Ohio Legislative Service Commission

Bill Analysis

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S.B. 256

129th General Assembly
(As Introduced)

Sens. Coley, Seitz, LaRose, Schaffer, Jones, Patton

BILL SUMMARY

- Authorizes suppliers and consumers to enter into a cure agreement in those situations where a consumer has initiated a court action subsequent to a violation of the Consumer Sales Practices Act.
- Prescribes the procedure for initiating and completing a cure offer.
- Requires a cure offer to include both a remedy and compensation for attorney's fees.
- Limits the amount that can be awarded to a consumer if a cure offer is made and the remedy offered is more than actual damages determined appropriate subsequent to the court action.
- Prescribes the proper form of a cure offer.

CONTENT AND OPERATION

Context

The bill pertains to civil actions brought subsequent to a violation of the Consumer Sales Practices Act. A consumer transaction is a sale, lease, assignment, award by chance, or other transfer of a good, service, or other item by a supplier to a consumer.[1] The supplier is the entity providing the item; the consumer is the entity receiving the item.[2] Transactions between consumers and certain other entities (such as public utilities, financial institutions, insurance companies, etc.) are excluded from the

[1] R.C. 1345.01(A).

[2] R.C. 1345.01(C) and (D).

definition of consumer transaction.[3] Continuing law provides consumers with a cause of action and entitles them to relief if a supplier violates the Consumer Sales Practices Act.[4] Additionally, consumers are entitled to an amount equivalent to three times actual economic damages or $200, whichever is greater, plus an amount not to exceed $5,000 in noneconomic damages, if the supplier commits any of the following types of violations:

- An unfair or deceptive practice in relation to a consumer transaction, as specified in continuing law;
- An unconscionable act in relation to a consumer transaction, as specified in continuing law;
- Any act or practice determined by the courts to be unfair or deceptive;
- Any act designated as being unfair or deceptive in rules adopted by the Attorney General.[5]

Overview

In situations where a consumer has a cause of action against a supplier, the bill authorizes the supplier and the consumer to enter into a cure agreement. If a cure offer is made and the remedy offered is more than actual damages determined appropriate subsequent to the court action, the bill limits the amount that can be awarded to a consumer. Note that the bill only applies to private actions sought by a consumer and not class actions.[6] It also does not apply to claims for personal injury or death.[7]

Agreement to cure

For any private action sought by a consumer against a supplier, the supplier may deliver a cure offer to the consumer. A cure offer is defined as a written offer of one or more things of value, such as cash or goods, made by a supplier to a consumer in response to the consumer's claim of a violation of the Consumer Sales Practices Act and must include reasonable legal fees related to the filing of the claim, up to $1,500.[8] The offer must be delivered to the consumer within 30 days after the supplier is served with

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[3] R.C. 1345.01(A).

[4] R.C. 1345.09.

[5] R.C. 1345.09(B) by reference to R.C. 1345.02 and 1345.03, not in the bill.

[6] R.C. 1345.092(A).

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

[8] R.C. 1345.09(F) and 1345.092(I).

notice of the action. The supplier is required to file a copy of the cure offer with the court in which the action was commenced.[9]

The consumer then has 30 days after the offer is received to provide notice to the supplier of acceptance or rejection of the offer. The consumer is required to file notice of the acceptance with the applicable court and serve the notice to the supplier. The notice is deemed effective when it is filed with the court. Failure on the part of the consumer to timely file any sort of notice with the court is deemed a rejection of the cure offer. The bill requires courts to extend the time periods for filing motions and pleadings in the underlying civil action to allow both parties adequate time to comply with the cure offer requirements.[10]

If no cure offer is made or if an offer is rejected, the consumer may proceed with the civil action.[11] If a cure offer is accepted, the agreed upon resolution must be completed within a reasonable time in accordance with supervision by the court, which may extend deadlines relating to the civil action as it sees fit.[12]

Limitations on awards

The bill limits the amounts that can be awarded to a consumer, if a cure offer is rejected and the consumer proceeds with a civil action. If a judge, jury, or arbitrator awards actual economic damages that are less than the value of the supplier's remedy, the consumer is not entitled to any of the following:

- An award of treble damages;
- Any court costs incurred after the date the consumer receives the cure offer;
- Any attorney's fees the consumer incurs after the date the consumer receives the cure offer.[13]

If the consumer rejects the cure offer and actual economic damages are determined to be *greater* than the remedy offered by the supplier, or if no cure offer is made, the consumer would still be eligible for the awards listed above.

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

[10] R.C. 1345.092(B) and (C).

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

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

[13] R.C. 1345.092(G).

The bill stipulates that the comparison between actual economic damages awarded subsequent to the court action and the remedy offered to determine if these limitations apply cannot include treble damages, court costs, or attorney's fees. A cure offer is admissible only for the limited purpose of determining whether treble damages, court costs, and attorney's fees may be awarded in the civil action.[14]

Form of the cure offer

A cure offer must include language that clearly explains the resolution being offered by the supplier, consisting of the supplier's offered remedy and reasonable attorney's fees, listed separately. The remedy may involve cash, goods, or services, and must include an itemized list consisting of each of the remedy's elements' fair-market value. The compensation for attorney's fees is not to exceed $1,500.[15]

The cure offer must also include a notice substantially similar to the following:

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 $1,500.00. 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 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).

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[14] R.C. 1345.092(G)(3) and (H).

[15] R.C. 1345.09(F) and 1345.092(D)(1).

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

ATTORNEY'S FEES = $ (fill in the blank)

TOTAL VALUE OF CURE OFFER = $ (fill in the blank)[16]

HISTORY

ACTION	DATE
Introduced	11-16-11

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