



Sub. H.B. 292

123rd General Assembly
(As Passed by the General Assembly)

Reps. Willamowski, Buehrer, DePiero, Pringle, Schuler, Taylor, Terwilleger, Vesper, Womer Benjamin, Salerno, Grendell, Sulzer, Jones

Sens. Cupp, Johnson

Effective date: *

ACT SUMMARY

- Specifies that commitments to pay attorneys' fees in commercial contracts of indebtedness are enforceable in Ohio courts and otherwise only if the total amount owed on the contract at the time it was entered into exceeds \$100,000 and only to the extent that the commitment obligates payment of a reasonable amount.
- Provides a procedure for the determination of reasonable attorneys' fees for the purpose of enforceability of commitments to pay attorneys' fees in certain commercial contracts of indebtedness.
- Makes provision for the recovery of attorneys' fees and legal expenses in the Secured Transactions Law governing the disposition and redemption of collateral that is the subject of a commercial contract.

CONTENT AND OPERATION

Scope

The act enacts new law in the Uniform Commercial Code to provide for the recovery of attorneys' fees in connection with certain commercial contracts of indebtedness and makes changes in the Secured Transactions Law to provide for

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

the recovery of attorneys' fees if collateral that is the subject of a commercial contract is disposed of or redeemed.

Recovery of attorneys' fees under a commercial contract of indebtedness

The act regulates the recovery of attorneys' fees under certain contracts of indebtedness that contain commitments to pay attorneys' fees. A "contract of indebtedness" is defined, under the act, as a note, bond, mortgage, conditional sale contract, retail installment contract, lease, security agreement, or other written evidence of indebtedness, other than indebtedness incurred for purposes that are primarily personal, family, or household. "Commitment to pay attorneys' fees" is defined as an obligation to pay attorneys' fees that arises in connection with the enforcement of a contract of indebtedness. (Sec. 1301.21(A)(1) and (2).)

The act specifies that if a contract of indebtedness includes a commitment to pay attorneys' fees, and if the contract is enforced through judicial proceedings or otherwise after maturity of the debt, a person that has the right to recover attorneys' fees under the commitment may recover the fees in accordance with the commitment to the extent the act renders the commitment enforceable. A commitment to pay attorneys' fees is enforceable under the act only if the total amount owed on the contract of indebtedness at the time the contract was entered into exceeds \$100,000. The act provides that a person has the right to recover attorneys' fees under a commitment to pay attorneys' fees at the option of that person. "Maturity of the debt" is defined under the act to include maturity upon default or otherwise. (Sec. 1301.21(A)(3), (B), and (C).)

Determination of reasonable attorneys' fees recoverable

A commitment to pay attorneys' fees contained in a contract of indebtedness is enforceable under the act only to the extent that it obligates the payment of an amount that is reasonable. In determining the amount of reasonable attorneys' fees, all relevant factors must be considered, including, but not limited to: (1) the nature of the legal services rendered, (2) the time expended in rendering the services, (3) the amount of money and the value of the property affected, and (4) the professional skill and expertise of the attorney or attorneys rendering the services. (Sec. 1301.21(D).)

The act deems the following to be reasonable amounts, unless a court has been requested to make a determination of the amount of attorneys' fees that is reasonable and finds to the contrary by a preponderance of the evidence (sec. 1301.21(D)(1) and (2)):

(1) If the commitment to pay attorneys' fees is based on a specific percentage of the total principal, interest, and other charges owed on the contract

of indebtedness, the reasonable amount of attorneys' fees is the percentage of the total so owed as specified in the contract of indebtedness.

(2) If the commitment to pay attorneys' fees is not based on a specific percentage of the total principal, interest, and other charges owed on the contract of indebtedness, the reasonable amount of attorneys' fees is an amount equal to the attorneys' fees customarily charged by the attorney rendering the services.

Application

The act provides that the enforceability of commitments to pay attorneys' fees only applies to commitments included in contracts of indebtedness that are enforced, through judicial proceedings or otherwise, on or after March 7, 2000. (Section 3.)

Disposition of collateral under the Secured Transactions Law

Under continuing Secured Transactions Law (Chapter 1309.), a secured party may sell, lease, or otherwise dispose of collateral after default in payment by the debtor occurs. Proceeds from a disposition must be distributed in a specified order of priority, the first tier of which is the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing, and the like. (Sec. 1309.47(A)(1).)

The act expands this tier to include the reasonable attorneys' fees and legal expenses incurred by the secured party to the extent they are provided for in an agreement with the secured party and are not prohibited under the act's provisions dealing with recovery of attorneys' fees on commercial contracts of indebtedness. (Sec. 1309.47(A)(1).)

Redemption of collateral under the Secured Transactions Law

Under continuing Secured Transactions Law, prior to a secured party disposing of collateral or entering into a contract for its disposition, or prior to the secured party discharging the debtor's obligation by electing to retain the collateral, the debtor or another secured party, unless otherwise agreed in writing after default, generally may redeem the collateral. In order to redeem the collateral, the debtor or secured party may tender fulfillment of all obligations secured by the collateral and the reasonable expenses incurred by the secured party in retaking, holding, and preparing the collateral for disposition and in arranging for its sale.

The act expands the required tendered amounts for a redemption to include the reasonable attorneys' fees and legal expenses incurred by the secured party to

the extent they are provided for in an agreement with the secured party and not prohibited by the act's provisions dealing with the recovery of attorneys' fees on commercial contracts of indebtedness. (Sec. 1309.49.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-09-99	p. 389
Reported, H. Civil & Commercial Law	06-16-99	p. 845
Passed House (94-0)	06-23-99	pp. 911-912
Reported, S. Judiciary	12-08-99	p. 1222
Passed Senate (32-0)	12-09-99	p. 1242
Concurrence (87-0)	12-09-99	pp. 1458-1459

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