

# County Council of Cuyahoga County, Ohio

## Ordinance No. O2018-0002

Sponsored by: <b>County Executive Budish/Department of Consumer Affairs</b>  Co-sponsored by: <b>Councilmembers Simon, Brown, Jones, Miller and Brady</b>	<b>An Ordinance</b> enacting Title 13, Chapter 1301 of the Cuyahoga County Code to establish the Cuyahoga County Consumer Protection Code; amending Section 202.16(A)(7) of the Cuyahoga County Code to clarify the duties and responsibilities of the Department of Consumer Affairs/Division of Consumer Protection.
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WHEREAS, Council deems it necessary to adopt regulations governing the County's Department of Consumer Affairs; and

WHEREAS, the need to promote honest and fair business practices; and the protection of the citizens of and visitors to Cuyahoga County from unfair and deceptive practices and acts are in the best interest of the public;

WHEREAS, the public health, safety and welfare of the residents of the County will best be served by enacting a Cuyahoga County Consumer Protection Code that provides for enforcement by the Department of Consumer Affairs through many means.

**NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:**

**SECTION 1.** Title 13, Chapter 1301 of the Cuyahoga County Code is hereby enacted as follows:

### **Title 13: Commercial Regulation**

#### **Chapter 1301 Consumer Protection**

##### **Section 1301.01: Definitions**

As used in the Chapter 1301:

- (A) "Appliances" shall mean any device or instrument operated by electricity, gas or otherwise, and designed for personal, family or household purposes.
- (B) "Assurance of Voluntary Compliance" shall mean a written agreement resolving or otherwise disposing of issues raised by a Complaint and which is entered into by the parties and the Director.

- (C) “Complaint” shall mean any written statement that alleges a violation of this Chapter, Chapter 1302, the Ohio Revised Code, including sections 1345.02 and 1345.03, the Ohio Administrative Code, and other applicable consumer protection laws as amended.
- (D) “Consumer” shall mean a person who engages in a consumer transaction with a supplier.
- (E) “Consumer Goods” shall mean goods purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.
- (F) “Credit and Debits” shall mean credit or debits which are primarily for personal, family, or household use.
- (G) “Consumer Transaction” shall mean 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 section 4905.03 and 5725.01 of the Ohio Revised Code, and their customers, except for transactions involving a loan made pursuant to sections 1321.35 through 1321.48 of the Ohio 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 Ohio 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.
- (H) “Days” shall mean calendar days.
- (I) “Department” shall mean the Cuyahoga County Department of Consumer Affairs.
- (J) “Director” shall mean the Director of the Cuyahoga County Department of Consumer Affairs.
- (K) “Knowledge” shall mean actual awareness, but such actual awareness may be inferred where objective manifestations indicate that the individual involved acted with such awareness.
- (L) “Mediation” shall mean informal negotiations between the Consumer, the Supplier, and the Director.

- (M) “Person” shall mean any individual, corporation, government, governmental subdivision or agency, business trust, estate, trust partnership, association, cooperative, or other legal entity.
- (N) “Services” shall mean and includes, but is not limited to, work, labor, consumer transactions, privileges, and all other accommodations which are primarily for personal, family, or household purposes.
- (O) “Supplier” shall mean 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 assignee or purchaser of the loan for value, except as otherwise provided in section 1345.091 of the Ohio Revised Code. For purposes of this section, in a consumer transaction in connection with a residential mortgage, “seller” means a loan officer, mortgage broker, or nonbank mortgage lender.
- (P) “Unconscionable consumer sales acts or practices” shall mean practices in connection with a consumer transaction which unfairly takes advantage of the lack of knowledge, ability, experience, or capacity, of a consumer, or results in a gross disparity between the value received by a consumer and the price paid to the consumer’s detriment. Unconscionable consumer sales acts or practices include, but are not limited to, those practices defined by this Chapter, Chapter 1302 of this Code, the Ohio Revised Code, Chapter 1345 of the Ohio Revised Code including section 1345.03, the Ohio Administrative Code, and other applicable consumer protection laws, as amended.
- (Q) “Unfair or Deceptive Practices” shall mean any unfair or deceptive consumer trade practice in the sale or any false, falsely disparaging, or misleading oral or written statement, visual description or other misrepresentation of any kind made in the conduct of any consumer transaction; the collection of consumer debts; the offering of sale, lease, rental or loan of consumer goods or services; the offering for sale of products by weight, count or measure. Unfair or deceptive practices include, but are not limited to, those practices defined by this Chapter, Chapter 1302 of this Code, the Ohio Revised Code, Chapter 1345 of the Ohio Revised Code including section 1345.02, the Ohio Administrative Code, and other applicable consumer protection laws, as amended.

### **Section 1301.02: Unfair and Deceptive Practices Prohibited**

No supplier shall engage in any unfair or deceptive practice as defined in Section 1301.01 (Q), including but not limited to, using in any manner the name, logo, and/or seal of any governmental entity, or purport to the consumer that it has the authority of any governmental entity, including Cuyahoga County, without authorization. Such an unfair or deceptive practice violates this Chapter whether it occurs before, during, or after the transaction.

Without limiting the scope of an unfair or deceptive practice, the act or practice of a supplier in representing any of the following is deceptive:

- (A) That the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have;
- (B) That the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not;
- (C) That the subject of a consumer transaction is new, or unused, if it is not;
- (D) That the subject of a consumer transaction is available to the consumer for a reason that does not exist;
- (E) 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 as determined by Chapter 1345 of the Ohio Revised Code and does not violate this section;
- (F) That the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;
- (G) That replacement or repair is needed, if it is not;
- (H) That a specific price advantage exists, if it does not;
- (I) That the supplier has a sponsorship, approval, or affiliation that the supplier does not have;
- (J) 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.

Whoever violates any provisions of this Section may be subject to the remedies provided in Section 1301.08. Each violation shall constitute a separate offense.

### **Section 1301.03: Unconscionable Consumer Sales Acts or Practices Prohibited**

No supplier shall engage in any unconscionable consumer sales act or practice as defined in Section 1301.01 (P). Such an unconscionable sales act or practice violates this Chapter whether it occurs before, during, or after the transaction.

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

- (A) 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;
- (B) 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 with consumers;
- (C) 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;
- (D) 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;
- (E) 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;
- (F) Whether the supplier knowingly made a misleading statement or opinion on which the consumer was likely to rely to the consumer's detriment;
- (G) 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 check, unless the supplier had conspicuously posted in the establishment at the time of the sale a sign stating the supplier's refund policy.

Whoever violates any provisions of this Section may be subject to the remedies provided in Section 1301.08. Each violation shall be a separate offense.

#### **Section 1301.04: Jurisdiction**

The Department shall have jurisdiction over all consumer transactions which take place within Cuyahoga County, regardless of the residence of any of the persons directly or indirectly affected by such transaction. For purposes of online and/or telephone consumer transactions, the location of the consumer or the supplier within Cuyahoga County at the time of the transaction shall establish jurisdiction.

#### **Section 1301.05: Filing Consumer Complaints**

Any consumer who feels they have been subjected to unfair or deceptive practices or unconscionable consumer sales acts or practices may at any time file a complaint in writing with the Cuyahoga County Department of Consumer Affairs; provided, however that no action may be brought by the County under this Chapter to recover for a transaction more than two years after the occurrence of a violation. Filing a complaint

pursuant to this Chapter does not toll the statute of limitations in any other action before another entity or court. The complaint should state enough details of the incident so as to allow the Department to investigate the circumstances surrounding the incident, the complaint should state the name and address of the person alleged to have committed the violation, the details of the violation, and any other information the Department deems necessary.

#### **Section 1301.06: Enforcement Procedures**

- (A) In enforcing this Chapter, the County Executive, through the Director, may:
1. Investigate a violation or a complaint;
  2. Attempt dispute resolution, including mediation with the parties;
  3. Refer a complaint or a violation to the County Prosecutor, Ohio Attorney General, Federal Trade Commission, Consumer Financial Protection Bureau, or other appropriate agencies with jurisdiction over the complaint; or
  4. Enforce violations of this Chapter through civil actions.
- (B) When the County Executive finds that any violation is causing or will cause immediate, substantial, and irreparable injury, or it is otherwise in the public interest, the County Executive, through the Director, may take immediate enforcement action, including issuing a Cease and Desist Order, obtaining a Written Assurance of Voluntary Compliance or entering into a settlement/mediation agreement prohibiting the alleged violator from engaging in an unfair or deceptive practice or unconscionable consumer sales act or practice. Any settlement shall be in writing and made a matter of public record.
- (C) The County Executive may bring a civil action in the Cuyahoga County Court of Common Pleas or any court of competent jurisdiction to enforce a Cease and Desist Order, a Written Assurance of Voluntary Compliance and/or Settlement/Mediation Agreement, and also to enjoin any violation of this Chapter or Chapter 1302 or enforce any order or decision issued under this Chapter or Chapter 1302.
- (D) The County Executive, through the Director and upon approval of the Director of Law or his/her designee, shall have the power to compel via notification the attendance of witnesses and to require the production by them of books, papers, documents, and other materials relevant to any case under investigation.
- (E) Notwithstanding paragraphs (A) through (D) of this Section, no action seeking civil penalties under this code shall be brought by the County if an action seeking civil penalties has been brought, and is either pending or disposed of by a court of competent jurisdiction with prejudice, by the Ohio Attorney General under Section 1345.07 of the Ohio Revised Code for the same underlying conduct. This limitation

shall not apply to (1) any action brought by the county that does not seek civil penalties or (2) any action brought by the county seeking to enforce a settlement agreement or court order resulting from a prior action or settlement approved by County or the Ohio Attorney General.

**Section 1301.07: Investigations by Director of Consumer Affairs**

- (A) If, by the Director's or the Director's designee's own inquiries or, as a result of complaints, the Director has reason to believe that a person has engaged or is engaging in an act or practice that violates this Chapter, he/she may investigate.
- (B) For this purpose, the County Executive, through the Director and upon approval of the Director of Law or his/her designee, may administer oaths, compel witnesses to attend an investigatory hearing, adduce evidence, and require the production of relevant matter.
- (C) Within twenty days after a notice to attend has been delivered via certified mail, return receipt requested, a person noticed under this section may file a motion to extend the date for appearance, stating good cause for the request.
- (D) A person compelled to attend under this section shall comply with the terms of the notice, unless the parties agree to modify the terms of the notice or unless the County Executive has modified or withdrawn the notice.
- (E) If a person fails without lawful excuse to obey a notice to appear or to produce relevant matter, the County Executive, through the Director, may file a complaint in the Cuyahoga County Court of Common Pleas or a court of competent jurisdiction for violations of this Chapter.
- (F) The procedures available to the County Executive and Director under this section are cumulative and concurrent, and the exercise of one procedure by the County Executive or Director does not preclude or require the exercise of any other procedure.

**Section 1301.08: Director of Consumer Affairs Remedies**

- (A) If the Director finds a violation, the County Executive, through the Director, may order the supplier to:
  - (1) cease and desist committing the violation;
  - (2) provide restitution to the consumer;
  - (3) pay any costs of investigation or related activities of the Department;
  - (4) pay a civil penalty as set forth in this Section; or

- (5) take any other action that would:
  - (a) assist the public in obtaining relief;
  - (b) prevent future violations; or
  - (c) otherwise make the consumer whole.
  
- (B) If the Director, by the Director's or the Director's designee's own inquiries, or as a result of complaints, has reasonable cause to believe that a supplier has engaged or is engaging in a practice that violates this Chapter, and that the action would be in the public interest, the County Executive, through the Director, may bring any of the following:
  - (1) An action to obtain a declaratory judgment that the act or practice violates this Chapter;
  - (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 County shows by a preponderance of the evidence that the supplier has violated this Chapter, the court may issue a temporary restraining order, preliminary injunction, or permanent injunction to restrain and prevent the act or practice.
    - (b) On motion of the County, 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.
  
- (C) On motion of the County and without bond, in the County'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.
  
- (D) In addition to the other remedies provided in this section, if a 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 County may request and the court may impose a civil penalty of not more than twenty-five thousand dollars against the supplier.

- (E) 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 County, with court approval, may terminate enforcement proceedings brought by the County Executive upon acceptance of an assurance from the supplier of voluntary compliance with this Chapter, with respect to the alleged violation. The assurance shall be filed with the court and entered as a consent judgment. 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.
- (F) Violation of a cease and desist order, a written assurance of voluntary compliance, and/or mediated settlement agreement entered into pursuant to this section shall be treated as a violation of this Chapter and enforced pursuant to this Section.
- (G) A violation of this Chapter shall be punishable by the payment of a civil penalty in the sum of not less than one thousand (\$1000.00) dollars, nor more than five thousand (\$5000.00) dollars, to be recovered in a civil action.
- (H) Civil penalties ordered pursuant to divisions (B), (D), and (G) of this section shall be paid to the Cuyahoga County Treasurer;
- (I) The remedies available to the County Executive and the Director under this section are cumulative and concurrent, and the exercise of one remedy by the County Executive or Director does not preclude or require the exercise of any other remedy. The County Executive and Director are not required to use any procedure set forth in Section 1301.07 prior to the exercise of any remedy set forth in this section.

### **Section 1301.09: Other Rights and Remedies**

- (A) Nothing herein shall prevent any person from exercising any right or seeking any private remedy or redress to which one might otherwise be entitled, or from filing any complaint with any other agency or court.
- (B) Bona Fide Errors
  - (1) In any case arising under this Chapter, 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 Section 1301.08 of this Code, monetary recovery shall not exceed the amount

of actual damages resulting from the violation.

- (2) 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, or unconscionable by a rule adopted pursuant to division (B)(2) of 1345.05 of the Revised Code before the consumer transaction on which the action is based. If the case arises under this Chapter, the County Executive and Director are limited to injunctive relief as the only remedy against the supplier for that violation.
- (3) A receiver may be appointed by the court in an action under this Chapter 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:
  - (a) 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;
  - (b) Sell, convey, and assign all property taken into his or her possession, and hold and dispose of the proceeds;
  - (c) Perform any other acts respecting the property that the court authorizes.
- (4) Any person who has suffered damages as a result of the use of any act or practice prohibited by this Title and who submits proof to the satisfaction of the court that he or she has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent that he or shee has sustained out-of-pocket losses.
- (5) If a court determines after a hearing in any action brought pursuant to this Chapter 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 any practice that violates this Chapter, the Director 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 may investigate to determine whether to institute proceedings to revoke or suspend the supplier's license or permit.

### **Section 1301.10: Applicability**

Nothing in the Chapter shall be construed to exempt compliance with state and federal laws related to consumer protection. Violation of these laws may be prosecuted as applicable. The remedies in this Chapter are in addition to remedies otherwise available for the same conduct under state or local law.

### **Section 1301.11: Severability**

This Chapter and each article and section thereunder, are hereby declared to be independent and, notwithstanding any other evidence of legislative intent, it is hereby declared to be controlling legislative intent that if any provisions of said article and/or section, or the application thereof to any person or circumstance is held to be invalid, the invalidity shall not affect other articles and/or sections of this Chapter, and it is hereby declared that such articles and sections would have been passed independently of such article and/or section so known to be invalid.

**SECTION 2.** Section 202.16(A)(7) of the Cuyahoga County Code is hereby amended as follows (additions are bolded and underlined, deletions are stricken):

7. The duties and responsibilities of the Division of Consumer Protection shall include:
  - a. **Protecting and promoting the welfare of County consumers;**
  - b. Promoting consumer/financial literacy and asset building in Cuyahoga County;
  - c. **Receiving and investigating complaints and initiating its own investigation of alleged violations of consumer protection or weights and measures laws as provided by Cuyahoga County or** ~~Investigating alleged violations of laws relating to Weights and Measures as provided by the Ohio Revised Code, **the Ohio Administrative Code, and other applicable consumer laws as amended,** and **or**~~ referring such violations to the Cuyahoga County Prosecutor, Ohio Attorney General, or other agencies if appropriate;
  - d. Educating consumers and businesses about laws related to consumer protection;
  - e. Mediating disputes between consumers and businesses **related to consumer protection complaints** ~~about laws related to consumer protection;~~
  - f. Collaborating with businesses, non-profit organizations and government agencies on programs related to consumer affairs issues;
  - g. Advising, when requested, the County Executive and the County Council on policies and programs related to consumer protection; and

