Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 275*

129th General Assembly
(As Reported by S. Insurance, Commerce & Labor)

Reps. Young and Slaby, Henne, Bubp, Combs, Hollington, Hackett, Thompson, J. Adams, R. Adams, Newbold

BILL SUMMARY

- Permits a supplier to offer a consumer a "cure offer" if the consumer files an action against the supplier for an alleged violation of the Consumer Sales Practices Act.
- Establishes timelines and procedures for a supplier making a cure offer and a consumer accepting or rejecting a cure offer.
- Requires a cure offer to contain a supplier's remedy consisting solely of monetary compensation to resolve the alleged violation of the Consumer Sales Practices Act, the amount of attorney's fees to be paid, not to exceed $2,500, court costs, and a prominent notice containing a disclosure in a form contained in the bill.
- Prohibits a consumer from being awarded treble damages, and court costs and attorney's fees after the cure offer is received, if the consumer does not accept a cure offer and a court or arbitrator awards the consumer actual economic damages that are not greater than the value of the remedy included in the cure offer.
- Requires a consumer to request attorney's fees and court costs from a supplier and to submit documentation evidencing the requested amount upon acceptance of a cure offer.
- Authorizes a supplier, if the supplier feels that the requested amounts are unreasonable, to seek a ruling from the appointed court related to attorney's fees and court costs requested by a consumer.

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* This analysis was prepared before the report of the Senate Insurance, Commerce and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Requires the court to make an award of reasonable attorney's fees and court costs if such a ruling is sought.
- Provides that the cure offer is not admissible as evidence in a jury trial of the consumer's action.
- Requires a judge, after a verdict is rendered or if the action is tried to the judge, to consider a cure offer only if the offer was timely delivered and only for the purpose of determining whether treble damages may be awarded and the amount of attorney's fees and court costs to be awarded.
- Provides that the bill does not apply to claims for personal injury or death.

CONTENT AND OPERATION

Cure offer

Procedure

If a consumer brings an action seeking a private remedy against a supplier for a violation of the Ohio Consumer Sales Practices Act (CSPA), the bill permits the supplier to deliver a cure offer to the consumer or to the consumer's attorney if the consumer is represented by an attorney within 30 days after service of process is completed upon the supplier. The supplier must send a cure offer by certified mail, return receipt requested, to the consumer or the consumer's attorney if the consumer is represented by an attorney. The bill requires the supplier to file a copy of the cure offer with the court in which the action was commenced. "Cure offer" is defined as a written offer of monetary compensation that is made by a supplier to a consumer or the consumer's attorney in response to a consumer's claim of a violation of the CSPA. A cure offer must include reasonable legal fees necessary or reasonably related to the filing of the initial complaint of up to $2,500 and court costs incurred by the consumer and related to the filing of the initial complaint.[1]

Under the bill, a consumer has 30 days after receiving a cure offer from a supplier to notify the supplier or the supplier's attorney if the supplier is represented by an attorney of the consumer's acceptance or rejection of the cure offer. The consumer must file the notice of acceptance or rejection with the court in which the action was commenced and serve the notice to the supplier. The notice is deemed effective when it is filed with the court. The failure of a consumer to file such a notice within 30 days

[1] R.C. 1345.092(A) and (I).

after the date of receipt of the cure offer is deemed a rejection of the cure offer by the consumer.[2]

If the consumer files a notice rejecting the cure offer provided by the supplier, if a cure offer is deemed rejected by failure to file a notice of acceptance or rejection, or if no cure offer is made to the consumer by the supplier within the time frame specified in the bill, the consumer may proceed with a civil action in accordance with the CSPA.[3]

If a judge, jury, or arbitrator awards "actual economic damages" that are not greater than the value of a supplier's remedy included in a cure offer, the consumer is not entitled to an award of treble damages or to any court costs or attorney's fees incurred by the consumer after the date the consumer or the consumer's attorney receives the cure offer. The comparison of actual economic damages and the supplier's remedy may not take into consideration statutory treble damages, court costs, or attorney's fees. "Actual economic damages" means damages for direct, incidental, or consequential pecuniary losses resulting from a violation of the CSPA and does not include damages for noneconomic loss.[4]

If the consumer files a notice accepting a cure offer, then the consumer is required to request an amount, up to $2,500, from the supplier to pay attorney's fees and an amount to pay court costs. The consumer is required to provide bills or other documents evidencing these amounts. If the supplier finds the requested amounts to be reasonable, then the supplier is required to pay these amounts along with the remedy offered. If the supplier finds the requested amounts to be excessive, then the supplier has ten days of the consumer accepting the cure offer to seek a ruling from the court appointed to the case on the matter. If such a request is made, then the court is required to review the documentation provided by the supplier and to make an award of reasonable attorney's fees and court costs to the consumer. The agreed upon resolution must be completed and all court-awarded attorney's fees and court costs must be paid within a reasonable time in accordance with court supervision. The bill permits the court, at any time and in its discretion, to extend any deadlines set forth by rule, statute, or court order for filing motions or pleadings or conducting discovery in order to allow the resolution to be completed.[5]

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[2] R.C. 1345.092(B).

[3] R.C. 1345.092(E).

[4] R.C. 1345.092(G) and 1345.09(G).

[5] R.C. 1345.092(F).

Information required to be included in a cure offer

The bill requires a cure offer to include both of the following:[6]

(1) Language that clearly explains the resolution being offered by the supplier consisting of the following separate components:

(a) A supplier's remedy that consists solely of monetary compensation to resolve alleged violations of the CSPA;

(b) Reasonable attorney's fees that consist of legal fees necessary or reasonably related to the filing of the initial complaint, not to exceed $2,500;

(c) Court costs incurred by the consumer that are related to the filing of the initial complaint.

(2) A prominent notice that clearly and conspicuously contains the following disclosure in substantially the following form:[7]

NOTICE: THIS LETTER INCLUDES A "CURE OFFER" THAT IS BEING OFFERED TO SETTLE ALL ALLEGED VIOLATIONS OF CHAPTER 1345. OF THE REVISED CODE RAISED BY YOUR WRITTEN COMPLAINT. THE CURE OFFER INCLUDES BOTH A "SUPPLIER'S REMEDY" TO SOLVE THIS DISPUTE AND AN OFFER TO PAY YOUR ATTORNEY'S FEES UP TO $2,500.00 AND YOUR COURT COSTS IN FILING THE COMPLAINT. YOU ARE NOT OBLIGATED TO ACCEPT THIS CURE OFFER AND HAVE THE RIGHT TO CONSULT WITH LEGAL COUNSEL BEFORE MAKING YOUR DECISION.

YOU MUST NOTIFY THE SUPPLIER WITHIN 30 DAYS OF RECEIPT OF THIS CURE OFFER OF YOUR DECISION TO EITHER ACCEPT OR REJECT THE OFFER BY FILING A RESPONSE WITH THE COURT AND SENDING A COPY OF THE RESPONSE TO THE SUPPLIER. IF THE COURT DOES NOT RECEIVE YOUR RESPONSE WITHIN THE REQUIRED TIME, YOUR FAILURE TO RESPOND WILL, BY LAW, BE CONSIDERED REJECTION OF OUR OFFER.

REJECTION OF THIS CURE OFFER COULD IMPACT YOUR ABILITY TO COLLECT COURT COSTS AND LEGAL FEES. IF A COURT, JURY, OR ARBITRATOR FINDS IN YOUR FAVOR, BUT DOES NOT AWARD YOU AN AMOUNT MORE THAN THE VALUE OF THE SUPPLIER'S REMEDY, THE SUPPLIER WILL NOT BE

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[6] R.C. 1345.092(D)(1).

[7] R.C. 1345.092(D)(2).

RESPONSIBLE FOR TREBLE DAMAGES, ATTORNEY'S FEES, OR ANY COURT COSTS YOU INCUR AFTER THE DATE THIS CURE OFFER WAS MADE (fill in the date).

VALUE OF SUPPLIER'S REMEDY = $ (fill in the blank)

THE SELLER ALSO AGREES TO PAY YOUR ATTORNEY'S FEES, UP TO $2,500.00, THAT ARE NECESSARY OR REASONABLY RELATED TO THE FILING OF YOUR INITIAL CLAIM, AS WELL AS YOUR COURT COSTS.

Extension of time periods for filing pleadings

If by rule, notice, or order of court, a motion or pleading is required to be filed by any party during the time periods for delivering a cure offer and for the notice of acceptance or rejection of the cure offer, the bill permits the court to extend the time period for filing the motion or pleading to allow both parties adequate time to comply with the bill.[8]

Admissibility of a cure offer

The bill provides that a cure offer is not admissible as evidence in a jury trial of the consumer's action seeking a private remedy. After a jury renders its verdict in that action or if the action is tried to a judge, the judge is required to consider the cure offer only if the offer was timely delivered in accordance with the bill and only for the limited purpose of determining whether treble damages may be awarded and the amount of court costs and reasonable attorney's fees that may be awarded. A cure offer is not admissible in a court proceeding for any other purpose.[9]

Nonapplicability of cure offer procedures

The bill states that its provisions do not apply to claims for personal injury or death.[10]

Conforming change in CSPA

The bill makes a conforming change to the CSPA when a cure offer is made to preclude the prevailing party from receiving attorney's fees incurred after the date the consumer or consumer's attorney receives the cure offer if the party is awarded actual

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[8] R.C. 1345.092(C).

[9] R.C. 1345.092(H).

[10] R.C. 1345.092(J).

economic damages that are less than the value of the supplier's remedy included in the cure offer.[11]

Background – the Consumer Sales Practices Act

The Ohio Consumer Sales Practices Act provides statutory protection for consumers who are subject to a supplier's unfair, deceptive, or unconscionable acts or practices.[12] The law allows a consumer to bring a lawsuit against a supplier who commits those types of acts or practices and entitles the consumer to either rescind the transaction or recover damages caused by the violation. In addition, in a case in which it is shown that the act or practice complained of has already been declared deceptive or unconscionable by rule of the Attorney General or a previous court decision, a consumer may be entitled to treble damages.[13]

Applicable definitions

The following definitions in the CSPA apply to the terms used in the bill:[14]

"Supplier" means a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer. If the consumer transaction is in connection with a residential mortgage, "supplier" generally does not include an assignee or purchaser of the loan for value. In a consumer transaction in connection with a residential mortgage, "seller" means a loan officer, mortgage broker, or nonbank mortgage lender.

"Consumer" means a person who engages in a consumer transaction with a supplier.

"Consumer transaction" means 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. "Consumer transaction" does not include: (1) transactions between persons, defined in the laws pertaining to public utility companies and financial institutions-dealers in intangibles, and their customers, except for transactions involving short-term loans and transactions in connection with residential mortgages between loan officers, mortgage brokers, or nonbank mortgage

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[11] R.C. 1345.09(F).

[12] R.C. Chapter 1345.

[13] R.C. 1345.09.

[14] R.C. 1345.01(A), (C), and (D) – not in the bill.

lenders and their customers, (2) transactions between certified public accountants or public accountants and their clients, (3) transactions between attorneys, physicians, or dentists and their clients or patients, and (4) transactions between veterinarians and their patients that pertain to medical treatment but not ancillary services.

HISTORY

ACTION	DATE
Introduced	06-21-11
Reported, H. Judiciary & Ethics	12-14-11
Passed House (57-37)	12-14-11
Reported, S. Insurance, Commerce & Labor	–-

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