



# Ohio Legislative Service Commission

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## Bill Analysis

Jeff Hobday

### **Sub. H.B. 291**

131st General Assembly  
(As Reported by H. Judiciary)

**Reps.** Young and Dever, Blessing, Hambley, Hood, Bishoff, Schuring, Amstutz, T. Johnson, Grossman

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### **BILL SUMMARY**

- Permits a confession of judgment only for monetary default under the terms of an instrument evidencing indebtedness.
  - Requires the creditor's attorney to give a defendant notice of monetary default and potential legal action at least 30 days before filing a petition for judgment by confession unless a warrant of attorney was signed in connection with the settlement of a dispute.
  - Requires the court to provide the defendant notice of judgment and an opportunity for a hearing to determine whether the defendant was in monetary default following the entry of judgment pursuant to a confession of judgment.
  - Requires the court to award the defendant court costs, attorney fees, and damages if the court determines after a hearing that the creditor has not demonstrated the defendant's monetary default.
  - Requires standard language in an instrument of indebtedness notifying the debtor that failure to make timely payments could result in a court judgment without the debtor's prior knowledge or a court trial and that notices of monetary default and of the right to a hearing will be provided.
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### **CONTENT AND OPERATION**

#### **Confession of judgment**

The bill limits the use of a confession of judgment pursuant to a cognovit note to monetary default under the terms of an instrument evidencing indebtedness. "Monetary

default" is defined in the bill as failure to make payments due under the terms of an instrument of indebtedness as originally agreed to, amended, or modified by the parties.<sup>1</sup> Unless the cognovit note was signed in connection with a settlement, the bill requires the creditor's attorney to give notice of default to the debtor (the defendant) and an opportunity to make the payments due before entering judgment under the terms of a cognovit note. After entering judgment, the court must give the defendant notice of judgment and an opportunity for a hearing to contest whether the defendant defaulted on payments due under the note.<sup>2</sup>

A confession of judgment is an agreement by a debtor to the entry of judgment on the happening of an event, such as nonpayment by the debtor. A promissory note containing a confession of judgment and a warrant of attorney (an authorization for the creditor's attorney to enter judgment, usually without notice to the debtor, in the event of a default) is known as a cognovit note. Existing law prohibits the use of cognovit notes in consumer transactions and bars entry of judgment under a cognovit note unless the note contains a notice to the debtor that by signing the note the debtor is giving up the right to a trial.<sup>3</sup>

### **Provisions to be included in instrument of indebtedness**

If a warrant of attorney is signed in connection with the settlement of a dispute, the bill requires the creditor to include in the instrument of indebtedness a provision stating that failure to make timely payments may result in a court judgment against the debtor without the debtor's prior knowledge or a court trial, and that the powers of a court can be used to collect from the debtor regardless of any claims the debtor may have against the creditor whether for returned goods, faulty goods, failure on the creditor's part to comply with the agreement, or any other cause.<sup>4</sup> If a warrant of attorney is not signed in connection with the settlement of a dispute, the bill requires the following language:<sup>5</sup>

Warning – By signing this paper, you may be giving up your right to a court trial. If you do not pay on time a court judgment may be taken against you without your prior knowledge or a court trial, and the powers of a court can be

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<sup>1</sup> R.C. 2323.13(A) and (H).

<sup>2</sup> R.C. 2323.13(C) and (D).

<sup>3</sup> R.C. 2323.13(D) and (E) (existing law designations).

<sup>4</sup> R.C. 2323.13(F)(1).

<sup>5</sup> R.C. 2323.13(F)(2).

used to collect from you regardless of any claims you may have against the creditor whether for returned goods, faulty goods, failure on the creditor's part to comply with the agreement, or any other cause. The creditor will send you a notice by mail, return receipt requested, at your last known address prior to the entry of a judgment stating that you are in monetary default. If a judgment is entered, the court will send you a notice of judgment at your last known address informing you of your right to request a court hearing to determine whether you have defaulted in the payments due under the terms of this agreement.

### **Creditor's attorney must provide written notice**

Except when the defendant signed a warrant of attorney in connection with the settlement of a dispute, the bill requires the attorney for the creditor to send the debtor a written notice stating in substance that the defendant is in monetary default and that the attorney may take some form of legal action if payment is not received by the 30th day after the notice is mailed. The creditor's attorney must send the notice at least 30 days prior to filing a petition for judgment by confession. The notice must be sent to the defendant's last known address by mail, return receipt requested. The attorney must provide proof of compliance with the notice requirement in the petition for judgment.<sup>6</sup>

### **Defendant's right to a hearing**

Immediately upon entering a judgment by confession, the bill requires the court to notify the defendant of the judgment and of the defendant's right to a hearing to contest whether the defendant was in monetary default. Within 30 days after receipt of the notice, or within 30 days after the entry of judgment if the notice is mailed and returned as undeliverable, the defendant may request a hearing to determine whether the defendant has defaulted in the payments due under the terms of the instrument of indebtedness. The defendant must request the hearing by motion to the court in writing and simultaneously send a copy of the request to the judgment creditor's attorney by certified mail, return receipt requested.<sup>7</sup>

The bill requires the court to hold the hearing within seven days after receiving the defendant's request, though the court may continue the hearing for good cause shown. The parties may call witnesses and offer evidence at the hearing in accordance

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<sup>6</sup> R.C. 2323.13(C).

<sup>7</sup> R.C. 2323.13(D) and (E)(1).

with the Rules of Evidence. If the court determines that the creditor has not demonstrated the defendant's monetary default, it must vacate the judgment and award to the defendant court costs, reasonable attorney fees incurred in connection with the hearing, and any actual, consequential, or incidental damages resulting from the judgment.<sup>8</sup>

Nothing in the bill limits the right of a party to seek relief from a judgment or order under Civil Rule 60 of the Ohio Rules of Civil Procedure.<sup>9</sup>

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## HISTORY

ACTION	DATE
Introduced	07-22-15
Reported, H. Judiciary	05-11-16

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<sup>8</sup> R.C. 2323.13(E)(1).

<sup>9</sup> R.C. 2323.13(E)(2).

