

As Reported by the House Civil and Commercial Law Committee

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Sub. H. B. No. 248

Representative Blessing

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A B I L L

To enact section 1349.55 of the Revised Code to set 1
forth requirements governing non-recourse civil 2
litigation advance contracts. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 1349.55 of the Revised Code be 4
enacted to read as follows: 5

Sec. 1349.55. (A) As used in this section: 6

(1) "Non-recourse civil litigation advance" means a 7
transaction in which a company makes a cash payment to a consumer 8
who has a pending civil claim or action in exchange for the right 9
to receive an amount out of the proceeds of any realized 10
settlement, judgment, award, or verdict the consumer may receive 11
in the civil lawsuit. 12

(2) "Company" means a person or entity that enters into a 13
non-recourse civil litigation advance transaction with a consumer. 14

(3) "Consumer" means a person or entity residing or domiciled 15
in Ohio and represented by an attorney with a pending civil claim 16
or action. 17

(B) All contracts for a non-recourse civil litigation advance 18
shall comply with the following requirements: 19

(1) The contract shall be completely filled in and contain on the front page, appropriately headed and in at least twelve-point bold type, the following disclosures: 20
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(a) The total dollar amount to be advanced to the consumer; 23

(b) An itemization of one-time fees; 24

(c) The total dollar amount to be repaid by the consumer, in six-month intervals for thirty-six months, and including all fees; 25
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(d) The annual percentage rate of return, calculated as of the last day of each six-month interval, including frequency of compounding. 27
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(2) The contract shall provide that the consumer may cancel the contract within five business days following the consumer's receipt of funds, without penalty or further obligation. The contract shall contain the following notice written in a clear and conspicuous manner: "CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM [insert name of company]." The contract also shall specify that in order for the cancellation to be effective, the consumer must either return to the company the full amount of disbursed funds by delivering the company's uncashed check to the company's offices in person, within five business days of the disbursement of funds, or mail a notice of cancellation and include in that mailing a return of the full amount of disbursed funds in the form of the company's uncashed check, or a registered or certified check or money order, by insured, registered or certified United States mail, postmarked within five business days of receiving funds from the company, at the address specified in the contract for the cancellation. 30
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(3) The contract shall contain the following statement in at least twelve-point boldface type: "THE COMPANY AGREES THAT IT 49
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SHALL HAVE NO RIGHT TO AND WILL NOT MAKE ANY DECISIONS WITH 51
RESPECT TO THE CONDUCT OF THE UNDERLYING CIVIL ACTION OR CLAIM OR 52
ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE 53
THOSE DECISIONS REMAINS SOLELY WITH YOU AND YOUR ATTORNEY IN THE 54
CIVIL ACTION OR CLAIM." 55

(4) The contract shall contain the initials of the consumer 56
on each page. 57

(5) The contract shall contain the following statement in at 58
least twelve-point boldface type located immediately above the 59
place on the contract where the consumer's signature is required: 60
"DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY OR IF IT 61
CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY FILLED 62
IN COPY OF THIS CONTRACT. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD 63
OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES, 64
YOU MAY WANT TO CONSULT A TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, 65
OR FINANCIAL PROFESSIONAL. YOU ACKNOWLEDGE THAT YOUR ATTORNEY IN 66
THE CIVIL ACTION OR CLAIM HAS PROVIDED NO TAX, PUBLIC OR PRIVATE 67
BENEFIT PLANNING, OR FINANCIAL ADVICE REGARDING THIS TRANSACTION." 68

(6) The contract shall contain a written acknowledgment by 70
the attorney representing the consumer in the civil action or 71
claim that states all of the following: 72

(a) The attorney representing the consumer in the civil 73
action or claim has reviewed the contract and all costs and fees 74
have been disclosed including the annualized rate of return 75
applied to calculate the amount to be paid by the consumer. 76

(b) The attorney representing the consumer in the civil 77
action or claim is being paid on a contingency basis per a written 78
fee agreement. 79

(c) All proceeds of the civil litigation will be disbursed 80
via the trust account of the attorney representing the consumer in 81

the civil action or claim or a settlement fund established to 82
receive the proceeds of the civil litigation from the defendant on 83
behalf of the consumer. 84

(d) The attorney representing the consumer in the civil 85
action or claim is following the written instructions of the 86
consumer with regard to the non-recourse civil litigation advance. 87

(7) For English, French, and Spanish speaking consumers, the 88
contract shall be written in the same language in which the oral 89
negotiations are conducted between the company and the consumer. 90
For consumers whose primary language is not English, French, or 91
Spanish, the principal terms of the contract shall be translated 92
in writing into the consumer's native language, the consumer shall 93
sign the translated document containing the principal terms and 94
initial each page, and the translator shall sign a notarized 95
affirmation confirming that the principal terms have been 96
presented to the consumer in the consumer's native language and 97
acknowledged by the consumer, in writing. Principal terms shall 98
include all items that must be disclosed by this section. 99

(C) If a dispute arises between the consumer and the company 100
concerning the contract for a non-recourse civil litigation 101
advance, the responsibilities of the attorney representing the 102
consumer in the civil action or claim shall be no greater than the 103
attorney's responsibilities under the Ohio Rules of Professional 104
Conduct. 105