

**As Introduced**

**131st General Assembly**

**Regular Session**

**2015-2016**

**H. B. No. 291**

**Representatives Young, Dever**

**Cosponsors: Representatives Blessing, Hambley, Hood, Bishoff, Schuring,  
Amstutz, Johnson, T., Grossman**

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**A BILL**

To amend section 2323.13 of the Revised Code to  
require notice and an opportunity for a hearing  
to a defendant before entry of judgment pursuant  
to a confession of judgment.

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

**Section 1.** That section 2323.13 of the Revised Code be  
amended to read as follows:

**Sec. 2323.13.** (A) A confession of judgment may be made  
under this section only for nonpayment of principal and interest  
under the terms of an instrument evidencing indebtedness.

(B) An attorney who confesses judgment in a case, at the  
time of making ~~such the~~ confession, ~~must shall~~ produce the  
warrant of attorney for making it to the court before which ~~he~~  
the attorney makes the confession. Notwithstanding any agreement  
to the contrary, if the maker or any of several makers resides  
within the territorial jurisdiction of a municipal court  
established under section 1901.01 of the Revised Code, or signed  
the warrant of attorney authorizing confession of judgment in  
~~such that~~ territory, judgment on ~~such the~~ warrant of attorney

shall be confessed in the municipal court having jurisdiction in 19  
~~such that~~ territory, provided the court has jurisdiction over 20  
the subject matter; otherwise, judgment may be confessed in any 21  
court in the county where the maker or any of several makers 22  
resides or signed the warrant of attorney. The original or a 23  
copy of the warrant shall be filed with the clerk. 24

~~(B)~~ (C) The attorney who represents the judgment creditor 25  
shall ~~include~~ do the following: 26

(1) Include in the petition a statement setting forth to 27  
the best of ~~his~~ the attorney's knowledge the last known address 28  
of the defendant; 29

(2) Send the defendant at the defendant's last known 30  
address a written notice of the filing of the petition by 31  
certified mail, return receipt requested, at least thirty days 32  
prior to the entry of the judgment. The attorney shall notify 33  
the court of the date when the notice to the defendant is sent 34  
under this division. 35

~~(C)~~ (D) Within thirty days after receipt of the notice, 36  
the defendant may request a hearing to determine whether the 37  
defendant has defaulted in the payment of principal and 38  
interest. The request shall be made in writing. The defendant 39  
shall send a copy of the request to the judgment creditor's 40  
attorney by certified mail, return receipt requested. The 41  
parties may call witnesses and offer evidence at the hearing in 42  
accordance with the Rules of Evidence. If the court determines 43  
after a hearing that the creditor has not demonstrated the 44  
defendant's default in the payment of principal and interest, it 45  
shall deny the petition for judgment by confession. 46

(E) Immediately upon entering any ~~such~~ judgment under this 47

section, the court shall notify the defendant of the entry of 48  
the judgment by personal service or by registered or certified 49  
letter mailed to ~~him~~ the defendant at the address set forth in 50  
the petition. 51

~~(D)~~ (F) A warrant of attorney to confess judgment 52  
contained in any promissory note, bond, security agreement, 53  
lease, contract, or other evidence of indebtedness executed on 54  
or after January 1, 1974, is invalid and the courts are without 55  
authority to render a judgment based upon such a warrant unless 56  
there appears on the instrument evidencing the indebtedness, 57  
directly above or below the space or spaces provided for the 58  
signatures of the makers, or other person authorizing the 59  
confession, in such type size or distinctive marking that it 60  
appears more clearly and conspicuously than anything else on the 61  
document: 62

"Warning--By signing this paper, you ~~give~~ may be giving up 63  
your right to ~~notice and a~~ court trial. If you do not pay on 64  
time a court judgment may be taken against you without ~~your~~ 65  
~~prior knowledge a court trial,~~ and the powers of a court can be 66  
used to collect from you regardless of any claims you may have 67  
against the creditor whether for returned goods, faulty goods, 68  
failure on ~~his~~ the creditor's part to comply with the agreement, 69  
or any other cause. You will be sent a notice by certified mail, 70  
return receipt requested, at your last known address at least 71  
thirty days prior to the entry of a judgment. You will have 72  
thirty days following receipt of the notice to request a court 73  
hearing to determine whether you have defaulted in the payment 74  
of principal and interest." 75

~~(E)~~ (G) (1) A warrant of attorney to confess judgment 76  
contained in any instrument executed on or after January 1, 77

1974, arising out of a consumer loan or consumer transaction, is 78  
invalid and the courts shall have no jurisdiction to render a 79  
judgment based upon such a warrant. An action founded upon an 80  
instrument arising out of a consumer loan or a consumer 81  
transaction ~~as defined in this section~~ is commenced by the 82  
filing of a complaint as in any ordinary civil action. 83

Notice of the filing shall be served on the defendant and 84  
returned in the same manner as in other cases and shall read as 85  
follows: 86

"To: (HERE INSERT THE NAME OF THE DEFENDANT OR DEFENDANTS) 87

"(HERE INSERT THE NAME OF PLAINTIFF OR PLAINTIFFS) ask 88  
judgment in this court against you for (HERE INSERT THE AMOUNT 89  
CLAIMED IN DOLLARS AND CENTS) upon the following claim (HERE 90  
INSERT THE NATURE OF THE CLAIM AND DESCRIPTION OF THE 91  
INSTRUMENT) . 92

"The court may enter judgment upon this claim if no answer 93  
is filed within the time allowed by law. If an answer is filed, 94  
a trial shall be held within sixty days of the date of filing of 95  
the answer. 96

"You have a right to retain an attorney. If you do not 97  
file an answer, judgment may be entered against you by default, 98  
and your earnings may be subjected to garnishment or your 99  
property may be attached to satisfy the judgment. If your 100  
defense is supported by witnesses, account books, receipts, or 101  
other documents, you must produce them at the trial. Subpoenas 102  
for witnesses and subpoenas duces tecum, if requested by a 103  
party, will be issued by the clerk." 104

If an answer is filed, a trial shall be held within sixty 105  
days of the date of filing of the answer, unless for good cause 106

shown the court may continue the same. 107

(2) As used in division (G) of this section: 108

~~(1)~~(a) "Consumer loan" means a loan to a natural person 109  
and the debt incurred is primarily for a personal, family, 110  
educational, or household purpose. The term "consumer loan" 111  
includes the creation of debt by the lender's payment of or 112  
agreement to pay money to the debtor or to a third party for the 113  
account of the debtor; the creation of a debt by a credit to an 114  
account with the lender upon which the debtor is entitled to 115  
draw; and the ~~forebearance~~forbearance of debt arising from a 116  
consumer loan. 117

~~(2)~~(b) "Consumer transaction" means a sale, lease, 118  
assignment, award by chance, or other transfer of an item of 119  
goods, a service, franchise, or an intangible, to an individual 120  
for purposes that are primarily personal, family, educational, 121  
or household. 122

**Section 2.** That existing section 2323.13 of the Revised 123  
Code is hereby repealed. 124