



Dennis M. Papp

Bill Analysis
Legislative Service Commission

H.B. 185*

126th General Assembly
(As Reported by S. Judiciary on Criminal Justice)

Reps. Latta, McGregor, C. Evans, Perry, Carano, T. Patton, Daniels, J. Stewart, Coley, Gibbs, Allen, Buehrer, DeBose, Dolan, Domenick, D. Evans, Flowers, Gilb, Hughes, Oelslager, Reidelbach, Seaver, G. Smith, Wagoner, Yuko

BILL SUMMARY

- Requires a depository institution maintaining an "interest on lawyer's trust account" (IOLTA) for a lawyer, law firm, or legal professional association to notify the Office of Disciplinary Counsel or other entity designated by the Ohio Supreme Court when a properly payable instrument is presented for payment from the IOLTA and it contains insufficient funds and makes specifications about the content and timing of this notice.

CONTENT AND OPERATION

Overview--existing law

Under existing law, each attorney receiving funds belonging to a client that are to be held for a short period of time or are of nominal amounts must deposit the funds in an "interest on lawyer's trust account" (IOLTA) at a qualified bank, savings and loan association, or credit union (depository institution). Interest earned on IOLTAs is to be given to the Treasurer of State and credited to the Ohio Legal Aid Fund. None of the interest earned is to be paid to the attorney or entity depositing, or to the client owning, the funds (R.C. 4705.09, not in bill).

Existing law sets forth requirements for IOLTAs, including that: (1) all funds be subject to withdrawal upon request and without delay as soon as permitted by federal law, (2) the rate of interest payable on the IOLTA cannot be

* This analysis was prepared before the report of the Senate Judiciary on Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

less than that payable on nonattorney accounts, and (3) the depository institution maintaining the IOLTA must be directed to remit the described interest or dividends earned on the funds to the Treasurer of State at least quarterly for deposit into the Legal Aid Fund. Existing law also requires that the depository institution maintaining the IOLTA be directed to transmit statements containing certain information to the Ohio Legal Assistance Foundation and, upon request, to the attorney or entity depositing into the IOLTA and the Treasurer of State. This information includes the name of the attorney, law firm, or legal professional association remitting the funds; the applicable rate of interest; the accounting period; the net and total amounts remitted to the Treasurer of State; the average account balance for each month during the reporting period; and amounts deducted for service charges.

Under existing law, the statements made by depository institutions and described in clause (3) of the preceding paragraph are confidential and, under existing law, are to be used only for purposes of administering the Legal Aid Fund. (R.C. 4705.10.)

Operation of the bill

Notice

The bill adds a duty upon the depository institution maintaining an IOLTA to notify a specified office or entity of the Ohio Supreme Court when there are insufficient funds in the IOLTA to honor a withdrawal drawn upon it. Specifically, the depository institution must notify the Office of Disciplinary Counsel or other entity designated by the Supreme Court on each occasion when a properly payable instrument is presented for payment from an IOLTA, and the IOLTA contains insufficient funds. This notice must be provided without regard to whether the instrument is honored by the depository institution maintaining the IOLTA. (R.C. 4705.10(A)(4).)

The notice must be provided by electronic or other means within five banking days of the date that the instrument was honored or returned as dishonored. The notice must contain: (1) the name and address of the depository institution maintaining the IOLTA, (2) the name and address of the lawyer, law firm, or legal professional association depositing into the IOLTA, and (3) the account number and either the amount of the overdraft and the date issued or the amount of the dishonored instrument and the date returned. Under the bill, this notice is confidential and may be used only for specified purposes. The bill requires that, in addition to the administration of the Legal Aid Fund as required by existing law, the purpose for which the depository institution's statements and reports may be used, including the bill's new notice requirement, is for enforcement of the Rules of Professional Conduct adopted by the Supreme Court.

Those Rules regulate the conduct of Ohio attorneys and firms or other business entities of attorneys. (R.C. 4705.10(B)(1).)

Payment of fees

Under the bill, a depository institution maintaining an IOLTA on behalf of a lawyer, law firm, or legal professional association may charge the lawyer, law firm, or legal professional association fees associated with producing and mailing the notice required by the bill that is described above. The bill specifies, however, that the depository institution may not deduct those fees from the interest earned on the IOLTA. (R.C. 4705.10(B)(2).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-07-05	p. 377
Reported, H. Financial Institutions, Real Estate & Securities	05-10-05	p. 771
Passed House (97-0)	05-11-05	pp. 790-791
Reported, S. Judiciary on Criminal Justice	---	---

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