

As Introduced

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Representative DeGeeter

**Cosponsors: Representatives Hagan, Garland, Murray, Williams, B., Lundy,
Fende, Dodd, Foley, Phillips, Chandler, Yuko, Winburn, Slesnick, Letson,
Patten, Domenick, Weddington, Pryor, Newcomb**

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A B I L L

To amend sections 1345.07, 1345.09, and 1345.10 and 1
to enact section 1345.022 of the Revised Code to 2
require a supplier in certain consumer 3
transactions to obtain express written 4
authorization from a consumer before charging the 5
consumer's account. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1345.07, 1345.09, and 1345.10 be 7
amended and section 1345.022 of the Revised Code be enacted to 8
read as follows: 9

Sec. 1345.022. (A) No supplier who is engaged in a consumer 10
transaction involving an unsolicited offer for goods, services, or 11
memberships shall cause billing information to be submitted for 12
the payment of those goods, services, or memberships, directly or 13
indirectly, without first obtaining express written authorization 14
from the consumer. 15

(B)(1) The express written authorization required under 16
division (A) of this section shall be signed by the consumer and 17

shall include all of the following information in at least a 18
ten-point font size: 19

(a) The name of the supplier; 20

(b) The address and telephone number at which personal or 21
voice contact with an employee or agent of the supplier may be 22
made during normal business hours; 23

(c) An itemized list of all prices or fees that will be 24
assessed against the consumer as part of the transaction, 25
including any shipping, handling, delivery, or other charges; 26

(d) The date of the transaction or the date upon which the 27
consumer's account will be charged; 28

(e) The last four digits of the account number to be charged; 29

(f) A detailed description of the goods, services, or 30
memberships that are the subject of the transaction; 31

(g) All material terms and conditions of the supplier's 32
policies regarding refunds, cancellations, exchanges, or 33
repurchases; 34

(h) The consumer's express consent to be charged for the 35
goods, services, or memberships that are the subject of the 36
transaction. 37

(2) A consumer's acceptance under the terms of a negative 38
option offer or free-to-pay conversion offer, or the supplier's 39
use of pre-acquired account information or express written 40
authorization that was obtained for a previous transaction, shall 41
not constitute express written authorization for purposes of this 42
section. 43

(C) Each supplier who obtains express written authorization 44
from a consumer under this section shall give the consumer a copy 45
of the signed authorization for the consumer to retain. 46

(D) As used in this section: 47

(1) "Billing information" means any data that enables a person to access any account of a consumer, including a credit card account, checking account, savings account, share account, utility account, mortgage loan account, or any other account. 48
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(2) "Free-to-pay conversion offer" means an offer under which the consumer receives a good, service, or membership for free for an initial period and incurs an obligation to pay for the good, service, or membership when the consumer does not take affirmative action to cancel the agreement before the end of the initial period. 52
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(3) "Negative option offer" means an offer under which the consumer's silence or failure to take an affirmative action to cancel the agreement or reject the goods, services, or memberships that are the subject of the agreement is interpreted by the seller as acceptance of the offer. 58
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(4) "Pre-acquired account information" means any information that enables a supplier to cause a charge against a consumer's account without obtaining the account number, or other information that would provide access to the account, directly from the consumer during the transaction pursuant to which the account will be charged. 63
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(5) "Unsolicited offer" means any offer for goods, services, or memberships that is not initiated or solicited by the consumer, including an offer that is made by the supplier after the consumer initiates contact with the supplier regarding other unrelated goods, services, or memberships. 69
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Sec. 1345.07. (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 74
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general may bring any of the following: 79

(1) An action to obtain a declaratory judgment that the act 80
or practice violates section 1345.02, 1345.03, or 1345.031 of the 81
Revised Code; 82

(2) An action, with notice as required by Civil Rule 65, to 83
obtain a temporary restraining order, preliminary injunction, or 84
permanent injunction to restrain the act or practice. If the 85
attorney general shows by a preponderance of the evidence that the 86
supplier has violated or is violating section 1345.02, 1345.03, or 87
1345.031 of the Revised Code, the court may issue a temporary 88
restraining order, preliminary injunction, or permanent injunction 89
to restrain and prevent the act or practice. On motion of the 90
attorney general, or on its own motion, the court may impose a 91
civil penalty of not more than five thousand dollars for each day 92
of violation of a temporary restraining order, preliminary 93
injunction, or permanent injunction issued under this section, if 94
the supplier received notice of the action. The civil penalties 95
shall be paid as provided in division (G) of this section. Upon 96
the commencement of an action under division (A)(2) of this 97
section against a supplier who operates under a license, permit, 98
certificate, commission, or other authorization issued by the 99
supreme court or by a board, commission, department, division, or 100
other agency of this state, the attorney general shall immediately 101
notify the supreme court or agency that such an action has been 102
commenced against the supplier. 103

(3) A class action under Civil Rule 23, as amended, on behalf 104
of consumers who have engaged in consumer transactions in this 105
state for damage caused by: 106

(a) An act or practice enumerated in division (B) or (D) of 107
section 1345.02 of the Revised Code; 108

(b) Violation of a rule adopted under division (B)(2) of 109

section 1345.05 of the Revised Code before the consumer 110
transaction on which the action is based; 111

(c) An act or practice determined by a court of this state to 112
violate section 1345.02, 1345.03, or 1345.031 of the Revised Code 113
and committed after the decision containing the determination has 114
been made available for public inspection under division (A)(3) of 115
section 1345.05 of the Revised Code. 116

(B) On motion of the attorney general and without bond, in 117
the attorney general's action under this section, the court may 118
make appropriate orders, including appointment of a referee or a 119
receiver, for sequestration of assets, to reimburse consumers 120
found to have been damaged, to carry out a transaction in 121
accordance with a consumer's reasonable expectations, to strike or 122
limit the application of unconscionable clauses of contracts so as 123
to avoid an unconscionable result, or to grant other appropriate 124
relief. The court may assess the expenses of a referee or receiver 125
against the supplier. 126

(C) Any moneys or property recovered by the attorney general 127
in an action under this section that cannot with due diligence 128
within five years be restored by a referee to consumers shall be 129
unclaimed funds reportable under Chapter 169. of the Revised Code. 130

(D) In addition to the other remedies provided in this 131
section, if the violation is an act prohibited by section 1345.022 132
of the Revised Code, an act or practice that was declared to be 133
unfair, deceptive, or unconscionable by rule adopted pursuant to 134
division (B)(2) of section 1345.05 of the Revised Code before the 135
consumer transaction on which the action is based occurred, or an 136
act or practice that was determined by a court of this state to 137
violate section 1345.02, 1345.03, or 1345.031 of the Revised Code 138
and committed after the decision containing the court's 139
determination was made available for public inspection pursuant to 140
division (A)(3) of section 1345.05 of the Revised Code, the 141

attorney general may request and the court may impose a civil 142
penalty of not more than twenty-five thousand dollars against the 143
supplier. The civil penalties shall be paid as provided in 144
division (G) of this section. 145

(E) No action may be brought by the attorney general under 146
this section to recover for a transaction more than two years 147
after the occurrence of a violation. 148

(F) If a court determines that provision has been made for 149
reimbursement or other appropriate corrective action, insofar as 150
practicable, with respect to all consumers damaged by a violation, 151
or in any other appropriate case, the attorney general, with court 152
approval, may terminate enforcement proceedings brought by the 153
attorney general upon acceptance of an assurance from the supplier 154
of voluntary compliance with Chapter 1345. of the Revised Code, 155
with respect to the alleged violation. The assurance shall be 156
filed with the court and entered as a consent judgment. Except as 157
provided in division (A) of section 1345.10 of the Revised Code, a 158
consent judgment is not evidence of prior violation of such 159
chapter. Disregard of the terms of a consent judgment entered upon 160
an assurance shall be treated as a violation of an injunction 161
issued under this section. 162

(G) Civil penalties ordered pursuant to divisions (A) and (D) 163
of this section shall be paid as follows: one-fourth of the amount 164
to the treasurer of the county in which the action is brought and 165
three-fourths to the consumer protection enforcement fund created 166
by section 1345.51 of the Revised Code. 167

(H) The remedies available to the attorney general under this 168
section are cumulative and concurrent, and the exercise of one 169
remedy by the attorney general does not preclude or require the 170
exercise of any other remedy. The attorney general is not required 171
to use any procedure set forth in section 1345.06 of the Revised 172
Code prior to the exercise of any remedy set forth in this 173

section. 174

Sec. 1345.09. For a violation of Chapter 1345. of the Revised 175
Code, a consumer has a cause of action and is entitled to relief 176
as follows: 177

(A) Where the violation was an act prohibited by section 178
1345.02, 1345.03, or 1345.031 of the Revised Code, the consumer 179
may, in an individual action, rescind the transaction or recover 180
the consumer's actual economic damages plus an amount not 181
exceeding five thousand dollars in noneconomic damages. 182

(B) Where the violation was an act or practice declared to be 183
deceptive or unconscionable by rule adopted under division (B)(2) 184
of section 1345.05 of the Revised Code before the consumer 185
transaction on which the action is based, or an act or practice 186
determined by a court of this state to violate section 1345.02, 187
1345.03, or 1345.031 of the Revised Code and committed after the 188
decision containing the determination has been made available for 189
public inspection under division (A)(3) of section 1345.05 of the 190
Revised Code, the consumer may rescind the transaction or recover, 191
but not in a class action, three times the amount of the 192
consumer's actual economic damages or two hundred dollars, 193
whichever is greater, plus an amount not exceeding five thousand 194
dollars in noneconomic damages or recover damages or other 195
appropriate relief in a class action under Civil Rule 23, as 196
amended. 197

(C) Where the violation was an act prohibited by section 198
1345.022 of the Revised Code, the consumer may recover, in an 199
individual action, up to three times the amount of the 200
unauthorized charge to the consumer's account or recover damages 201
in a class action under Civil Rule 23, as amended. If the supplier 202
knowingly committed the act in violation of section 1345.022 of 203
the Revised Code, the consumer additionally may recover punitive 204

or exemplary damages. 205

(D)(1) Except as otherwise provided in division ~~(C)~~(D)(2) of 206
this section, in any action for rescission, revocation of the 207
consumer transaction must occur within a reasonable time after the 208
consumer discovers or should have discovered the ground for it and 209
before any substantial change in condition of the subject of the 210
consumer transaction. 211

(2) If a consumer transaction between a loan officer, 212
mortgage broker, or nonbank mortgage lender and a customer is in 213
connection with a residential mortgage, revocation of the consumer 214
transaction in an action for rescission is only available to a 215
consumer in an individual action, and shall occur for no reason 216
other than one or more of the reasons set forth in the "Truth in 217
Lending Act," 82 Stat. 146 (1968), 15 U.S.C. 1635, not later than 218
the time limit within which the right of rescission under section 219
125(f) of the "Truth in Lending Act" expires. 220

~~(D)~~(E) Any consumer may seek a declaratory judgment, an 221
injunction, or other appropriate relief against an act or practice 222
that violates this chapter. 223

~~(E)~~(F) When a consumer commences an individual action for a 224
declaratory judgment or an injunction or a class action under this 225
section, the clerk of court shall immediately mail a copy of the 226
complaint to the attorney general. Upon timely application, the 227
attorney general may be permitted to intervene in any private 228
action or appeal pending under this section. When a judgment under 229
this section becomes final, the clerk of court shall mail a copy 230
of the judgment including supporting opinions to the attorney 231
general for inclusion in the public file maintained under division 232
(A)(3) of section 1345.05 of the Revised Code. 233

~~(F)~~(G) The court may award to ~~the~~ a prevailing ~~party~~ consumer 234
a reasonable attorney's fee limited to the work reasonably 235

performed, if either of the following apply: 236

(1) ~~The consumer complaining of the act or practice that~~ 237
~~violated this chapter has brought or maintained an action that is~~ 238
~~groundless, and the consumer filed or maintained the action in bad~~ 239
~~faith~~ The supplier committed an act that violated section 1345.022 240
of the Revised Code; 241

(2) The supplier has knowingly committed an act or practice 242
that violates this chapter. 243

~~(G)~~(H) As used in this section, "actual economic damages" 244
means damages for direct, incidental, or consequential pecuniary 245
losses resulting from a violation of Chapter 1345. of the Revised 246
Code and does not include damages for noneconomic loss as defined 247
in section 2315.18 of the Revised Code. 248

~~(H)~~(I) Nothing in this section shall preclude a consumer from 249
also proceeding with a cause of action under any other theory of 250
law. 251

Sec. 1345.10. (A) With the exception of consent judgments 252
entered before any testimony is taken, a final judgment against a 253
supplier under section 1345.07 of the Revised Code is admissible 254
as prima-facie evidence of the facts on which it is based in 255
subsequent proceedings under section 1345.09 of the Revised Code 256
against the same supplier, or ~~his~~ the supplier's successors or 257
assigns. 258

(B) An action by or on behalf of a consumer pursuant to 259
section 1345.09 of the Revised Code precludes that consumer from 260
being included in a later class action by the attorney general 261
with respect to the same transaction, but intervention by the 262
attorney general in a pending action is authorized. If the 263
attorney general brings a class action on behalf of consumers, a 264
consumer may withdraw from the class action prior to trial, or, 265

with the permission of the court, at any time. 266

(C) ~~An~~ (1) Except as provided in division (C)(2) of this 267
section, an action under sections 1345.01 to 1345.13 of the 268
Revised Code may not be brought more than two years after the 269
occurrence of the violation which is the subject of suit, or more 270
than one year after the termination of proceedings by the attorney 271
general with respect to the violation, whichever is later. 272
However, an action under sections 1345.01 to 1345.13 of the 273
Revised Code arising out of the same consumer transaction can be 274
used as a counterclaim whenever a supplier sues a consumer on an 275
obligation arising from the consumer transaction. 276

(2) An action under section 1345.09 of the Revised Code for a 277
violation of section 1345.022 of the Revised Code may not be 278
brought more than four years after the date upon which the 279
consumer discovered the unauthorized charges to the consumer's 280
account. 281

Section 2. That existing sections 1345.07, 1345.09, and 282
1345.10 of the Revised Code are hereby repealed. 283