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Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Hillyer

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Summary

- Requires a commercial credit reporting agency to (1) provide one free credit report per year to a business that is the subject of the report and (2) establish a procedure through which such a business may dispute statements on the report.

Detailed Analysis

Overview

The bill addresses “**commercial credit reports**,” which are reports provided by a commercial credit reporting agency to a business for a legitimate business purpose, relating to the financial status or payment habits of a business that is the subject of the report. A “**commercial credit reporting agency**” is an entity that – for monetary fees, dues, or on a cooperative nonprofit basis – provides commercial credit reports on a business operating in Ohio to third parties. For purposes of the bill, the following are not considered “commercial credit reports”:

1. A report prepared for commercial insurance underwriting, claims, or auditing purposes;
2. A report containing information related to transactions or experiences between the business that is the subject of the report and the person making the report;
3. An authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;
4. Any report in which a person that has been requested by a third party to make a specific extension of credit directly or indirectly to the subject of the report conveys its decision with respect to that request.¹

¹ R.C. 1349.73(A)(2), (3), and (7).

Free annual report

The bill requires a commercial credit reporting agency – if requested by a business that is the subject of the commercial credit report – to provide one copy of that report per year at no cost to the business. The report must be in the format routinely made available to third parties and include information identifying the source, date, and specific amount, if any, of negative information that was provided to the agency concerning the business.²

Disputed information

If the business that is the subject of the report believes the report contains an inaccurate statement of fact, it may – within 30 days after receipt of the report – file with the agency a written summary identifying each inaccurate statement of fact and indicating the nature of its disagreement with the statement. The agency has 30 days from receipt of the summary to do either of the following at no cost to the business:

1. Delete the disputed statement of fact from the report and, thereafter, block any repeat reporting of that disputed statement unless its accuracy has been verified;
2. Include in the report a notice of the business’s assertion that the statement of fact is inaccurate.³

Civil action; cure offer

If an agency fails to take the actions described above, and a person suffers a loss as a result, the bill permits the person to initiate a civil action against the agency to recover actual damages or \$500, whichever is greater. For this purpose, “**loss**” includes economic damages and any presumed reputational injury to the business that results from the publication of an inaccurate statement of fact. If the trier of fact finds that the failure to comply was willful, the damages may be increased to an amount not exceeding three times the actual damages sustained or \$1,000, whichever is greater. In addition to damages, the person may be awarded reasonable attorney’s fees and court costs. The person may also seek a declaratory judgment, an injunction, or other appropriate relief in an individual capacity or, where warranted, in a class action.⁴

On the other hand, an agency may make a “**cure offer**,” which is a written offer of the payment of money or any other thing of value that is (1) reasonably calculated to remedy the loss claimed and (2) accompanied by an offer of a minimum additional amount. The bill defines “**minimum additional amount**” as an amount offered as compensation for inconvenience and any attorney’s or other fees, expenses, or other costs of any kind that the person may have incurred in relation to the loss. The minimum additional amount must equal the great of 10% of the value of the cure offer or \$500, but not exceeding \$4,000.⁵

² R.C. 1349.73(A)(1) and (B).

³ R.C. 1349.73(C).

⁴ R.C. 1349.73(A)(5) and (D).

⁵ R.C. 1349.73(A)(4) and (6).

A person that accepts a cure offer cannot initiate or maintain any other action that is substantially based on the same allegations of fact. A cure offer is admissible in a civil action only if it is delivered to the person claiming the loss *before* the agency files its initial responsive pleading in the action. If that happens, the cure offer may be introduced into evidence at trial. The agency is then liable for the person's attorney's fees and court costs incurred following delivery of the offer *only if* the person's actual damages, excluding attorney's fees and court costs, exceed the value of the cure offer plus the minimum additional amount.⁶

The bill also authorizes the Attorney General to conduct an investigation and bring a civil action for failure to comply with the bill. However, no civil action can be brought under the bill more than two years after the compliance failure that is the subject of the action occurred.⁷

History

Action	Date
Introduced	02-12-19

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⁶ R.C. 1349.73(E).

⁷ R.C. 1349.73(F) and (G).