

Ohio House of Representatives
Financial Institutions, Housing, and Urban Development Committee
Richard Michalowski's Proponent Testimony on HB 67
May 2, 2017

Good morning Chair Dever, Vice Chair Sprague, Ranking Member Smith, and Members of the House Financial Institutions, Housing, and Urban Development Committee. Thank you for the opportunity to testify before you in support of HB 67, relating to the elimination of a cognovit provision from commercial contract law except in the settlement of a dispute. My name is Richard Michalowski. I am an owner of IAP, Inc,- a small scale commercial real estate development company with very conservative values and limited debt exposure relative to assets. I will first share a personal story related to an experience with a loan from Huntington Bank and the effect of a cognovit note, and then summarize my specific reasons to support the elimination of this provision in most circumstances.

Our family-owned company obtained a real estate loan from Huntington Bank, whose national headquarters sits across the street from the Statehouse. We never missed a loan payment and always paid on time. However, my wife (also a signer on the loan) developed a very rare medical condition and underwent surgery at a well-renowned medical facility. Her condition was potentially life-threatening, and the bank was aware of her medical issues. Shortly after the surgery, I notified the bank that the surgery was successful, both to alleviate their concerns and to assure them that my wife would recover. Huntington Bank then called back to ask for the address of the hospital so they could send a certified letter for pre-foreclosure proceedings.

Regulators pressured Huntington to fix its troubled balance sheet and saw our small company as a scapegoat. On the same day my wife was discharged from the hospital after nearly a two-week hospital stay, her mother (my mother-in-law) died. Nine days later, we received a certified letter indicating the start of foreclosure of the property. At this time, Huntington Bank was aware that said property was under contract with a \$9 billion company to purchase a portion of the property. We had a \$2.3 million pending sale for the loan collateral, with a balance of \$1.3 million. (The pending sale was for a purchase price nearly twice the loan balance.) This purchase offer was withdrawn by the large company several weeks after the foreclosure filing.

Then, Huntington Bank filed a cognovit judgment within a few days of Christmas without any notice. The bank billed me for over \$60,000.00 in attorney's fees, which included the attorney's fee for filing the judgment against me! Even though they raised our loan payment from \$6,500 per month to \$13,100 per month on a non-income producing property, we never missed a payment and had a 34% debt ratio. We continued to pay these exorbitant loan amounts on

time, but we ultimately were forced to sell another strong, income-producing property at a significant loss and paid off our obligations to Huntington Bank within six months.

It should be noted that we are aware of two business associates from Ohio whose companies had defaulted on much larger loans with Huntington Bank. One loan was over \$17 million and the other was over \$24 million and they did not instantly file a judgment on either one, even though our loan amount was only \$1.3 million with a global debt ratio of 34% and 66% equity on our global portfolio.

Lastly, other banks with whom we had much larger loans for other properties were not concerned about our ability to pay, never contacted us adversely, did not foreclose on any other of our properties, and did not have cognovits as part of their loans.

With your knowledge of the above outlined personal experiences, I would now like to offer the following reasons for cancellation of cognovits in support of HB 67:

1. With the cognovits provision, financial institutions may take advantage of small companies that do not have attorneys on staff.
2. Financial institutions do not give the loan customer the ability or right to defend their position (as my unique situation with life-threatening surgery for my wife, her parent's death, and possible loss of sale of the collateral property showed). Customers are forced to give up their right to self-defense.
3. Institutions give passes on other large loans even with customers in default, at the expense of small vulnerable companies.
4. A cognovit allows a financial institution to liquidate the total assets of the customer, without regard for the family's well-being, as indicated by the statement of a Huntington Bank representative, "I can sell everything you have for 10 cents on a dollar and we would be paid back".
5. This bill will help to level the playing field to prevent the type of situation we encountered from happening to other vulnerable families or businesses. We did everything right but yet were considered easy prey due to our high amount of equity and vulnerability due to our medical situation, death in the family, and loss of sale of the very property that would soon have allowed us to pay off the loan with ease.
6. A cognovit note allows instant judgment without the right to defend yourself, which cripples the company from refinancing any of the company's other assets, even a free and clear property. Underwriting rules dictate that all loan applications ask the question, "Do you have

any liens or judgments filed against you?”. Such acknowledgment will cause the loan to be declined in most cases.

7. In our case, the cognovit provision gave the financial institution from which we obtained this loan the upper hand to unfairly overcome the “little guy”.
8. While it is important to give financial institutions latitude to operate successfully so they may resist crippling regulations from the government, most cognovits create an inequity present in only a handful of states nationwide. Cognovits give the financial institution unfair leverage & take away rights from smaller companies.
9. We believe that the reforms in HB 67 would ensure that the commercial loan space has a reasonable procedure for calling a loan while ensuring a robust loanable funds market. Most businesses lose money for at least their first year, and this bill gives entrepreneurs the confidence they need to start & expand their businesses here in Ohio instead of creating uncertainty regarding their loan’s payment schedule.

Chair Dever and all committee members, thank you for your time, your kind consideration of my comments, and for allowing me to share our concerns about the cognovits provision. I welcome your questions.