
**Rules of
Elected Officials
Division 60—Attorney General
Chapter 8—Unfair Practices**

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Title 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 8—Unfair Practices

15 CSR 60-8.010 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) Unless inconsistent with the definitions provided in Chapter 407, RSMo, the following terms and phrases shall mean:

(A) Actual cost shall mean money expended or credit incurred and no allowance shall be made for the replacement cost of merchandise that the seller is reasonably assured of recouping the replacement cost as part of the price of subsequent sales of the merchandise;

(B) Consumer shall include any person (as defined in section 407.010.5., RSMo) who purchases, may purchase or is solicited for purchase of merchandise;

(C) Disaster area shall mean an area declared to be a disaster area by either state or federal authorities;

(D) Excessive price shall mean a seller's price that is not justified by the seller's actual cost of acquiring, producing, selling, transporting and delivering the actual product sold plus the seller's usual and customary profit margin prior to the onset of the natural disaster;

(E) Good faith shall mean honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade;

(F) Natural disaster shall mean property damage caused by heavy rainfall, storm, tornado, flooding or earthquake; and

(G) Necessity shall include all materials and services related to, but not limited to, food, water, medical treatment, sanitation, construction, repair and transportation.

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

*Original authority: 407.020, RSMo (1967),

amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.

15 CSR 60-8.011 Definitions

Emergency rule filed July 29, 1993, effective Aug. 8, 1993, expired Dec. 5, 1993.

15 CSR 60-8.020 Unfair Practice 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 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) An unfair practice is any practice which—
 (A) Either—

1. Offends any public policy as it has been established by the Constitution, statutes or common law of this state, or by the Federal Trade Commission, or its interpretive decisions; or

2. Is unethical, oppressive or unscrupulous; and

(B) Presents a risk of, or causes, substantial injury to consumers.

(2) Proof of deception, fraud, or misrepresentation is not required to prove unfair practices as used in section 407.020.1., RSMo. (See *Federal Trade Commission v. Sperry and Hutchinson Co.*, 405 U.S. 233, 92 S.Ct. 898, 31 L.Ed.2d 170 (1972); *Marshall v. Miller*, 302 N.C. 539, 276 S.E.2d 397 (N.C. 1981); see also, Restatement, Second, Contracts, sections 364 and 365).

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

*Original authority: 407.020, RSMo (1967), amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.

15 CSR 60-8.021 Price Gouging

Emergency rule filed July 29, 1993, effective Aug. 8, 1993, expired Dec. 5, 1993.

15 CSR 60-8.030 Price Gouging

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. Practices specified are not intended to be an all inclusive list of practices which are unfair, but this rule enumerates specific practices which are unfair and are violative of section 407.020, RSMo.

(1) It is an unfair practice for any person in connection with the advertisement or sale of merchandise to—

(A) Take advantage of a person's physical or mental impairment or hardship caused by extreme temporary conditions, and charge a price substantially above the previous market price of the merchandise in seller's trade area;

(B) Charge within a disaster area an excessive price for any necessity; or

(C) Charge any person an excessive price for any necessity which the seller has reason to know is likely to be provided to consumers within a disaster area.

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

*Original authority: 407.020, RSMo (1967), amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.

15 CSR 60-8.040 Duty of Good Faith

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. Practices specified are not intended to be an all inclusive list of practices which are unfair, but this rule enumerates specific practices which are unfair and are violative of section 407.020, RSMo.

(1) It is an unfair practice for any person in connection with the advertisement or sale of merchandise to violate the duty of good faith in solicitation, negotiation and performance, or in any manner fail to act in good faith (see section 400.2-103(1)(b), Restatement, Second, Contracts section 205).

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

*Original authority: 407.020, RSMo (1967), amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.

15 CSR 60-8.050 Duress and Undue Influence

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. Practices specified are not intended to be an all inclusive list of practices which are unfair, but this rule enumerates specific practices which are unfair and are violative of section 407.020, RSMo.

(1) It is an unfair practice for any person in connection with the advertisement or sale of merchandise to use or employ any duress, or undue influence (see section 400.2-103(1)(b), Restatement, Second, Contracts sections 205, 364).

AUTHORITY: sections 407.020, RSMo (Cum. Supp. 1992) and 407.145,

RSMo (Cum. Supp. 1993). * Original rule filed March 18, 1994, effective Sept. 30, 1994.

*Original authority: 407.020, RSMo (1967), amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.

15 CSR 60-8.060 Unsolicited Merchandise and Negative Option Plans

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. Practices specified are not intended to be an all inclusive list of practices which are unfair, but this rule enumerates specific practices which are unfair and are violative of section 407.020, RSMo.

(1) It is an unfair practice for any seller in connection with the advertisement or sale of merchandise to bill, charge or attempt to collect payment from consumers, for any merchandise which the consumer has not ordered or solicited.

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

*Original authority: 407.020, RSMo (1967), amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.

15 CSR 60-8.070 Unilateral Breach of Contract

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. Practices specified are not intended to be an all inclusive list of practices which are unfair, but this rule enumerates specific practices which are unfair and are violative of section 407.020, RSMo.

(1) It is an unfair practice for any person in connection with the sale of merchandise to unilaterally breach unambiguous provisions of consumer contracts (see *Orkin Exterminating Company, Inc. v. Federal Trade Commission*, 849 F.2d 1354 (11th Cir. 1988)).

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

*Original authority: 407.020, RSMo (1967), amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.

15 CSR 60-8.080 Unconscionable Practices

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. Practices specified are not intended to be an all inclusive list of practices which are unfair, but this rule enumerates specific practices which are unfair and are violative of section 407.020, RSMo.

(1) It is an unfair practice for any person in connection with the sale of merchandise to engage in any unconscionable act or practice, or to use any unconscionable contract or contract term.

(2) It is unconscionable to take advantage of an unequal bargaining position and obtain a contract or term which results in a gross disparity of values exchanged (see section 400.2-302, RSMo; Restatement, Second, Contracts section 208).

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

**Original authority: 407.020, RSMo (1967), amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.*

15 CSR 60-8.090 Illegal Conduct

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. Practices specified are not intended to be an all inclusive list of practices which are unfair, but this rule enumerates specific practices which are unfair and are violative of section 407.020, RSMo.

(1) It is an unfair practice for any person in connection with the advertisement or sale of merchandise to engage in any method, use or practice which—

(A) Violates state or federal law intended to protect the public; and

(B) Presents a risk of, or causes substantial injury to consumers.

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

**Original authority: 407.020, RSMo (1967), amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.*