



## **S.B. 199**

126th General Assembly  
(As Introduced)

**Sens. Dann, Roberts, Fingerhut, Brady, Miller, Fedor, Hagan**

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### **BILL SUMMARY**

- Eliminates the exemption for "dealers in intangibles" from the Consumer Sales Practices Act.
- Eliminates the requirement that the examination and investigation information of mortgage brokers and loan officers remain privileged and confidential.

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### **CONTENT AND OPERATION**

#### **Consumer Sales Practices Act modification**

##### **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.<sup>1</sup> 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.<sup>2</sup> For the purposes of the CSPA, a "consumer transaction" is defined 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."

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<sup>1</sup> R.C. 1345.02.

<sup>2</sup> R.C. 1345.03.

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

**Dealers in intangibles exemption**

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

Existing law exempts certain transactions from the protection of the CSPA. Currently, 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.

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<sup>3</sup> R.C. 1345.07.

<sup>4</sup> R.C. 1345.09.

### **Mortgage broker and loan officer information**

(R.C. 1322.061; and 1181.25, not in the bill)

### **Confidential and privileged information**

Under the current Mortgage Broker/Loan Officer Law, examination information<sup>5</sup> and investigation information<sup>6</sup> regarding mortgage brokers and loan officers, and any information leading to or arising from an examination or investigation, is privileged and confidential. The information remains privileged and confidential for all purposes except when the Superintendent of Financial Institutions must take official action regarding the affairs of a mortgage broker or a loan officer, or in connection with criminal proceedings. The information may also be introduced into evidence or disclosed when, in the opinion of the Superintendent, it is appropriate with regard to certain of the Superintendent's enforcement actions and decisions or with regard to enforcement actions taken or decisions made by other financial institution regulatory authorities to whom the Superintendent provided the information, and also when the Superintendent has initiated litigation within the Superintendent's power, duties, and obligations.

The bill eliminates the confidential and privileged status of mortgage broker and loan officer examination and investigation information. Therefore, the disclosure of the information is not limited to official actions of the Superintendent or enforcement proceedings.

### **Public records**

Furthermore, existing law identifies as a public record all mortgage broker and loan officer application information, except Social Security numbers, employer identification numbers, financial account numbers, the identity of the institution where financial accounts are maintained, personal financial information, fingerprint cards and the information contained on them, and criminal background information.

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<sup>5</sup> *Operations managers for a mortgage broker business and loan officers are subject to examinations approved by the Superintendent of Financial Institutions under R.C. 1322.051.*

<sup>6</sup> *The Superintendent of Financial Institutions is required to investigate applicants for mortgage broker registration or loan officer licensure under R.C. 1322.03 and 1322.031, and can investigate alleged violations of the Mortgage Broker/Loan Officer Law under R.C. 1322.10.*

The bill adds all mortgage broker and loan officer examination information and information from investigations conducted by the Superintendent as public records. Therefore, limited by the above-listed public record exceptions, investigation and examination information of mortgage brokers and loan officers is available as a public record.

**Information released to the Attorney General**

Under current law, the Division of Financial Institutions can release mortgage broker and loan officer information to the Attorney General for purposes relating to the Attorney General's administration of the Consumer Sales Practices Act. However, this information remains privileged and confidential and cannot be disclosed or introduced into evidence unless authorized by the Superintendent.

Corresponding to its other changes, the bill specifies that this limitation on disclosure only applies to information that is not considered a public record under the bill.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	10-13-05	p. 1493

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