



S.B. 185

126th General Assembly
(As Introduced)

Sens. Padgett, Schuring

BILL SUMMARY

- Expands the Consumer Sales Practices Act (CSPA) to cover certain transactions between businesses.
- Eliminates the exemption for "dealers in intangibles" from the CSPA.

CONTENT AND OPERATION

Background

The Consumer Sales Practices Act (CSPA) prohibits unfair or deceptive trade practices in consumer transactions, such as falsely representing the characteristics of a product, falsely indicating that a specific price advantage exists, misrepresenting a warranty, or falsely indicating the need for a repair.¹ The CSPA also prohibits unconscionable acts in consumer transactions, such as taking advantage of a person's inability to understand the transaction's terms, making misleading statements on which a consumer is likely to rely, selling goods when the supplier knows the consumer cannot pay in full, or selling services to a consumer who is unable to receive a substantial benefit from the purchase.²

The CSPA authorizes the Attorney General to investigate alleged violations and to seek civil penalties and remedies.³ It also provides consumers with a private right of action.⁴ In an individual action, a consumer generally may rescind the transaction or recover the individual's damages. In certain circumstances, the

¹ R.C. 1345.02.

² R.C. 1345.03.

³ R.C. 1345.07.

⁴ R.C. 1345.09.

consumer may recover three times the amount of actual damages or \$200, whichever is greater, or may recover damages or other appropriate relief in a class action. The CSPA also permits consumers to seek a declaratory judgment, an injunction, or other appropriate relief against an act or practice that constitutes a violation. The court may award to the prevailing party a reasonable attorney's fee if the consumer brought an action that is groundless and filed the action in bad faith *or* the violation was knowingly committed.

Transactions between businesses

(R.C. 1345.01)

Current law defines a "consumer transaction" as 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." Therefore, current law generally protects an individual consumer from an unfair, deceptive, or unconscionable business practice.

The bill expands the definition of "consumer transaction" to include "business transactions between persons for goods or services not for resale in the ordinary course of a person's trade or business but for the use or benefit of a person's business or in connection with the operation of a person's business." Thus, the bill adds certain business-to-business transactions into the scope of the CSPA's protection against unfair, deceptive, or unconscionable consumer transactions.

Dealers in intangibles exemption

(R.C. 1345.01; and 4905.03 and 5725.01, not in the bill)

Additionally, the existing definition of "consumer transaction" exempts certain transactions from the protection of the CSPA. Under current law, the CSPA does not cover transactions between a customer or client and a public utility, a financial institution, a dealer in intangibles, an insurance company (domestic or foreign), a certified public accountant, a public accountant, an attorney, a physician, a dentist, or a veterinarian for a transaction that pertains to medical treatment.

The bill removes the exemption for a dealer in intangibles from the purview of the CSPA. Under current law, a dealer in intangibles is a business entity that "keeps an office or other place of business in this state and engages at such office or other place in a business that consists primarily of lending money, or discounting, buying, or selling bills of exchange, drafts, acceptances, notes,

mortgages, or other evidences of indebtedness, or of buying or selling bonds, stocks, or other investment securities," whether on the business's own account with a view to profit, or as agent or broker for others, with a view to profit or personal earnings. However, financial institutions, insurance companies, and institutions used exclusively for charitable purposes are not considered dealers in intangibles. In addition, the investment of funds as personal accumulations or as business reserves or working capital does not qualify a business as a dealer in intangibles.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-22-05	p. 1448

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