

**As Reported by the House Judiciary Committee**

**131st General Assembly**

**Regular Session**

**2015-2016**

**Sub. 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 after entry of judgment pursuant  
to a confession of judgment, except when the  
confession of judgment is made in connection  
with the settlement of a dispute.

**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) Except when made in connection with the  
settlement of a dispute, a confession of judgment may be made  
under this section only for monetary default 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 18  
established under section 1901.01 of the Revised Code, or signed 19  
the warrant of attorney authorizing confession of judgment in 20  
~~such that~~ territory, judgment on ~~such the~~ warrant of attorney 21  
shall be confessed in the municipal court having jurisdiction in 22  
~~such that~~ territory, provided the court has jurisdiction over 23  
the subject matter; otherwise, judgment may be confessed in any 24  
court in the county where the maker or any of several makers 25  
resides or signed the warrant of attorney. The original or a 26  
copy of the warrant shall be filed with the clerk. 27

~~(B)~~ (C) The attorney who represents the judgment creditor 28  
shall ~~include~~ do the following: 29

(1) Except when the defendant signed the warrant of 30  
attorney in connection with the settlement of a dispute, at 31  
least thirty days before filing a petition for a judgment by 32  
confession, send the defendant at the defendant's last known 33  
address, by mail, return receipt requested, a written notice 34  
stating in substance that the defendant is in monetary default 35  
and that the attorney may take some form of legal action if 36  
payment is not received by the thirtieth day after the notice is 37  
mailed; 38

(2) Include in the petition a statement setting forth to 39  
the best of ~~his~~ the attorney's knowledge the last known address 40  
of the defendant and, if applicable, provide proof of compliance 41  
with division (C)(1) of this section. 42

~~(C)~~ (D) Immediately upon entering any ~~such~~ judgment under 43  
this section, the court shall notify the defendant of the entry 44  
of the judgment and of the defendant's right to a hearing under 45  
division (E) of this section by personal service or by 46  
registered or certified letter mailed to ~~him~~ the defendant at 47

the address set forth in the petition. 48

~~(D)~~ (E) (1) Within thirty days after receipt of the notice 49  
described in division (D) of this section, or within thirty days 50  
after the entry of judgment if the notice is mailed and returned 51  
as undeliverable, the defendant may request a hearing to 52  
determine whether the defendant has defaulted in the payments 53  
due under the terms of the instrument of indebtedness. The 54  
request shall be made by motion to the court in writing. The 55  
defendant simultaneously shall send a copy of the request to the 56  
judgment creditor's attorney by certified mail, return receipt 57  
requested. The hearing shall be held not later than seven days 58  
after the request for a hearing is received by the court, except 59  
that the court may continue the hearing for good cause shown. 60  
The parties may call witnesses and offer evidence at the hearing 61  
in accordance with the Rules of Evidence. If the court 62  
determines after a hearing that the creditor has not 63  
demonstrated the defendant's monetary default, it shall vacate 64  
the judgment and award to the defendant court costs, reasonable 65  
attorney fees incurred in connection with the hearing, and any 66  
actual, consequential, and incidental damages resulting from the 67  
judgment. 68

(2) Nothing in this section shall limit the right of a 69  
party to seek relief from a judgment or order under Civil Rule 70  
60. 71

(F) A warrant of attorney to confess judgment contained in 72  
any promissory note, bond, security agreement, lease, contract, 73  
or other evidence of indebtedness executed on or after January 74  
1, 1974, is invalid and the courts are without authority to 75  
render a judgment based upon such a warrant unless there appears 76  
on the instrument evidencing the indebtedness, directly above or 77

below the space or spaces provided for the signatures of the 78  
makers, or other person authorizing the confession, in such type 79  
size or distinctive marking that it appears more clearly and 80  
conspicuously than anything else on the document, one of the 81  
following: 82

(1) If the warrant of attorney is signed in connection 83  
with the settlement of a dispute: 84

"Warning--By signing this paper, you give up your right to 85  
notice and a court trial. If you do not pay on time a court 86  
judgment may be taken against you without your prior knowledge 87  
or a court trial, and the powers of a court can be used to 88  
collect from you regardless of any claims you may have against 89  
the creditor whether for returned goods, faulty goods, failure 90  
on the creditor's part to comply with the agreement, or any 91  
other cause." 92

(2) If the warrant of attorney is not signed in connection 93  
with the settlement of a dispute: 94

"Warning--By signing this paper, you ~~give~~ may be giving up 95  
your right to ~~notice and a~~ court trial. If you do not pay on 96  
time a court judgment may be taken against you without your 97  
prior knowledge or a court trial, and the powers of a court can 98  
be used to collect from you regardless of any claims you may 99  
have against the creditor whether for returned goods, faulty 100  
goods, failure on ~~his~~ the creditor's part to comply with the 101  
agreement, or any other cause. The creditor will send you a 102  
notice by mail, return receipt requested, at your last known 103  
address prior to the entry of a judgment stating that you are in 104  
monetary default. If a judgment is entered, the court will send 105  
you a notice of judgment at your last known address informing 106  
you of your right to request a court hearing to determine 107

whether you have defaulted in the payments due under the terms 108  
of this agreement." 109

~~(E)~~ (G) (1) A warrant of attorney to confess judgment 110  
contained in any instrument executed on or after January 1, 111  
1974, arising out of a consumer loan or consumer transaction, is 112  
invalid and the courts shall have no jurisdiction to render a 113  
judgment based upon such a warrant. An action founded upon an 114  
instrument arising out of a consumer loan or a consumer 115  
transaction ~~as defined in this section~~ is commenced by the 116  
filing of a complaint as in any ordinary civil action. 117

Notice of the filing shall be served on the defendant and 118  
returned in the same manner as in other cases and shall read as 119  
follows: 120

"To: (HERE INSERT THE NAME OF THE DEFENDANT OR DEFENDANTS) 121

"(HERE INSERT THE NAME OF PLAINTIFF OR PLAINTIFFS) ask 122  
judgment in this court against you for (HERE INSERT THE AMOUNT 123  
CLAIMED IN DOLLARS AND CENTS) upon the following claim (HERE 124  
INSERT THE NATURE OF THE CLAIM AND DESCRIPTION OF THE 125  
INSTRUMENT). 126

"The court may enter judgment upon this claim if no answer 127  
is filed within the time allowed by law. If an answer is filed, 128  
a trial shall be held within sixty days of the date of filing of 129  
the answer. 130

"You have a right to retain an attorney. If you do not 131  
file an answer, judgment may be entered against you by default, 132  
and your earnings may be subjected to garnishment or your 133  
property may be attached to satisfy the judgment. If your 134  
defense is supported by witnesses, account books, receipts, or 135  
other documents, you must produce them at the trial. Subpoenas 136

for witnesses and subpoenas duces tecum, if requested by a 137  
party, will be issued by the clerk." 138

If an answer is filed, a trial shall be held within sixty 139  
days of the date of filing of the answer, unless for good cause 140  
shown the court may continue the same. 141

(2) As used in division (G) of this section: 142

~~(1)~~(a) "Consumer loan" means a loan to a natural person 143  
and the debt incurred is primarily for a personal, family, 144  
educational, or household purpose. The term "consumer loan" 145  
includes the creation of debt by the lender's payment of or 146  
agreement to pay money to the debtor or to a third party for the 147  
account of the debtor; the creation of a debt by a credit to an 148  
account with the lender upon which the debtor is entitled to 149  
draw; and the ~~forebearance~~ forbearance of debt arising from a 150  
consumer loan. 151

~~(2)~~(b) "Consumer transaction" means a sale, lease, 152  
assignment, award by chance, or other transfer of an item of 153  
goods, a service, franchise, or an intangible, to an individual 154  
for purposes that are primarily personal, family, educational, 155  
or household. 156

(H) As used in this section, "monetary default" means 157  
failure to make payments due under the terms of an instrument of 158  
indebtedness as originally agreed to, amended, or modified by 159  
the parties. 160

**Section 2.** That existing section 2323.13 of the Revised 161  
Code is hereby repealed. 162