shall mean a person who, for a fee, provides or who holds himself or herself out as providing tax preparation services. A "tax preparer" shall not include:
- (a) An attorney-at-law, and the employees of an attorney-at-law, who is a tax preparer;
 - (b) A certified public accountant, and the employees of a certified public accountant, who is a tax preparer;
 - (c) An officer or employee of a federal state, or local governmental agency who provides tax preparation services in the scope of his or her employment; or
 - (d) An administrator, conservator, guardian, executor, trustee, receiver or other representative appointed by the court who provides tax preparation services in the scope of that appointment.
- (7) "Writing" shall mean information legibly recorded in either paper or electronic form.

(B) Mandatory disclosures.

- (1) Prior to rendering any tax preparation services to a consumer, a tax preparer must provide the consumer with the following information, in writing:
- (a) A disclosure form that contains the following information:
 - (i) A written list, description, and price of the tax preparation service offered by the tax preparer;
 - (ii) A written list, description, and price of all miscellaneous fees associated with tax preparations services, including filing fees and processing fees;
 - (iii.) A written statement that a consumer is not required to utilize a refund settlement product in order to receive tax preparation services from the tax preparer;
 - (iv.) A written estimate of the total charge to the consumer based upon the tax preparation services the consumer has selected to purchase;
 - (v.) A written estimate of the period of time the consumer can reasonably expect to wait for his or her tax refund; and

(vi.) Verification from the tax preparer indicating that the tax preparer has reviewed each disclosure with the consumer and that the tax preparer has verbally reviewed all the required disclosures with the consumer.

- (2) No tax preparation services shall be rendered to any consumer until the tax preparer has reviewed the disclosure form with the consumer and verified to such review on the disclosure form. A copy of the disclosure form shall be provided to consumer at time of tax preparation.
- (3) A copy of the disclosure form used by tax preparers shall be filed with the Cuyahoga County Department of Consumer Affairs prior to offering tax preparation services to consumers.

(C) Prohibited activity.

No tax preparer shall require as a condition of offering or rendering tax preparation services to a consumer that the consumer utilize a refund settlement product.

(D) Joint and several liability.

Any person who employs or contracts with another person to provide tax preparation services as a tax preparer for a consumer shall be jointly and severally liable with the tax preparer for any violations of this Chapter.

(E) Penalties.

Whoever violates any provisions of this may be subject to penalties provided in Section 1301.04. Every day that a violation continues shall constitute a separate and distinct offense.

SECTION 2. Section 202.16(C) of the Cuyahoga County Code is hereby enacted as follows:

(C) There shall be a Consumer Protection Division located for administrative purposes within the Department of Consumer Affairs. The Department may:

- (1) Protect and promote the welfare of County consumers and businesses;
- (2) Assist, develop, and conduct programs of consumer education and financial literacy;
- (3) Receive and investigate complaints and initiate its own investigation of alleged violations of consumer protection or weights and measures laws as provided by the Cuyahoga County Code or Ohio Revised Code, and referring

Clerk of Council

Date

First Reading/Referred to Committee: August 26, 2014

Committee(s) Assigned: Education, Environment & Sustainability

Journal _____
_____, 20__