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OHIO LEGISLATIVE SERVICE COMMISSION

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Substitute Bill Comparative Synopsis

Sub. H.B. 105

136th General Assembly

House Insurance

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This table summarizes how the latest substitute version of the bill differs from the immediately preceding version. It addresses only the topics on which the two versions differ substantively. It does not list topics on which the two bills are substantively the same.

| Previous Version (As Introduced) | Latest Version (I_136_0706-1) |
|--|---|
| Terminology | |
| Refers to “consumer litigation funding agreements” and “consumer litigation funding companies” (R.C. 1357.01(E) and (F)). | Changes the terms to “consumer legal funding agreements” and “consumer legal funding companies” (R.C. 1357.01(E) and (F), with conforming changes throughout the bill). |
| Defines “consumer” as a “natural person or estate for a decedent with a legal claim” (R.C. 1357.01(E)). | Limits the definition, and application of the bill’s consumer agreement regulations, to natural persons (not estates) with a pending claim who reside or are domiciled in Ohio (R.C. 1357.01(E)). |
| Excludes advances from a consumer’s “immediate family,” defined as a “spouse; sibling; child, including adopted children and stepchildren; parent; grandparent; or grandchild,” from the bill’s regulations (R.C. 1357.01(G)(2)(a) and (J)). | Similar, but changes the term to “family member” and expands the definition to include aunts, uncles, and cousins (R.C. 1357.01(G)(2)(a) and (J)). |
| Consumer legal funding agreements | |
| Requires certain elements of a consumer agreement to be printed in at least 12-point bold type (R.C. 1357.02(A)(4) and (6)). | No provision. |

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| <p>Requires a consumer agreement to specify that the funded amount and associated charges are to be paid <i>only</i> from the proceeds of the legal claim (R.C. 1357.02(A)(6)(c)).</p> <p>Specifies that any violation of the bill’s requirements concerning the contents of a consumer agreement renders the agreement unenforceable by the company, the consumer, or any successor in interest to the agreement (R.C. 1357.02(C)).</p> | <p>Similar, but removes the word “only” (R.C. 1357.02(A)(6)(c)).</p> <p>Similar, but specifies that only a <i>willful</i> violation renders an agreement unenforceable (R.C. 1357.02(C)).</p> |
| Consumer legal funding companies | |
| <p>Prohibits a consumer litigation funding company from charging or collecting fees in excess of 10% of the funded amount per year (R.C. 1357.03(J)(1)(b)).</p> <p>No provision.</p> <p>No provision.</p> | <p>Instead prohibits a consumer legal funding company from charging a one-time service fee that exceeds 7% of the initial funded amount (R.C. 1357.03(J)(1)(b)).</p> <p>Prohibits a consumer legal funding company from colluding with or knowingly assisting a lawyer or law firm in enticing a consumer to bring a claim that the company knows or has reason to know is fabricated or otherwise not in good faith. Declares any resulting consumer legal funding agreement void ab initio. (R.C. 1357.03(L).)</p> <p>Prohibits a consumer legal funding company from knowingly offering or colluding to provide funding as an inducement to a consumer who is presently represented by counsel to terminate that engagement and engage another lawyer or law firm to represent the consumer in the same matter. Declares any resulting consumer legal funding agreement void ab initio. (R.C. 1357.03(M).)</p> |
| Attorneys and law firms | |
| <p>No provision.</p> | <p>Prohibits a law firm or attorney that has a financial interest in a consumer legal funding company, or any attorney whose family member has such a financial interest, from doing any of the following:</p> |

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|---|---|
| | <ul style="list-style-type: none"> ▪ Representing the consumer in any legal claim respecting which the consumer has entered into a consumer legal funding agreement with the company; ▪ Providing consumer legal funding directly to a consumer the attorney or law firm represents; ▪ Referring a consumer to the consumer’s retained attorney in any legal claim respecting which the consumer has entered into a consumer legal funding agreement with the company (<i>R.C. 1357.04(B)(3)</i>). |
| Agreements with foreign persons or entities | |
| Prohibits a consumer litigation funding company or a consumer litigation financier from entering into an agreement with a person or entity not domiciled in the U.S. or respecting a legal claim that is directly or indirectly financed by such a person or entity (<i>R.C. 1357.06(A) and (B)</i>). | Similar to the As Introduced version but adds a mental state – <i>knowingly</i> – to the prohibition (<i>R.C. 1357.06(A) and (B)</i>). |
| Discovery of consumer agreements | |
| Specifies that consumer litigation funding agreements and all parties to them are presumed to be subject to discovery in any civil proceeding (<i>R.C. 1357.04(D)</i>). | Instead specifies that a consumer legal funding agreement is presumed to be subject to discovery if a court orders a party to the legal claim to disclose of the existence or contents of any insurance agreement or if a party to the legal claim discloses the existence or contents of an insurance agreement without a court order or directive (<i>R.C. 1357.04(C)(1)</i>). |
| No provision. | Requires a party that has entered into a consumer legal funding agreement that is presumed subject to discovery to “without delay,” disclose the contents of and parties to the agreement to all other parties to the legal claim (<i>R.C. 1357.04(C)(2)</i>). |
| Stipulates that the bill’s discovery provisions apply “notwithstanding any contrary provision of the agreement” (<i>R.C. 1357.04(C)</i>). | Instead specifies that any provision of a consumer legal funding agreement entered into, amended, or renewed on or after the bill’s |

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| | effective date that prohibits or limits discovery of the agreement or the parties to the agreement is void and unenforceable (<i>R.C. 1357.04(D)</i>). |
| Discovery of commercial agreements | |
| <p>Requires a claimant or their attorney to provide any commercial litigation financing agreement at the time the legal claim is asserted, without awaiting a discovery request, to all named parties to the legal claim and all insurers that may have a potential duty to defend or indemnify a named party to the legal claim (<i>R.C. 1357.07(C)</i>).</p> | <p>Same as the As Introduced version, and also stipulates that a commercial litigation financing agreement is presumed to be subject to discovery if a court orders a party to the legal claim to disclose of the existence or contents of any insurance agreement or if a party to the legal claim discloses the existence or contents of an insurance agreement without a court order or directive. Requires a party that has entered into a commercial litigation financing agreement that is presumed subject to discovery to “without delay,” disclose the contents of and parties to the agreement to all other parties to the legal claim. (<i>R.C. 1357.07(C) and (D)</i>.)</p> <p>The utility of the commercial agreement discovery requirements added by I_136_0706-1 is unclear given that disclosure requirement retained from the As Introduced version appears to be more robust.</p> |
| No provision. | Specifies that any provision of a commercial litigation financing agreement entered into, amended, or renewed on or after the bill’s effective date that prohibits or limits discovery of the agreement or the parties to the agreement is void and unenforceable (<i>R.C. 1357.07(E)</i>). |