Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **H.B. 248** DATE: **September 19, 2007**

STATUS: **As Introduced** SPONSOR: **Rep. Blessing**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Sets forth requirements governing nonrecourse civil litigation advance contracts**

State Fiscal Highlights

- No direct fiscal effect on the state.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2007	FY 2008	FUTURE YEARS
County and Municipal Courts			
Revenues	Potential offsetting gain from court cost and filing fees	Potential offsetting gain from court cost and filing fees	Potential offsetting gain from court cost and filing fees
Expenditures	Potential minimal increase in civil adjudication costs	Potential minimal increase in civil adjudication costs	Potential minimal increase in civil adjudication costs

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- The bill would authorize legal finance companies and nonrecourse advance contracts. However, the only legal recourse available to a consumer injured by a violation of the bill's requirements would be to file a civil action in a county or municipal court. It is unknown how many actions may result from the bill, but it is likely that filing fee revenue and court costs would mitigate any increase in civil adjudication costs that may occur.

Detailed Fiscal Analysis

Overview

This bill sets forth requirements governing nonrecourse civil litigation advance contracts. These 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, judgment, award, or verdict the consumer may receive in the civil lawsuit. Repayment of the advance is only required if a case is won or an out-of-court settlement is reached. Nonrecourse advances carry a risk premium, or an amount of money paid to the finance company in addition to the funds already advanced, and are typically more expensive than a bank loan since nonrecourse advances are not required to be repaid if the claimant does not receive a payment from the defendant.

The Ohio Supreme Court ruled in 2003 in *Rancman v. Interim Settlement Funding Corp.* (99 Ohio St.3d 121, 2003-Ohio-2721) that except as otherwise permitted by legislative enactment or the Ohio Rules of Court's Code of Professional Responsibility, a contract making the repayment of funds advanced to a party to a pending case contingent upon the outcome of that case is void as maintenance (assistance to a litigant in pursuing or defending a lawsuit provided by someone who does not have a bona fide interest in the case) and champerty (a form of maintenance in which a nonparty undertakes to further another's interest in a suit in exchange for a part of the litigated matter if a favorable result ensues).

Fiscal effects

While the bill would authorize legal finance companies and nonrecourse advance contracts, the bill provides no specific state governing authority for the regulation of such contracts. It is highly unlikely that the Office of the Attorney General (AGO) would assist a consumer with a complaint concerning these contracts since (1) AGO does not provide investigative and filing assistance to individual consumers (rather, AGO represents the state) and (2) there is a substantial likelihood that a consumer with a pending claim involving money coming out of a pending lawsuit is already represented by counsel. Consequently, there does not appear to be any direct fiscal effect on the state as a result of the bill.

The only legal recourse available to a consumer injured by a violation of the bill's requirements would be to file a civil action in a county or municipal court. It is uncertain how many actions may be filed in the case of breach of contract, failure to provide a right to cancel or some other statutory violation involving these contracts, but it is likely that filing fee revenue and court costs would mitigate any increase in civil adjudication costs that may occur.

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