



Aida Montano

## *Bill Analysis*

Legislative Service Commission

### **H.B. 292**

123rd General Assembly  
(As Introduced)

**Reps. Willamowski, Buehrer, DePiero, Pringle, Schuler, Taylor, Terwilleger,  
Vesper, Womer Benjamin**

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#### **BILL SUMMARY**

- Specifies that commitments to pay attorney's fees in commercial contracts of indebtedness are enforceable in Ohio courts and otherwise only to the extent that they obligate payment of a reasonable amount.
- Provides for the determination of reasonable attorney's fees for the purpose of enforceability of commitments to pay attorney's fees in contracts of indebtedness.
- Makes provision for the recovery of attorney's fees and legal expenses in the Secured Transactions Law governing the disposition and redemption of collateral that is the subject of a commercial contract.

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#### **CONTENT AND OPERATION**

##### **Scope**

The bill enacts new law in the Uniform Commercial Code to provide for the recovery of attorney's fees in connection with commercial contracts of indebtedness and makes changes in the Secured Transactions Law to provide for the recovery of attorney's fees if collateral that is the subject of a commercial contract is disposed of or redeemed.

##### **Recovery of attorney's fees under a commercial contract of indebtedness**

The bill regulates the recovery of attorney's fees under contracts of indebtedness that contain commitments to pay attorney's fees. A "contract of indebtedness" is defined, under the bill, 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 attorney's fees" is defined as an obligation to pay attorney's fees that arises in connection with the enforcement of a contract of indebtedness. (Sec. 1301.21(A)(1) and (2).)

The bill specifies that if a contract of indebtedness includes a commitment to pay attorney's 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 attorney's fees under the commitment may recover the fees in accordance with the commitment to the extent the bill renders the commitment enforceable. Also, the bill provides that a person has the right to recover attorney's fees under a commitment whether or not the person is named in the contract as having that right. "Maturity of the debt" is defined under the bill to include maturity upon default or otherwise. (Sec. 1301.21(A)(3) and (B).)

### **Determination of reasonable attorney's fees recoverable**

A commitment to pay attorney's fees contained in a contract of indebtedness is enforceable, under the bill, only to the extent that it obligates the payment of an amount that is reasonable. In determining the amount of reasonable attorney's fees, a court must consider all relevant factors, 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 rendering the services. (Sec. 1301.21(C).)

The bill deems the following as reasonable amounts, in the absence of a preponderance of the evidence to the contrary, depending upon whether the contract provides for payment of attorney's fees based on a percentage of certain elements of the contract (sec. 1301.21(C)(1), (2), (3), and (4)):

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

(a) If the total so owed is \$100,000 or less, the reasonable amount of attorney's fees is the greater of either \$1,000 or an amount that is the lesser of 20% of the total so owed or the percentage of the total so owed as specified in the contract of indebtedness.

(b) If the total so owed exceeds \$100,000, the reasonable amount of attorney's fees is the percentage of the total so owed as specified in the contract of indebtedness.

(2) If the commitment to pay attorney's fees is not based on a specific percentage of the total principal, interest, and other charges owed on the contract of indebtedness:

(a) If the total so owed is \$100,000 or less, the reasonable amount of attorney's fees is the greater of either \$1,000 or an amount not exceeding 20% of the total so owed.

(b) If the total so owed exceeds \$100,000, the reasonable amount of attorney's fees is an amount equal to the attorney's fees customarily charged by the attorney rendering the services.

### **Application**

The bill provides that the enforceability of commitments to pay attorney's fees under the bill only applies to commitments included in contracts of indebtedness that are enforced, through judicial proceedings or otherwise, on or after the bill's effective date. (Section 3.)

### **Disposition of collateral under the Secured Transactions Law**

Under the 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 bill expands this tier to include the reasonable attorney's 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 bill's provisions dealing with recovery of attorney's fees on commercial contracts of indebtedness. (Sec. 1309.47(A)(1).)

### **Redemption of collateral under the Secured Transactions Law**

Under the 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 bill expands the required tendered amounts for a redemption to include the reasonable attorney's 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 bill's provisions dealing with the recovery of attorney's fees on commercial contracts of indebtedness. (Sec. 1309.49.)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-09-99	p. 389

H0292-I.123/jc

