



Aida S. Montano

Bill Analysis
Legislative Service Commission

H.B. 38

125th General Assembly
(As Introduced)

Reps. Willamowski, Hagan, McGregor, Seitz, Setzer, Schaffer, Buehrer

BILL SUMMARY

- Provides that a person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person performs for or with the expectation of compensation, whether directly or indirectly received, a service for which a license, certificate, permit, or registration is required, including licenses, certificates, permits, or registrations required under specified laws, while not holding a current and valid license, certificate, permit, or registration.

CONTENT AND OPERATION

Deceptive trade practices

The current Deceptive Trade Practices Law provides that a *person* engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person does any of specifically listed acts.¹ The bill expands that Law to provide that a person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person performs for or with the expectation of compensation, whether directly or indirectly received, a service for which a license, certificate, permit, or registration is required, including licenses, certificates, permits, or registrations required under certain laws specified below, while not holding a current and valid license, certificate, permit, or registration. These laws are the following: Dairies Law (R.C. Chapter 917.); Pesticides Law (R.C. Chapter 921.); Agricultural Commodity Handlers Law (R.C. Chapter 926.); Plants and Nursery Stock Law (R.C. Chapter

¹ "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, limited liability company, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity (R.C. 4165.01(D)--not in the bill).

927.); Livestock Dealers Law (R.C. Chapter 943.); Small Loans Law (R.C. Chapter 1321.); Mortgage Brokers Law (R.C. Chapter 1322.); Asbestos Hazard Abatement Law (R.C. Chapter 3710.); Radon Law (R.C. Chapter 3723.); Lead Abatement and Testing Law (R.C. Chapter 3742.); Radiation Control Law (R.C. Chapter 3748.); Boxing, Discharging of Firearms, Dueling, and Ohio Athletic Commission Law (R.C. Chapter 3773.); Insurance Agents Licensing Law (R.C. Chapter 3905.); Public Insurance Adjusters Law (R.C. Chapter 3951.); Third-Party Administrators Law (R.C. Chapter 3959.); Accountants Law (R.C. Chapter 4701.); Architects Law (R.C. Chapter 4703.); Attorneys Law (R.C. Chapter 4705.); Auctioneers Law (R.C. Chapter 4707.); Barbers Law (R.C. Chapter 4709.); Debt Pooling Companies Law (R.C. Chapter 4710.); Ohio Credit Services Organizations Law (R.C. Chapter 4712.); Cosmetologists Law (R.C. Chapter 4713.); Dentists and Dental Hygienists Law (R.C. Chapter 4715.); Embalmers, Funeral Directors, and Crematory Facility Operators Law (R.C. Chapter 4717.); Telephone Solicitors Law (R.C. Chapter 4719.); Nurses Law (R.C. Chapter 4723.); Optometrists and Dispensing Opticians Law (R.C. Chapter 4725.); Pawnbrokers Law (R.C. Chapter 4727.); Precious Metals Dealers Law (R.C. Chapter 4728.); Pharmacists and Dangerous Drugs Law (R.C. Chapter 4729.); Physician Assistants Law (R.C. Chapter 4730.); Physicians and Limited Practitioners Law (R.C. Chapter 4731.); Psychologists and School Psychologists Law (R.C. Chapter 4732.); Professional Engineers and Professional Surveyors Law (R.C. Chapter 4733.); Chiropractors Law (R.C. Chapter 4734.); Real Estate Brokers Law (R.C. Chapter 4735.); Sanitarians Law (R.C. Chapter 4736.); Secondhand Dealers and Junk Yards Law (R.C. Chapter 4737.); Motor Vehicle Salvage Law (R.C. Chapter 4738.); Steam Engineers and Boiler Operators Law (R.C. Chapter 4739.); Construction Industry Examining Board Law (R.C. Chapter 4740.); Veterinarians Law (R.C. Chapter 4741.); Hearing Aid Dealers Law (R.C. Chapter 4747.); Private Investigators and Security Services Law (R.C. Chapter 4749.); Nursing Home Administrators Law (R.C. Chapter 4751.); Speech Pathologists and Audiologists Law (R.C. Chapter 4753.); Occupational Therapists and Physical Therapists Law (R.C. 4755.); Counselors and Social Workers Law (R.C. Chapter 4757.); Dietetics Law (R.C. Chapter 4759.); Anesthesiologist Assistants Law (R.C. Chapter 4760.); Respiratory Care Law (R.C. Chapter 4761.); Acupuncturists Law (R.C. Chapter 4762.); Real Estate Appraisers Law (R.C. Chapter 4763.); Emergency Medical Services Law (R.C. Chapter 4765.); Ambulance Licensing Board Law (R.C. Chapter 4766.); Athlete Agents Law (R.C. Chapter 4771.); X-ray Machine Operators, Radiographers, Radiation Therapy Technologists, and Nuclear Medicine Technologists Law (R.C. Chapter 4773.); Motor Vehicle Collision Repair Operators Law (R.C. Chapter 4775.); Industrial Hygiene and Occupational Safety Law (R.C. Chapter 4777.); (Orthotists, Prosthetists, and Pedorthists Law (R.C. Chapter 4779.); and Child Day Care Law (R.C. Chapter 5104.). (R.C. 4165.02(A)(14).)

Remedies

The following remedies for deceptive trade practices under current law apply to the new deceptive trade practice under the bill.

A person who is *likely to be damaged* by a person who commits a deceptive trade practice that is listed in R.C. 4165.02(A) may commence a civil action for injunctive relief against the other person, and the court of common pleas involved in that action may grant injunctive relief based on the principles of equity and on the terms that the court considers reasonable. Proof of monetary damage or loss of profits is not required in a civil action for injunctive relief. A person who is *injured* by a person who commits a deceptive trade practice that is listed in R.C. 4165.02(A) may commence a civil action to recover actual damages from the person who commits the deceptive trade practice.

The court may award reasonable attorney's fees to the prevailing party in either type of civil action authorized as described in the preceding paragraph. An award of attorney's fees may be assessed against a plaintiff if the court finds that the plaintiff knew the action to be groundless. An award of attorney's fees may be assessed against a defendant if the court finds that the defendant has willfully engaged in a trade practice listed in R.C. 4165.02(A) knowing it to be deceptive.

The civil relief as described above is in addition to civil or criminal remedies otherwise available against the same conduct under the common law or other sections of the Revised Code. (R.C. 4165.03--not in the bill.)

In order to prevail in a civil action that seeks injunctive relief or an award of damages and that is based on one or more deceptive trade practices listed in R.C. 4165.02(A), a complainant need not prove competition between the parties to the civil action. R.C. 4165.02 does not affect unfair trade practices that are otherwise actionable at common law or under other sections of the Revised Code. (R.C. 4165.02(B) and (C).)

HISTORY

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