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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Wilson

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SUMMARY

- Requires a company engaged in non-recourse civil litigation advance in Ohio to file a registration statement with the Superintendent of Financial Institutions in the Department of Commerce.
- Requires a company engaged in non-recourse civil litigation advance in Ohio, in effect at all times while registered, to obtain a corporate surety bond of at least \$50,000 in favor of the Superintendent.
- Restricts fees on a non-recourse civil litigation advance to 10% of the original amount of money provided to the consumer.
- Establishes the maximum amount of annual interest permitted on a non-recourse civil litigation advance as the amount determined by the Ohio Tax Commissioner to be the certified annual interest plus an additional 3%.
- Limits the duration of a non-recourse civil litigation advance to three years.
- Requires the consumer of a non-recourse civil litigation advance to file a copy of the contract with the court or other tribunal in which the underlying claim is being held and also requires a copy to be served to each opposing party.
- Adds several new consumer protections relating to the non-recourse civil litigation advance transaction by placing prohibitions on the company and contract terms, including restrictions on referrals, advertising, and waivers in contracts.
- Subjects violations of the non-recourse civil litigation advance law to the Ohio Consumer Sales Practices Act, permitting enforcement by the Attorney General and provides a consumer private right of action.
- Specifies that a violation of the non-recourse civil litigation advance law makes the contract legally unenforceable by the company, the consumer, or the successor in interest to the contract.

DETAILED ANALYSIS

General overview

Litigation funding typically involves a lender or litigation finance company providing funds to a plaintiff in a lawsuit (the consumer) in exchange for the right to collect proceeds when the plaintiff obtains a settlement or judgment in the case. Ohio law regulates these transactions under a statute that is referred to as the “non-recourse civil litigation advance contract” law. Existing law requires that a contract for a non-recourse civil litigation advance include information such as the total amount to be advanced to the consumer, an itemization of fees, the total dollar amount to be repaid, and the annual percentage rate on the advance. The law also permits the consumer to cancel the contract within five business days of receiving funds without any penalty and requires certain representations by the attorney representing the consumer.¹

The bill requires a company engaged in the business of non-recourse civil litigation advance in Ohio to register with the Superintendent of Financial Institutions in the Department of Commerce and to obtain a corporate surety bond.² The bill also limits the fees, interest, and duration of the contract, requires the consumer to notify the court and the opposing party of the contract, and adds several new consumer protections relating to these transactions. Lastly, the bill specifies that a violation of the laws regulating the non-recourse civil litigation advance transition are subject to the Ohio Consumer Sales Practices Act.³

Registration and bond

The bill requires that businesses engaging in non-recourse civil litigation advance in Ohio to file a registration statement with the Superintendent of Financial Institutions in the Department of Commerce. The registration must include the name of the company, the names of every person with ownership interest in the company, the company’s principal place of business, and if applicable a certificate that the company is licensed or registered as a foreign corporation or limited liability company, respectively, with the Secretary of State. The registration will be established by the Superintendent, but will not exceed \$150. If any information on the registration statement changes, the company must notify the Superintendent within 30 days of the change. Each company must also obtain a corporate surety bond of at least \$50,000 that is in effect at all times while registered and is in favor of the Superintendent.⁴

¹ R.C. 1359.55.

² R.C. 1349.551.

³ R.C. 1349.552 to 1349.555.

⁴ R.C. 1349.551.

Fees, interest, and duration

The bill limits fees on non-recourse civil litigation advance contracts to 10% of the original amount of money provided to the consumer. This fee can only be charged once a year with regard to any single legal claim regardless of the number of nonrecourse civil litigation advances the company enters into with the consumer with respect to the claim. In addition, any interest charged must be reasonable and not overly excessive. In determining what is reasonable and not overly excessive, the bill requires consideration of the Ohio Tax Commissioners certified annual interest. Under existing law, unchanged by the bill, the Tax Commissioner is required to determine the interest rate for certain taxes and other purposes on October 15 of each year. The bill limits the maximum interest rate of a non-recourse civil litigation advance to this number plus an additional 3%.⁵ For example, for the year 2020 the Tax Commissioners certified annual interest rate is 5%, therefore if the bill was effective in 2020, the maximum amount of annual interest that can be charged for any new non-recourse civil litigation advance is 8%.⁶

In addition, the bill limits the duration of a non-recourse civil litigation advance to three years. The bill also prohibits a company from entering into an agreement with a consumer that has the effect of incorporating the consumer's obligations to the company that are contained in the original non-recourse civil litigation advance into a subsequent non-recourse civil litigation advance.⁷

Notification to court and opposing party

The bill requires the consumer of the non-recourse civil litigation advance to file a copy of the contract with the court or other tribunal and serve a copy of it on each opposing party as well. If the advance is executed before the consumer files a complaint, the consumer must file a copy of the contract with the court and serve a copy on each opposing party at the same time as the original complaint. And the consumer must also file and serve a copy of any amendments or modifications made to the previously executed contract.

If the advance is executed after the consumer files a complaint, the consumer must follow the procedures described above within 14 days of the execution of the advance.⁸

Prohibitions

The bill adds several new consumer protections relating to the non-recourse civil litigation advance transaction by prohibiting a company from doing any of the following:

⁵ R.C. 1349.553(A) and (D) and R.C. 5703.47, not in the bill.

⁶ Ohio Department of Taxation Annual Certified Interest Rates, <https://tax.ohio.gov/wps/portal/gov/tax/researcher/interest-rates/interest-rates>, accessed July 22, 2020.

⁷ R.C. 1349.553(B) and (C).

⁸ R.C. 1349.554.

- Paying or offering to pay any attorney, law firm, medical provider, chiropractor, or physical therapist, or to any of their employees or agents, for referring a consumer to a company;
- Accepting any form of consideration from any of the preceding persons or entities;
- Advertising false or misleading information regarding its products or services;
- Referring a consumer or potential consumer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist or to any of their employees or agents (but if a consumer does not have legal representation, the company may refer the consumer to a local or state attorney referral service operated by a bar association or nonprofit organization);
- Failing to promptly supply copies of all complete non-recourse civil litigation advance contracts to the consumer and the attorney representing the consumer in a dispute;
- Attempting to obtain a waiver of any remedy, including damages, that the consumer might otherwise have;
- Attempting to effect arbitration or otherwise effect a waiver of a consumer's right to trial by jury;
- Offering, providing, or attempting to offer or provide legal advice to the consumer regarding the litigation financing or the underlying dispute;
- Assigning, which includes securitizing a non-recourse civil litigation advance, to a third party (this does not prevent a company that retains responsibility for enforcing the non-recourse civil litigation advance contract from making an assignment to a wholly owned subsidiary or an affiliate under its legal control);
- Structuring a non-recourse civil litigation advance arising from the same civil proceeding or claim as more than one transaction;
- Entering into a non-recourse civil litigation advance if an attorney or a law firm retained by a consumer in a civil claim or action on which the non-recourse civil litigation advance is based has any financial interest or ownership in the company.⁹

Enforcement and penalties

The bill establishes that a violation of non-recourse civil litigation advance law constitutes an unfair or deceptive act or practice in violation of Ohio's Consumer Sales Practices Act (CSPA).¹⁰ Under existing law, the Ohio Attorney General has broad authority to enforce the CSPA, including suing for injunctive relief and civil penalties. Additionally, under the bill and under the CSPA a consumer has a private right of action and can sue the supplier to rescind the

⁹ R.C. 1349.552.

¹⁰ R.C. 1349.555 and R.C. 1345.02, not in the bill.

transaction or to recover the consumer's actual economic damages plus up to \$5,000 in noneconomic damages. If the supplier's violation is an act or practice that has already been declared deceptive or unconscionable by the Attorney General or by a court, then the consumer may sue to rescind the transaction or recover three times the amount of the consumer's actual economic damages.¹¹ In addition, the bill specifies that a violation of the non-recourse civil litigation advance law makes the contract legally unenforceable by the company, the consumer, or the successor in interest to the contract.¹²

HISTORY

Action	Date
Introduced	06-08-20

S0322-I-133/ks

¹¹ R.C. 1345.09(A) and (B), not in the bill.

¹² R.C. 1349.555.