

AN ACT

To amend section 1345.09 and to enact section 1345.092 of the Revised Code to allow suppliers and consumers to enter into a Right to Cure agreement.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 1345.09 be amended and section 1345.092 of the Revised Code be enacted to read as follows:

Sec. 1345.09. For a violation of Chapter 1345. of the Revised Code, a consumer has a cause of action and is entitled to relief as follows:

(A) Where the violation was an act prohibited by section 1345.02, 1345.03, or 1345.031 of the Revised Code, the consumer may, in an individual action, rescind the transaction or recover the consumer's actual economic damages plus an amount not exceeding five thousand dollars in noneconomic damages.

(B) Where the violation was an act or practice declared to be deceptive or unconscionable by rule adopted under division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based, or an act or practice determined by a court of this state to violate section 1345.02, 1345.03, or 1345.031 of the Revised Code and committed after the decision containing the determination has been made available for public inspection under division (A)(3) of section 1345.05 of the Revised Code, the consumer may rescind the transaction or recover, but not in a class action, three times the amount of the consumer's actual economic damages or two hundred dollars, whichever is greater, plus an amount not exceeding five thousand dollars in noneconomic damages or recover damages or other appropriate relief in a class action under Civil Rule 23, as amended.

(C)(1) Except as otherwise provided in division (C)(2) of this section, in any action for rescission, revocation of the consumer transaction must occur within a reasonable time after the consumer discovers or should have discovered the ground for it and before any substantial change in condition of the subject of the consumer transaction.

(2) If a consumer transaction between a loan officer, mortgage broker, or nonbank mortgage lender and a customer is in connection with a

residential mortgage, revocation of the consumer transaction in an action for rescission is only available to a consumer in an individual action, and shall occur for no reason other than one or more of the reasons set forth in the "Truth in Lending Act," 82 Stat. 146 (1968), 15 U.S.C. 1635, not later than the time limit within which the right of rescission under section 125(f) of the "Truth in Lending Act" expires.

(D) Any consumer may seek a declaratory judgment, an injunction, or other appropriate relief against an act or practice that violates this chapter.

(E) When a consumer commences an individual action for a declaratory judgment or an injunction or a class action under this section, the clerk of court shall immediately mail a copy of the complaint to the attorney general. Upon timely application, the attorney general may be permitted to intervene in any private action or appeal pending under this section. When a judgment under this section becomes final, the clerk of court shall mail a copy of the judgment including supporting opinions to the attorney general for inclusion in the public file maintained under division (A)(3) of section 1345.05 of the Revised Code.

(F) The court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed and limited pursuant to section 1345.092 of the Revised Code, if either of the following apply:

(1) The consumer complaining of the act or practice that violated this chapter has brought or maintained an action that is groundless, and the consumer filed or maintained the action in bad faith;

(2) The supplier has knowingly committed an act or practice that violates this chapter.

(G) As used in this section, "actual economic damages" means damages for direct, incidental, or consequential pecuniary losses resulting from a violation of Chapter 1345. of the Revised Code and does not include damages for noneconomic loss as defined in section 2315.18 of the Revised Code.

(H) Nothing in this section shall preclude a consumer from also proceeding with a cause of action under any other theory of law.

Sec. 1345.092. (A) Not later than thirty days after service of process is completed upon a supplier by a consumer in any action seeking a private remedy pursuant to section 1345.09 of the Revised Code, the supplier may deliver a cure offer to the consumer, or if the consumer is represented by an attorney, to the consumer's attorney. The supplier shall send a cure offer by certified mail, return receipt requested, to the consumer, or if the consumer is represented by an attorney, to the consumer's attorney. The supplier shall file a copy of the cure offer with the court in which the action was

commenced.

(B) A consumer shall have thirty days after the date the consumer or the consumer's attorney receives a cure offer from a supplier to notify the supplier, or if the supplier is represented by an attorney, the supplier's attorney, of the consumer's acceptance or rejection of the cure offer. The consumer shall 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 shall be deemed effective when it is filed with the court. The failure of a consumer to file a notice of acceptance or rejection of the supplier's cure offer within thirty days after the date of receipt of the cure offer shall be deemed a rejection of the cure offer by the consumer.

(C) When by rule, notice, or order of court a motion or pleading is required to be filed by any party during the time periods described in divisions (A) and (B) of this section, the court may extend the time period for filing the motion or pleading to allow both parties adequate time to comply with this section.

(D) A cure offer shall include both of the following:

(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 this chapter;

(b) Reasonable attorney's fees that consist of legal fees necessary or reasonably related to the filing of the initial complaint, not to exceed two thousand five hundred dollars;

(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:

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 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.

(E) If the consumer files a notice rejecting the cure offer provided by the supplier, if a cure offer is deemed rejected pursuant to division (B) of this section, or if no cure offer is made to the consumer by the supplier within the time frame set forth in this section, the consumer may proceed with a civil action in accordance with this chapter.

(F) If the consumer files a notice accepting a cure offer, then both of the following shall apply:

(1)(a) The consumer shall, upon accepting the cure offer, request an amount, up to two thousand five hundred dollars, from the supplier to pay attorney's fees and an amount to pay court costs. The consumer shall provide to the supplier bills and other documents evidencing these amounts.

(b) If the supplier finds the requested amounts to be reasonable, then the supplier shall pay the consumer the requested amounts along with the offered remedy upon the resolution of the cure offer.

(c) If the supplier finds the requested amounts to be unreasonable, then the supplier shall, within ten days of the consumer accepting the cure offer, seek a ruling from the court appointed to the case. The court shall review the documentation provided by the consumer evidencing the requested amounts and shall award to the consumer attorney's fees, up to two thousand five hundred dollars, that are necessary or reasonably related to the filing of the claim and court costs.

(2) The agreed upon resolution shall be completed and any

court-ordered attorney's fees and court costs shall be paid within a reasonable time in accordance with court supervision. The court may at any time, in its discretion, extend any deadlines set forth by rule, statute, or order of the court for filing motions or pleadings, or conducting discovery in order to allow the resolution to be completed.

(G) If a judge, jury, or arbitrator awards actual economic damages as defined in section 1345.09 of the Revised Code that are not greater than the value of a supplier's remedy included in a cure offer made pursuant to this section, the consumer shall not be entitled to any of the following:

(1) An award of treble damages;

(2) Any court costs incurred by the consumer after the date the consumer or the consumer's attorney receives the cure offer;

(3) Any attorney's fees incurred by the consumer after the date the consumer or the consumer's attorney receives the cure offer from the supplier.

The comparison of actual economic damages and the supplier's remedy shall not take into consideration statutory treble damages, court costs, or attorney's fees.

(H) A cure offer is not admissible as evidence in a jury trial of the consumer's action seeking a private remedy pursuant to section 1345.09 of the Revised Code as described in division (A) of this section. After a jury renders its verdict in that action or if the action is tried to a judge, the judge shall consider the cure offer only if the offer was timely delivered in accordance with this section 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.

(I) As used in this section, "cure offer" means a written offer of monetary compensation that is made by a supplier to a consumer or to the consumer's attorney in response to a consumer's claim of a violation of Chapter 1345. of the Revised Code. A cure offer shall include reasonable legal fees necessary or reasonably related to the filing of the initial complaint of up to two thousand five hundred dollars and court costs incurred by the consumer and related to the filing of the initial complaint.

(J) This section does not apply to claims for personal injury or death.

SECTION 2. That existing section 1345.09 of the Revised Code is hereby repealed.

Sub. H. B. No. 275

129th G.A.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 275

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____