

13-11-19 Actions by consumer.

- (1) Whether he seeks or is entitled to damages or otherwise has an adequate remedy at law, a consumer may bring an action to:
 - (a) obtain a declaratory judgment that an act or practice violates this chapter; and
 - (b) enjoin, in accordance with the principles of equity, a supplier who has violated, is violating, or is likely to violate this chapter.
- (2) A consumer who suffers loss as a result of a violation of this chapter may recover, but not in a class action, actual damages or \$2,000, whichever is greater, plus court costs.
- (3) Whether a consumer seeks or is entitled to recover damages or has an adequate remedy at law, he may bring a class action for declaratory judgment, an injunction, and appropriate ancillary relief against an act or practice that violates this chapter.
- (4)
 - (a) A consumer who suffers loss as a result of a violation of this chapter may bring a class action for the actual damages caused by an act or practice specified as violating this chapter by a rule adopted by the enforcing authority under Subsection 13-11-8(2) before the consumer transactions on which the action is based, or declared to violate Section 13-11-4 or 13-11-5 by a final judgment of the appropriate court or courts of general jurisdiction and appellate courts of this state that was either officially reported or made available for public dissemination under Subsection 13-11-7(1)(c) by the enforcing authority 10 days before the consumer transactions on which the action is based, or with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent judgment which became final before the consumer transactions on which the action is based.
 - (b) If an act or practice that violates this chapter unjustly enriches a supplier and the damages can be computed with reasonable certainty, damages recoverable on behalf of consumers who cannot be located with due diligence shall be transferred to the state treasurer pursuant to Title 67, Chapter 4a, Unclaimed Property Act.
 - (c) If a supplier shows by a preponderance of the evidence that a violation of this chapter resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, recovery under this section is limited to the amount, if any, in which the supplier was unjustly enriched by the violation.
- (5) Except for services performed by the enforcing authority, the court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed if:
 - (a) the consumer complaining of the act or practice that violates this chapter has brought or maintained an action he knew to be groundless; or a supplier has committed an act or practice that violates this chapter; and
 - (b) an action under this section has been terminated by a judgment or required by the court to be settled under Subsection 13-11-21(1)(a).
- (6) Except for consent judgment entered before testimony is taken, a final judgment in favor of the enforcing authority under Section 13-11-17 is admissible as prima facie evidence of the facts on which it is based in later proceedings under this section against the same person or a person in privity with him.
- (7) When a judgment under this section becomes final, the prevailing party shall mail a copy to the enforcing authority for inclusion in the public file maintained under Subsection 13-11-7(1)(e).
- (8) An action under this section shall be brought within two years after occurrence of a violation of this chapter, or within one year after the termination of proceedings by the enforcing authority with respect to a violation of this chapter, whichever is later. When a supplier sues a consumer, he may assert as a counterclaim any claim under this chapter arising out of the transaction on which suit is brought.

Amended by Chapter 378, 2010 General Session