# Rules of Elected Officials

## Division 60—Attorney General

### Chapter 9—Fraudulent and Omissive Acts and Practices

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Title 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 9—Fraudulent and Omissive Acts and Practices

15 CSR 60-9.010 Definitions

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify the meaning of terms whether or not used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) Deception is any method, act, use, practice, advertisement or solicitation that has the tendency or capacity to mislead, deceive or cheat, or that tends to create a false impression.

(2) Reliance, actual deception, knowledge of deception, intent to mislead or deceive, or any other culpable mental state such as recklessness or negligence, are not elements of deception as used in section 407.020.1, RSMo (see State ex rel. Danforth v. Independence Dodge, Inc., 494 SW2d 362 (Mo. App., W.D. 1973); State ex rel. Ashcroft v. Marketing Unlimited, 613 SW2d 440 (Mo. App., E.D. 1981); State ex rel. Webster v. Areaco Investment Co., 758 SW2d 693 (Mo. App., E.D. 1988)). Deception may occur in securing the first contact with a consumer and is not cured even though the true facts or nature of the advertisement or offer for sale are subsequently disclosed. Exposition Press, Inc. v. F.T.C., 255 F.3d 869 (2d Cir. 1961).

15 CSR 60-9.040 Fraud in General

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the enforcement of the Act and provides notice to the public of their application.

(1) Fraud includes any acts, omissions or artifices which involve falsehood, deception, trickery, breach of legal or equitable duty, trust, or confidence, and are injurious to another or by which an undue or unconscientious advantage over another is obtained.

(2) Fraud, as used in section 407.020.1, RSMo is not limited to common law fraud or deceit and is not limited to finite rules, but extends to the infinite variations of human invention (see Howard v. Scott, 225 MO 685, 125 SW 1158 (1910); Skidmore v. Back, 512 SW2d 223 (Mo. App. S.D. 1974); United States v. Bishop, 895 F.2d 1276 (8th Cir. 1987); State v. Shaw, 847 S.W.2d 765 (Mo. banc 1993)).

15 CSR 60-9.030 Deceptive Format

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) Deception is any method, act, use, practice, advertisement or solicitation that has the tendency or capacity to mislead, deceive or cheat, or that tends to create a false impression.

15 CSR 60-9.020 Deception in General

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the enforcement of the Act and provides notice to the public of their application.

(1) Deception is any method, act, use, practice, advertisement or solicitation that has the tendency or capacity to mislead, deceive or cheat, or that tends to create a false impression.
administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) False pretense is any use of trick or deception, forgery, or false and fraudulent representation, statement, pretense, instrument or device with the intent to defraud (see State v. Fields, 366 SW2d 462 (Mo. 1965)).

(2) Reliance and injury are not elements of false pretense as used in section 407.020, RSMo.

15 CSR 60-9.070 Misrepresentation in General

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) Misrepresentation is an assertion that is not in accord with the facts (see Restatement, Second, Contracts, section 159; Packard v. K C One, Inc., 727 SW2d 138 (Mo.App., W.D. 1987)).

(2) Reliance, knowledge that the assertion is false or misleading, intent to defraud, intent that the consumer rely upon the assertion, or any other capable mental state such as recklessness or negligence, are not elements of misrepresentation as used in section 407.020, RSMo. (see State ex rel. Danforth v. Independence Dodge, Inc., 494 SW2d 362 (Mo.App., W.D. 1973); State ex rel. Ashcroft v. Marketing Unlimited, 613 SW2d 440 (Mo.App., E.D. 1981); State ex rel. Webster v. Areaco Investment Co., 796 SW2d 658 (Mo.App., E.D. 1988)).

15 CSR 60-9.060 False Promise in General

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) False promise is any statement or representation which is false or misleading as to the maker's intention or ability to perform a promise, or likelihood the promise will be performed.

(2) Reliance and injury are not elements of false promise as used in section 407.030.1, RSMo.

15 CSR 60-9.080 Material Untruths

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) It is a misrepresentation for any person in connection with the advertisement or sale of merchandise to make an untrue statement of material fact.

15 CSR 60-9.090 Half-Truths

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) It is a misrepresentation for any person in connection with the advertisement or sale of merchandise to omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they are made, not misleading.

15 CSR 60-9.100 Fraudulent Misrepresentations

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney
general may make rules necessary to the
administration and enforcement of the
provisions of Chapter 407, RSMo and, in
order to provide notice to the public, may
specify meanings of terms used in the
Act. This rule specifies the settled
meanings of certain terms used in the
enforcement of the Act and provides
notice to the public of their application.
Methods, acts, uses and practices speci-
\( fied \) are not intended to be an all inclusive
list of misrepresentation, but this rule
enumerates the specific acts and practi-
ces which are misrepresentations and are
violative of section 407.020, RSMo.

(1) It is a misrepresentation for any person in
connection with the advertisement or sale of
merchandise to make any fraudulent asser-
tion.

(2) An assertion is fraudulent if the person
intends his/her assertions to induce a
consumer to purchase merchandise, and the
person—
\( (A) \) Knows or believes that the assertion is
not in accord with the facts; or
\( (B) \) Knows that he does not have a reason-
able basis for his/her assertion (see Restate-
ment, Second, Contracts, section 162).

\( \text{Auth: sections 407.020, RSMo (Cum.}
\text{Supp. 1992) and 407.145, RSMo (Cum.}
\text{Supp. 1993).* Original rule filed March}
\text{18, 1994, effective Sept. 30, 1994.}

*Original authority: 407.020, RSMo (1967),

15 CSR 60-9.110 Concealment, Suppres-
sion or Omission of Any Material Fact in
General

\( \text{PURPOSE: The attorney general admin-
isters and enforces the provisions of the}
\text{Merchandising Practices Act,}
\text{Chapter 407, RSMo. The attorney gen-
eral may make rules necessary to the}
\text{administration and enforcement of the}
\text{provisions of Chapter 407, RSMo and, in}
\text{order to provide notice to the public, may}
\text{specify meanings of terms used in the}
\text{Act. This rule specifies the settled}
\text{meanings of certain terms used in the}
\text{enforcement of the Act and provides}
\text{notice to the public of their application.}

(1) Concealment of a material fact is any
method, act, use or practice which operates to
hide or keep material facts from consumers.

(2) Suppression of a material fact is any
method, act, use or practice which is likely to
curtail or reduce the ability of consumers to
take notice of material facts which are stated.

(3) Omission of a material fact is any failure
by a person to disclose material facts known to
him/her, or upon reasonable inquiry would be
known to him/her.

(4) Reliance and intent that others rely upon
such concealment, suppression or omission are
not elements of concealment, suppression or
omission as used in section 407.020.1., RSMo.

\( \text{Auth: sections 407.020, RSMo (Cum.}
\text{Supp. 1992) and 407.145, RSMo (Cum.}
\text{Supp. 1993).* Original rule filed March}
\text{18, 1994, effective Sept. 30, 1994.}

*Original authority: 407.020, RSMo (1967),

Judith K. Moriarty
Secretary of State