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S.B. 94
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsor: Sen. Wilson

Local Impact Statement Procedure Required: No

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Highlights

- The costs for the Office of the Attorney General's Consumer Protection Section to investigate and enforce civil violations of the expanded nonrecourse civil litigation advance contract law will depend on the number of complaints filed/reported, investigations performed, and enforcement actions taken. To some degree, any related increase in operating costs might be offset by the collection of civil penalties credited to the Consumer Protection Enforcement Fund (Fund 6310).
- Any increase in the annual operating costs of courts of common pleas to adjudicate civil actions related to Consumer Sales Protection Act violations is likely to be no more than minimal and absorbed by utilizing existing staff and resources.
- The Division of Financial Institutions within the Department of Commerce may incur a minimal administrative cost to register companies engaged in the business of nonrecourse civil litigation advance. Any cost will at least be partially offset by a registration fee of not more than \$150, likely to be credited to the Consumer Finance Fund (Fund 5530).

Detailed Analysis

Overview

The bill adds to the law regulating nonrecourse civil litigation advance contracts by:

- Requiring companies engaged in the business of nonrecourse 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.

- Limiting the fees, interest, and duration of the nonrecourse civil litigation advanced contract, requiring consumers to notify the court and the opposing party of the contract, and adding various new prohibitions, or “consumer protections,” relating to these transactions.
- Specifying that a violation of the law regulating nonrecourse civil litigation advance transactions constitutes an unfair or deceptive act or practice in violation of Ohio’s Consumer Sales Practices Act (CSPA).

Nonrecourse civil litigation advance contracts are contracts in which a company makes a cash payment to a consumer who has a pending civil claim or action in exchange for the right to receive an amount out of the proceeds of any realized settlement award. Repayment of the advance is only required if a case is won or an out-of-court settlement is reached.

Enforcement

Under the bill, any violation of the law regulating nonrecourse civil litigation advance transactions is considered an unfair or deceptive act or practice in violation of the CSPA, for which two civil remedies are available. The first such remedy is available to the Attorney General, who is authorized to investigate violations. The Attorney General may seek a declaratory judgment, an injunction, or other equitable relief, or organize and bring a class action. The second remedy permits a private individual to initiate a civil action.

Currently there is no mechanism for the Attorney General to enforce the law regulating these contracts. As such, there have been no investigations or civil actions filed by the Attorney General against any litigation financing lender or company. It appears that the only legal recourse available to a consumer injured by a violation of the existing law would be to file a civil action in a county or municipal court.

Attorney General

Overall, the magnitude of work involved for the Attorney General’s Consumer Protection Section to enforce the nonrecourse civil litigation advance law will depend on the number of complaints filed/reported, investigations performed, and enforcement actions taken.

According to the latest [Consumer Protection Annual Report](#), its Civil Investigative Unit opened 246 cases, and the Civil Legal Unit filed 46 consumer protection-related lawsuits in calendar year 2020. The data illustrates that the number of Attorney General-initiated lawsuits is relatively small. This is because as a matter of practice, the Attorney General attempts to settle the issues surrounding CSPA violations prior to initiating any formal legal action. Similar to existing CSPA cases, depending on the facts of the case and pattern of conduct, the Attorney General’s Office would generally seek court action against a litigation financing lender or company if a pattern of complaints is observed or when less formal negotiating strategies are unsuccessful. In that scenario, the Attorney General’s Office could request that a court of common pleas issue a declaratory judgment, a temporary restraining order, or an injunction in order to persuade violators to cease their offending behavior. If a civil remedy is pursued and the court determines that a violation has occurred, the court adjudicating the matter can award the Attorney General all costs and expenses associated with its investigation, in addition to reasonable attorney’s fees.

The court may impose a civil penalty of: (1) not more than \$5,000 for each day of violation of a temporary restraining order, preliminary injunction, or a permanent injunction, and (2) not more than \$25,000 for each violation of the CSPA. The civil penalties are distributed in the following amounts: three-fourths, or 75%, to the state's Consumer Protection Enforcement Fund (Fund 6310), and one-fourth, or 25%, to the treasury of the county where the Attorney General's action is brought. The timing and magnitude of this revenue stream will be sporadic and unpredictable. Any additional operating expenses incurred may be offset by additional penalty money credited to Fund 6310.

Local trial courts

LBO has not collected any evidence suggesting the number of civil actions brought annually in any given local trial court will significantly change. Potentially some civil actions will be brought for breach of nonrecourse civil litigation advanced contract or some other statutory violation involving these contracts would not be filed, but instead a complaint would be made with the Attorney General and perhaps informally resolved rather than litigated.¹ As the number of such cases is expected to be small, the bill is not expected to create a discernible ongoing fiscal effect on local trial courts, in particular courts of common pleas. Related operating costs are expected to be absorbed utilizing existing judicial personnel and appropriated resources.

Department of Commerce

The bill requires companies engaging in the business of nonrecourse civil litigation advance in the state to file a registration statement with the Superintendent of Financial Institutions in the Department of Commerce. As a result, the Department's Division of Financial Institutions may incur a minimal administrative cost to register these companies. It is uncertain how many companies will register. Any cost incurred by the Division will at least be partially offset by a registration fee not to exceed \$150. The fee will likely be credited to the Consumer Finance Fund (Fund 5530), which is used by the Division's Consumer Finance Section to regulate consumer finance or nondepository lending industries.

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¹ Such a civil action could be commenced in a municipal and county court, both of which have jurisdiction on matters in which the amount of money in dispute is \$15,000 or less, or in a common pleas court, which has jurisdiction in actions with amounts over \$15,000.