

**[Ohio Rev. Code §§ 1345.01, 1345.02, 1345.03, & 1345.04 through 1345.13.]**

**§ 1345.01: Consumer sales practices definitions: Consumer Sales Practices**

As used in sections 1345.01 to 1345.13 of the Revised Code:

(A) "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 transactions between persons, defined in sections 4905.03 and 5725.01 of the Revised Code, and their customers, except for transactions involving a loan made pursuant to sections 1321.35 to 1321.48 of the Revised Code and transactions in connection with residential mortgages between loan officers, mortgage brokers, or nonbank mortgage lenders and their customers; transactions involving a home construction service contract as defined in section 4722.01 of the Revised Code; transactions between certified public accountants or public accountants and their clients; transactions between attorneys, physicians, or dentists and their clients or patients; and transactions between veterinarians and their patients that pertain to medical treatment but not ancillary services.

(B) "Person" includes an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or other legal entity.

(C) "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" does not include an assignee or purchaser of the loan for value, except as otherwise provided in section 1345.091 of the Revised Code. For purposes of this division, in a consumer transaction in connection with a residential mortgage, "seller" means a loan officer, mortgage broker, or nonbank mortgage lender.

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

(E) "Knowledge" means actual awareness, but such actual awareness may be inferred where objective manifestations indicate that the individual involved acted with such awareness.

(F) "Natural gas service" means the sale of natural gas, exclusive of any distribution or ancillary service.

(G) "Public telecommunications service" means the transmission by electromagnetic or other means, other than by a telephone company as defined in section 4927.01 of the Revised Code, of signs, signals, writings, images, sounds, messages, or data originating in this state regardless of actual call routing. "Public telecommunications service" excludes a system, including its construction, maintenance, or operation, for the provision of telecommunications service, or any portion of such service, by any entity for the sole and exclusive use of that entity, its parent, a subsidiary, or an affiliated entity, and not for resale, directly or indirectly; the provision of terminal equipment used to originate telecommunications service; broadcast

transmission by radio, television, or satellite broadcast stations regulated by the federal government; or cable television service.

(H)

(1) "Loan officer" means an individual who for compensation or gain, or in anticipation of compensation or gain, takes or offers to take a residential mortgage loan application; assists or offers to assist a buyer in obtaining or applying to obtain a residential mortgage loan by, among other things, advising on loan terms, including rates, fees, and other costs; offers or negotiates terms of a residential mortgage loan; or issues or offers to issue a commitment for a residential mortgage loan. "Loan officer" also includes a mortgage loan originator as defined in division (Z) of section 1322.01 of the Revised Code.

(2) "Loan officer" does not include an employee of a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; an employee of a subsidiary of such a bank, savings bank, savings and loan association, or credit union; or an employee of an affiliate that (a) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration.

(I) "Residential mortgage" or "mortgage" means an obligation to pay a sum of money evidenced by a note and secured by a lien upon real property located within this state containing two or fewer residential units or on which two or fewer residential units are to be constructed and includes such an obligation on a residential condominium or cooperative unit.

(J)

(1) "Mortgage broker" means any of the following:

(a) A person that holds that person out as being able to assist a buyer in obtaining a mortgage and charges or receives from either the buyer or lender money or other valuable consideration readily convertible into money for providing this assistance;

(b) A person that solicits financial and mortgage information from the public, provides that information to a mortgage broker or a person that makes residential mortgage loans, and charges or receives from either of them money or other valuable consideration readily convertible into money for providing the information;

(c) A person engaged in table-funding or warehouse-lending mortgage loans that are residential mortgage loans.

(2) "Mortgage broker" does not include a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; a

subsidiary of such a bank, savings bank, savings and loan association, or credit union; an affiliate that (a) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration; or an employee of any such entity.

(K) "Nonbank mortgage lender" means any person that engages in a consumer transaction in connection with a residential mortgage, except for a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; a subsidiary of such a bank, savings bank, savings and loan association, or credit union; or an affiliate that (1) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (2) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration.

(L) For purposes of divisions (H), (J), and (K) of this section:

(1) "Control" of another entity means ownership, control, or power to vote twenty-five percent or more of the outstanding shares of any class of voting securities of the other entity, directly or indirectly or acting through one or more other persons.

(2) "Credit union service organization" means a CUSO as defined in 12 C.F.R. 702.2.

## § 1345.02: Unfair or deceptive acts or practices: Consumer Sales Practices

(A) No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) Without limiting the scope of division (A) of this section, the act or practice of a supplier in representing any of the following is deceptive:

(1) That the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have;

(2) That the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not;

(3) That the subject of a consumer transaction is new, or unused, if it is not;

(4) That the subject of a consumer transaction is available to the consumer for a reason that does not exist;

(5) That the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not, except that the act of a supplier in furnishing similar merchandise of equal or greater value as a good faith substitute does not violate this section;

(6) That the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;

(7) That replacement or repair is needed, if it is not;

(8) That a specific price advantage exists, if it does not;

(9) That the supplier has a sponsorship, approval, or affiliation that the supplier does not have;

(10) That a consumer transaction involves or does not involve a warranty, a disclaimer of warranties or other rights, remedies, or obligations if the representation is false.

(C) In construing division (A) of this section, the court shall give due consideration and great weight to federal trade commission orders, trade regulation rules and guides, and the federal courts' interpretations of subsection 45 (a)(1) of the "Federal Trade Commission Act," 38 Stat. 717 (1914), 15 U.S.C.A. 41, as amended.

(D) No supplier shall offer to a consumer or represent that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers, or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit is contingent upon an event occurring after the consumer enters into the transaction.

(E)

(1) No supplier, in connection with a consumer transaction involving natural gas service or public telecommunications service to a consumer in this state, shall request or submit, or cause to be requested or submitted, a change in the consumer's provider of natural gas service or public telecommunications service, without first obtaining, or causing to be obtained, the verified consent of the consumer. For the purpose of this division and with respect to public telecommunications service only, the procedures necessary for verifying the consent of a consumer shall be those prescribed by rule by the public utilities commission for public telecommunications service under division (D) of section 4905.72 of the Revised Code. Also, for the purpose of this division, the act, omission, or failure of any officer, agent, or other individual, acting for or employed by another person, while acting within the scope of that authority or employment, is the act or failure of that other person.

(2) Consistent with the exclusion, under 47 C.F.R. 64.1100(a)(3), of commercial mobile radio service providers from the verification requirements adopted in 47 C.F.R. 64.1100, 64.1150, 64.1160, 64.1170, 64.1180, and 64.1190 by the federal communications commission, division (E)(1) of this section does not apply to a provider of commercial mobile radio service insofar as such provider is engaged in the provision of commercial mobile radio service. However, when that exclusion no longer is in effect, division (E)(1) of this section shall apply to such a provider.

(3) The attorney general may initiate criminal proceedings for a prosecution under division (C) of section 1345.99 of the Revised Code by presenting evidence of criminal violations to the prosecuting attorney of any county in which the offense may be prosecuted. If the prosecuting attorney does not prosecute the violations, or at the request of the prosecuting attorney, the attorney general may proceed in the prosecution with all the rights, privileges, and powers conferred by law on prosecuting attorneys, including the power to appear before grand juries and to interrogate witnesses before grand juries.

(F) Concerning a consumer transaction in connection with a residential mortgage, and without limiting the scope of division (A) or (B) of this section, the act of a supplier in doing either of the following is deceptive:

- (1) Knowingly failing to provide disclosures required under state and federal law;
- (2) Knowingly providing a disclosure that includes a material misrepresentation.

(G) Without limiting the scope of division (A) of this section, the failure of a supplier to obtain or maintain any registration, license, bond, or insurance required by state law or local ordinance for the supplier to engage in the supplier's trade or profession is an unfair or deceptive act or practice.

### § 1345.03: Unconscionable consumer sales acts or practices: Consumer Sales Practices

(A) No supplier shall commit an unconscionable act or practice in connection with a consumer transaction. Such an unconscionable act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) In determining whether an act or practice is unconscionable, the following circumstances shall be taken into consideration:

- (1) Whether the supplier has knowingly taken advantage of the inability of the consumer reasonably to protect the consumer's interests because of the consumer's physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement;
- (2) Whether the supplier knew at the time the consumer transaction was entered into that the price was substantially in excess of the price at which similar property or services were readily obtainable in similar consumer transactions by like consumers;
- (3) Whether the supplier knew at the time the consumer transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction;
- (4) Whether the supplier knew at the time the consumer transaction was entered into that there was no reasonable probability of payment of the obligation in full by the consumer;

(5) Whether the supplier required the consumer to enter into a consumer transaction on terms the supplier knew were substantially one-sided in favor of the supplier;

(6) Whether the supplier knowingly made a misleading statement of opinion on which the consumer was likely to rely to the consumer's detriment;

(7) Whether the supplier has, without justification, refused to make a refund in cash or by check for a returned item that was purchased with cash or by check, unless the supplier had conspicuously posted in the establishment at the time of the sale a sign stating the supplier's refund policy.

(C) This section does not apply to a consumer transaction in connection with the origination of a residential mortgage.

#### § 1345.04: Jurisdiction: Consumer Sales Practices

The courts of common pleas, and municipal or county courts within their respective monetary jurisdiction, have jurisdiction over any supplier with respect to any act or practice in this state covered by sections 1345.01 to 1345.13 of the Revised Code, or with respect to any claim arising from a consumer transaction subject to such sections.

#### § 1345.05: Attorney general powers and duties: Consumer Sales Practices

(A) The attorney general shall:

(1) Adopt, amend, and repeal procedural rules;

(2) Adopt as a rule a description of the organization of the attorney general's office, stating the general courses and methods of operation of the section of the office of the attorney general, which is to administer Chapter 1345. of the Revised Code and methods whereby the public may obtain information or make submissions or requests, including a description of all forms and instructions used by that office;

(3) Make available for public inspection all rules and all other written statements of policy or interpretations adopted or used by the attorney general in the discharge of the attorney general's functions, together with all judgments, including supporting opinions, by courts of this state that determine the rights of the parties and concerning which appellate remedies have been exhausted, or lost by the expiration of the time for appeal, determining that specific acts or practices violate section 1345.02, 1345.03, or 1345.031 of the Revised Code;

(4) Inform consumers and suppliers on a continuing basis of acts or practices that violate Chapter 1345. of the Revised Code by, among other things, publishing an informational document describing acts and practices in connection with residential mortgages that are unfair, deceptive, or unconscionable, and by making that information available on the attorney general's official web site;

(5) Cooperate with state and local officials, officials of other states, and officials of the federal government in the administration of comparable statutes;

(6) Report annually on or before the thirty-first day of January to the governor and the general assembly on the operations of the attorney general in respect to Chapter 1345. of the Revised Code, and on the acts or practices occurring in this state that violate such chapter. The report shall include a statement of investigatory and enforcement procedures and policies, of the number of investigations and enforcement proceedings instituted and of their disposition, and of other activities of the state and of other persons to promote the purposes of Chapter 1345. of the Revised Code.

(7) In carrying out official duties, the attorney general shall not disclose publicly the identity of suppliers investigated or the facts developed in investigations unless these matters have become a matter of public record in enforcement proceedings, in public hearings conducted pursuant to division (B)(1) of this section, or the suppliers investigated have consented in writing to public disclosure.

(B) The attorney general may:

(1) Conduct research, make inquiries, hold public hearings, and publish studies relating to consumer transactions;

(2) Adopt, amend, and repeal substantive rules defining with reasonable specificity acts or practices that violate sections 1345.02, 1345.03, and 1345.031 of the Revised Code. In adopting, amending, or repealing substantive rules defining acts or practices that violate section 1345.02 of the Revised Code, due consideration and great weight shall be given to federal trade commission orders, trade regulation rules and guides, and the federal courts' interpretations of subsection 45(a)(1) of the "Federal Trade Commission Act," 38 Stat. 717 (1914), 15 U.S.C.A. 41, as amended.

In adopting, amending, or repealing such rules concerning a consumer transaction in connection with a residential mortgage, the attorney general shall consult with the superintendent of financial institutions and shall give due consideration to state and federal statutes, regulations, administrative agency interpretations, and case law.

(C) In the conduct of public hearings authorized by this section, the attorney general may administer oaths, subpoena witnesses, adduce evidence, and require the production of relevant material. Upon failure of a person without lawful excuse to obey a subpoena or to produce relevant matter, the attorney general may apply to a court of common pleas for an order compelling compliance.

(D) The attorney general may request that an individual who refuses to testify or to produce relevant material on the ground that the testimony or matter may incriminate the individual be ordered by the court to provide the testimony or matter. With the exception of a prosecution for perjury and an action for damages under section 1345.07 or 1345.09 of the Revised Code, an individual who complies with a court order to provide testimony or matter, after asserting a privilege against self incrimination to which the individual is entitled by law, shall not be subjected to a criminal proceeding on the basis of the testimony or matter discovered through that testimony or matter.



(E) Any person may petition the attorney general requesting the adoption, amendment, or repeal of a rule. The attorney general shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition. Within sixty days of submission of a petition, the attorney general shall either deny the petition in writing, stating the reasons for the denial, or initiate rule-making proceedings. There is no right to appeal from such denial of a petition.

(F) All rules shall be adopted subject to Chapter 119. of the Revised Code.

(G) The informational document published in accordance with division (A)(4) of this section shall be made available for distribution to consumers who are applying for a mortgage loan. An acknowledgement of receipt shall be retained by the lender, mortgage broker, and loan officer, as applicable, subject to review by the attorney general and the department of commerce.

### § 1345.06: Investigations by attorney general: Consumer Sales Practices

(A) If, by the attorney general's own inquiries or as a result of complaints, the attorney general has reasonable cause to believe that a person has engaged or is engaging in an act or practice that violates Chapter 1345. of the Revised Code, he may investigate.

(B) For this purpose, the attorney general may administer oaths, subpoena witnesses, adduce evidence, and require the production of relevant matter.

If matter that the attorney general requires to be produced is located outside the state, the attorney general may designate representatives, including officials of the state in which the matter is located, to inspect the matter on the attorney general's behalf, and the attorney general may respond to similar requests from officials of other states. The person subpoenaed may make the matter available to the attorney general at a convenient location within the state or pay the reasonable and necessary expenses for the attorney general or the attorney general's representative to examine the matter at the place where it is located, provided that expenses shall not be charged to a party not subsequently found to have engaged in an act or practice violative of Chapter 1345. of the Revised Code.

(C) Within twenty days after a subpoena has been served, a person subpoenaed under this section may file a motion to extend the return day, or to modify or quash the subpoena, stating good cause, in the court of common pleas of Franklin county or any other county in this state.

(D) A person subpoenaed under this section shall comply with the terms of the subpoena, unless the parties agree to modify the terms of the subpoena or unless the court has modified or quashed the subpoena, extended the return day of the subpoena, or issued any other order with respect to the subpoena prior to its return day.

If a person fails without lawful excuse to obey a subpoena or to produce relevant matter, the attorney general may apply to the court of common pleas of Franklin county or any other county in this state for an order compelling compliance.



(E) The attorney general may request that an individual who refuses to testify or to produce relevant matter on the ground that the testimony or matter may incriminate the individual be ordered by the court to provide the testimony or matter. With the exception of a prosecution for perjury and an action for damages under section 1345.07 or 1345.09 of the Revised Code, an individual who complies with a court order to provide testimony or matter, after asserting a privilege against self-incrimination to which the individual is entitled by law, shall not be subjected to a criminal proceeding or to a civil penalty or forfeiture on the basis of the testimony or matter required to be disclosed or testimony or matter discovered through that testimony or matter.

(F) The attorney general may:

(1) During an investigation under this section, afford, in a manner considered appropriate to to the attorney general, a supplier an opportunity to cease and desist from any suspected violation. The attorney general may suspend such an investigation during the time period that the attorney general permits the supplier to cease and desist; however, the suspension of the investigation or the affording of an opportunity to cease and desist shall not prejudice or prohibit any further investigation by the attorney general under this section.

(2) Terminate an investigation under this section upon acceptance of a written assurance of voluntary compliance from a supplier who is suspected of a violation of this chapter.

Acceptance of an assurance may be conditioned upon an undertaking to reimburse or to take other appropriate corrective action with respect to identifiable consumers damaged by an alleged violation of this chapter. An assurance of compliance given by a supplier is not evidence of violation of this chapter. The attorney general may, at any time, reopen an investigation terminated by the acceptance of an assurance of voluntary compliance, if the attorney general believes that further proceedings are in the public interest. Evidence of a violation of an assurance of voluntary compliance is prima-facie evidence of an act or practice in violation of this chapter, if presented after the violation in an action brought under this chapter. An assurance of voluntary compliance may be filed with the court and if approved by the court, entered as a consent judgment.

(G) The procedures available to the attorney general under this section are cumulative and concurrent, and the exercise of one procedure by the attorney general does not preclude or require the exercise of any other procedure.

## § 1345.07: Remedies of attorney general: Consumer Sales Practices

(A) If the attorney general, by the attorney general's own inquiries or as a result of complaints, has reasonable cause to believe that a supplier has engaged or is engaging in an act or practice that violates this chapter, and that the action would be in the public interest, the attorney general may bring any of the following:

(1) An action to obtain a declaratory judgment that the act or practice violates section 1345.02, 1345.03, or 1345.031 of the Revised Code;

(2)

(a) An action, with notice as required by Civil Rule 65, to obtain a temporary restraining order, preliminary injunction, or permanent injunction to restrain the act or practice. If the attorney general shows by a preponderance of the evidence that the supplier has violated or is violating section 1345.02, 1345.03, or 1345.031 of the Revised Code, the court may issue a temporary restraining order, preliminary injunction, or permanent injunction to restrain and prevent the act or practice.

(b)

(i) Except as provided in division (A)(2)(b)(ii) of this section, on motion of the attorney general, or on its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under this section, if the supplier received notice of the action. The civil penalties shall be paid as provided in division (G) of this section.

(ii) If the court issues under this section a temporary restraining order, preliminary injunction, or permanent injunction to restrain and prevent an act or practice that is a violation of section 1345.02 and division (A) of section 1349.81 of the Revised Code, on motion of the attorney general, or on its own motion, the court may impose a civil penalty of not less than five thousand dollars and not more than fifteen thousand dollars for each day of violation of the temporary restraining order, preliminary injunction, or permanent injunction, if the supplier received notice of the action. The civil penalties shall be paid as provided in division (G) of this section.

(c) Upon the commencement of an action under division (A)(2) of this section against a supplier who operates under a license, permit, certificate, commission, or other authorization issued by the supreme court or by a board, commission, department, division, or other agency of this state, the attorney general shall immediately notify the supreme court or agency that such an action has been commenced against the supplier.

(3) A class action under Civil Rule 23, as amended, on behalf of consumers who have engaged in consumer transactions in this state for damage caused by:

(a) An act or practice enumerated in division (B) , (D) , or (G) of section 1345.02 of the Revised Code;

(b) Violation of a rule adopted under division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based;

(c) 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.

(B) On motion of the attorney general and without bond, in the attorney general's action under this section, the court may make appropriate orders, including appointment of a referee or a receiver, for sequestration of assets, to reimburse consumers found to have been damaged, to carry out a transaction in accordance with a consumer's reasonable expectations, to strike or limit the application of unconscionable clauses of contracts

so as to avoid an unconscionable result, or to grant other appropriate relief. The court may assess the expenses of a referee or receiver against the supplier.

(C) Any moneys or property recovered by the attorney general in an action under this section that cannot with due diligence within five years be restored by a referee to consumers shall be unclaimed funds reportable under Chapter 169. of the Revised Code.

(D) In addition to the other remedies provided in this section, if the violation is an act or practice that was declared to be unfair, deceptive, or unconscionable by rule adopted pursuant to division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based occurred or an act or practice that was 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 court's determination was made available for public inspection pursuant to division (A)(3) of section 1345.05 of the Revised Code, the attorney general may request and the court may impose a civil penalty of not more than twenty-five thousand dollars against the supplier. The civil penalties shall be paid as provided in division (G) of this section.

(E) No action may be brought by the attorney general under this section to recover for a transaction more than two years after the occurrence of a violation.

(F) If a court determines that provision has been made for reimbursement or other appropriate corrective action, insofar as practicable, with respect to all consumers damaged by a violation, or in any other appropriate case, the attorney general, with court approval, may terminate enforcement proceedings brought by the attorney general upon acceptance of an assurance from the supplier of voluntary compliance with Chapter 1345. of the Revised Code, with respect to the alleged violation. The assurance shall be filed with the court and entered as a consent judgment. Except as provided in division (A) of section 1345.10 of the Revised Code, a consent judgment is not evidence of prior violation of such chapter. Disregard of the terms of a consent judgment entered upon an assurance shall be treated as a violation of an injunction issued under this section.

(G) Civil penalties ordered pursuant to divisions (A) and (D) of this section shall be paid as follows: one-fourth of the amount to the treasurer of the county in which the action is brought and three-fourths to the consumer protection enforcement fund created by section 1345.51 of the Revised Code.

(H) The remedies available to the attorney general under this section are cumulative and concurrent, and the exercise of one remedy by the attorney general does not preclude or require the exercise of any other remedy. The attorney general is not required to use any procedure set forth in section 1345.06 of the Revised Code prior to the exercise of any remedy set forth in this section.

### § 1345.08: Attorney general to coordinate with other administrative agency: Consumer Sales Practices

If the attorney general receives a complaint or other information concerning noncompliance with Chapter 1345. of the Revised Code, by a supplier subject to other administrative supervision in this state, he shall

immediately give written notice of the substance of the complaint or other information to the official or agency having supervisory authority over the supplier. The attorney general may request information about suppliers subject to other administrative supervision from the agencies or official supervising them.

### § 1345.09: Private cause of action: Consumer Sales Practices

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.

### § 1345.091: Claim or defense against assignee of loan: Consumer Sales Practices

No claim or defense under this chapter may be asserted by the attorney general or any consumer against an assignee or purchaser of a mortgage loan for value unless any one of the following applies:

(A) The violation was committed by the assignee or purchaser.

(B) The assignee or purchaser is affiliated by common control with the seller of the loan at the time of such assignment or purchase.

### § 1345.092: Supplier's right to cure: Consumer Sales Practices

(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.

### § 1345.10: Final judgment admissible as prima facie evidence: Consumer Sales Practices

(A) With the exception of consent judgments entered before any testimony is taken, a final judgment against a supplier under section 1345.07 of the Revised Code is admissible as prima-facie evidence of the facts on which it is based in subsequent proceedings under section 1345.09 of the Revised Code against the same supplier, or his successors or assigns.

(B) An action by or on behalf of a consumer pursuant to section 1345.09 of the Revised Code precludes that consumer from being included in a later class action by the attorney general with respect to the same transaction, but intervention by the attorney general in a pending action is authorized. If the attorney general brings a class action on behalf of consumers, a consumer may withdraw from the class action prior to trial, or, with the permission of the court, at any time.

(C) An action under sections 1345.01 to 1345.13 of the Revised Code may not be brought more than two years after the occurrence of the violation which is the subject of suit, or more than one year after the termination of proceedings by the attorney general with respect to the violation, whichever is later. However, an action under sections 1345.01 to 1345.13 of the Revised Code arising out of the same consumer transaction can be used as a counterclaim whenever a supplier sues a consumer on an obligation arising from the consumer transaction.

### § 1345.11: Bona fide errors: Consumer Sales Practices

(A) In any case arising under Chapter 1345. of the Revised Code, if a supplier shows by a preponderance of the evidence that a violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed against the supplier under division (D) of section 1345.07 of the Revised Code, no party shall be awarded attorney's fees, and monetary recovery shall not exceed the amount of actual damages resulting from the violation.

(B) If a supplier shows by a preponderance of the evidence that a violation was an act or practice required or specifically permitted by federal trade commission orders, trade regulation rules and guides, or the federal courts' interpretations of subsection 45(a)(1) of the "Federal Trade Commission Act," 38 Stat. 717 (1914), 15 U.S.C. 41, as amended, and that the act or practice was not otherwise declared to be unfair, deceptive, of unconscionable by a rule adopted pursuant to division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based, and:

(1) If the case arises under section 1345.07 of the Revised Code, the attorney general is limited to injunctive relief as the only remedy against the supplier for that violation; or

(2) If the case arises under section 1345.09 of the Revised Code, the supplier is not subject to any liability or penalty for the violation.

(C) A receiver may be appointed by the court in an action under section 1345.07 of the Revised Code, if it is shown that the assets of the supplier are in danger of being lost, removed, injured, or dissipated. A receiver may, under the direction of the court, do all of the following:

(1) Sue for, collect, receive, and take into his possession all the goods, chattels, rights, credits, moneys, effects, lands, tenements, books, records documents, papers, choses in action, bills, notes, and other property and assets of every kind and description acquired by any act or practice prohibited by this chapter, including property with which such property has been commingled if it cannot be identified in kind because of commingling;

(2) Sell, convey, and assign all property taken into his possession, and hold and dispose of the proceeds;

(3) Perform any other acts respecting the property that the court authorizes.

Any person who has suffered damages as a result of the use of any act or practice prohibited by this chapter and who submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses.

(D) If a court determines after a hearing in any action brought pursuant to section 1345.07 of the Revised Code that a supplier in the course of performing activity under any license or permit issued by the state or a political subdivision or agency of the state, engaged in a practice that violates this chapter, the attorney general may, within sixty days after the time for appealing has expired, send a certified copy of the court's final judgment and supporting opinion to the issuing authority. Upon receipt of the court's judgment and opinion, the issuing authority shall promptly investigate to determine whether to institute proceedings to revoke or suspend the supplier's license or permit. The court's judgment, findings of fact, and conclusions of law shall be binding upon the issuing authority when it conducts its investigation. The issuing authority shall report its decision or action to the attorney general within twenty days of the conclusion of the issuing authority's investigation. If the issuing authority institutes proceedings to revoke or suspend the supplier's license or permit, it shall report its decision to the attorney general within twenty days of the conclusion of the issuing authority's proceedings.

## § 1345.12: Applicability of chapter – exceptions: Consumer Sales Practices

Sections 1345.01 to 1345.13 of the Revised Code do not apply to:

- (A) An act or practice required or specifically permitted by or under federal law, or by or under other sections of the Revised Code, except as provided in division (B) of section 1345.11 of the Revised Code;
- (B) A publisher, broadcaster, printer, or other person engaged in the dissemination of information or the reproduction of printed or pictorial matter insofar as the information or matter has been disseminated or reproduced on behalf of others without knowledge that it violated sections 1345.01 to 1345.13 of the Revised Code;
- (C) Claims for personal injury or death.

## § 1345.13: Remedies in addition to other remedies: Consumer Sales Practices

The remedies in sections 1345.01 to 1345.13 of the Revised Code, are in addition to remedies otherwise available for the same conduct under state or local law.