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S.B. 19
(1_135_0038-3)
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for S.B. 19's Bill Analysis](#)

Version: In Senate Judiciary

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. The collection of civil penalties credited to the Consumer Protection Enforcement Fund (Fund 6310) may offset these costs, to some degree.
- 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.

Detailed Analysis

Overview

The bill modifies the regulation of nonrecourse civil litigation advances, most notably by:

- Adding to the disclosures and stipulations that must be contained in the contract for a nonrecourse civil litigation advance.
- Adding several new consumer protections relating to the nonrecourse civil litigation advance transaction by placing prohibitions on the company and contract terms, such as restrictions on referrals, advertising, and waivers in contracts.
- 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), and makes the contract legally unenforceable.

Under the bill, a “nonrecourse civil litigation advance” means a transaction in which a company makes a cash payment of less than \$400,000 to a consumer that has a pending legal claim in exchange for the right to receive an amount out of the proceeds of any realized settlement, judgement, award, or verdict. Generally, the consumer has no financial obligation to the company if no money is recovered for the legal claim.

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 now 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 new nonrecourse civil litigation advance law will depend on the number of complaints filed/reported, investigations performed, and enforcement actions taken. For comparison, according to the latest Consumer Protection Annual Report,¹ its Civil Investigative Unit opened 183 cases, and the Civil Legal Unit filed 43 consumer protection-related lawsuits in calendar year 2022.

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

¹ The [complete report](#) may be found on the Attorney General’s website under the “Media” tab and selecting “Reports” at ohioattorneygeneral.gov.

(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. Some civil actions may be brought for breach of nonrecourse civil litigation advanced contract if a complaint made to the Attorney General is unsuccessfully resolved.² 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.

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² 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.