

As Introduced

**133rd General Assembly
Regular Session
2019-2020**

S. B. No. 322

**Senator Wilson
Cosponsor: Senator McColley**

A BILL

To amend section 1349.55 and to enact sections 1
1349.551, 1349.552, 1349.553, 1349.554, and 2
1349.555 of the Revised Code to amend the law 3
regarding the non-recourse civil litigation 4
advance business. 5

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

Section 1. That section 1349.55 be amended and sections 6
1349.551, 1349.552, 1349.553, 1349.554, and 1349.555 of the 7
Revised Code be enacted to read as follows: 8

Sec. 1349.55. (A) As used in ~~this section~~sections 1349.55 9
to 1349.555 of the Revised Code: 10

(1) "Non-recourse civil litigation advance" means a 11
transaction in which a company makes a cash payment to a 12
consumer who has a pending civil claim or action in exchange for 13
the right to receive an amount out of the proceeds of any 14
realized settlement, judgment, award, or verdict the consumer 15
may receive in the civil lawsuit. 16

(2) "Company" means a person or entity that enters into a 17
non-recourse civil litigation advance transaction with a 18

consumer.	19
(3) "Consumer" means a person or entity residing or domiciled in Ohio and represented by an attorney with a pending civil claim or action.	20 21 22
(B) All contracts for a non-recourse civil litigation advance shall comply with the following requirements:	23 24
(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:	25 26 27
(a) The total dollar amount to be advanced to the consumer;	28 29
(b) An itemization of one-time fees;	30
(c) The total dollar amount to be repaid by the consumer, in six-month intervals for thirty-six months, and including all fees;	31 32 33
(d) The annual percentage rate of return, calculated as of the last day of each six-month interval, including frequency of compounding.	34 35 36
(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	37 38 39 40 41 42 43 44 45 46

full amount of disbursed funds by delivering the company's 47
uncashed check to the company's offices in person, within five 48
business days of the disbursement of funds, or mail a notice of 49
cancellation and include in that mailing a return of the full 50
amount of disbursed funds in the form of the company's uncashed 51
check, or a registered or certified check or money order, by 52
insured, registered or certified United States mail, postmarked 53
within five business days of receiving funds from the company, 54
at the address specified in the contract for the cancellation. 55

(3) The contract shall contain the following statement in 56
at least twelve-point boldface type: "THE COMPANY AGREES THAT IT 57
SHALL HAVE NO RIGHT TO AND WILL NOT MAKE ANY DECISIONS WITH 58
RESPECT TO THE CONDUCT OF THE UNDERLYING CIVIL ACTION OR CLAIM 59
OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO 60
MAKE THOSE DECISIONS REMAINS SOLELY WITH YOU AND YOUR ATTORNEY 61
IN THE CIVIL ACTION OR CLAIM." 62

(4) The contract shall contain the initials of the 63
consumer on each page. 64

(5) The contract shall contain the following statement in 65
at least twelve-point boldface type located immediately above 66
the place on the contract where the consumer's signature is 67
required: "DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT 68
COMPLETELY OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED 69
TO A COMPLETELY FILLED IN COPY OF THIS CONTRACT. BEFORE YOU SIGN 70
THIS CONTRACT YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY. 71
DEPENDING ON THE CIRCUMSTANCES, YOU MAY WANT TO CONSULT A TAX, 72
PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL PROFESSIONAL. 73
YOU ACKNOWLEDGE THAT YOUR ATTORNEY IN THE CIVIL ACTION OR CLAIM 74
HAS PROVIDED NO TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR 75
FINANCIAL ADVICE REGARDING THIS TRANSACTION." 76

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

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

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

(c) All proceeds of the civil litigation will be disbursed via the trust account of the attorney representing the consumer in the civil action or claim or a settlement fund established to receive the proceeds of the civil litigation from the defendant on behalf of the consumer.

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

(7) For English-, French-, and Spanish-speaking consumers, the contract shall be written in the same language in which the oral negotiations are conducted between the company and the consumer. For consumers whose primary language is not English, French, or Spanish, the principal terms of the contract shall be translated in writing into the consumer's native language, the consumer shall sign the translated document containing the principal terms and initial each page, and the translator shall sign a notarized affirmation confirming that the principal terms have been presented to the consumer in the consumer's native

language and acknowledged by the consumer, in writing. Principal 106
terms shall include all items that must be disclosed by this 107
section. 108

(C) If a dispute arises between the consumer and the 109
company concerning the contract for a non-recourse civil 110
litigation advance, the responsibilities of the attorney 111
representing the consumer in the civil action or claim shall be 112
no greater than the attorney's responsibilities under the Ohio 113
Rules of Professional Conduct. 114

Sec. 1349.551. (A) No company shall engage in the business 115
of non-recourse civil litigation advance in this state without 116
first having filed a registration statement with the 117
superintendent of financial institutions. 118

(B)(1) The registration statement shall be in the form 119
prescribed by the superintendent, and shall at a minimum contain 120
the name of the company, the names of every person with any 121
ownership interest in the company, the company's principal place 122
of business, and, if applicable, a certification that the 123
company is licensed or registered under section 1703.03 or 124
1705.54 of the Revised Code. The statement shall be accompanied 125
by a registration fee, established by the superintendent, of not 126
more than one hundred fifty dollars. 127

(2) A company shall notify the superintendent within 128
thirty days of any change in the information included on the 129
company's registration statement. 130

(C) Each company shall obtain and maintain in effect at 131
all times a corporate surety bond issued by a bonding company or 132
insurance company authorized to do business in this state. The 133
bond shall be in favor of the superintendent and in the penal 134

sum of at least fifty thousand dollars. The bond shall continue 135
in effect for as long as the company is registered with the 136
superintendent. 137

Sec. 1349.552. A company shall not do any of the 138
following: 139

(A) Pay or offer to pay a commission, referral fee, or 140
other form of consideration to any attorney, law firm, medical 141
provider, chiropractor, or physical therapist, or to any of 142
their employees or agents, for referring a consumer to a 143
company; 144

(B) Accept any commission, referral fee, rebate, or other 145
form of consideration from an attorney, law firm, medical 146
provider, chiropractor, or physical therapist, or from any of 147
their employees or agents; 148

(C) Advertise false or misleading information regarding 149
its products or services; 150

(D) Refer a consumer or potential consumer to a specific 151
attorney, law firm, medical provider, chiropractor, or physical 152
therapist or to any of their employees or agents; provided that, 153
if a consumer does not have legal representation, the company 154
may refer the consumer to a local or state attorney referral 155
service operated by a bar association or nonprofit organization; 156

(E) Fail to promptly supply copies of all complete non- 157
recourse civil litigation advance contracts to the consumer and 158
the attorney representing the consumer in a dispute; 159

(F) Attempt to obtain a waiver of any remedy, including 160
but not limited to, compensatory, statutory, or punitive 161
damages, that the consumer might otherwise have; 162

<u>(G) Attempt to effect arbitration or otherwise effect a</u>	163
<u>waiver of a consumer's right to trial by jury;</u>	164
<u>(H) Offer, provide, or attempt to offer or provide legal</u>	165
<u>advice to the consumer regarding the litigation financing or the</u>	166
<u>underlying dispute;</u>	167
<u>(I) (1) Assign, which includes securitizing a non-recourse</u>	168
<u>civil litigation advance, in whole or in part, to a third party;</u>	169
<u>(2) Division (I) (1) of this section does not prevent a</u>	170
<u>company that retains responsibility for collecting payment,</u>	171
<u>administration, or otherwise enforcing the non-recourse civil</u>	172
<u>litigation advance contract from making an assignment that is to</u>	173
<u>a wholly owned subsidiary of the company or to an affiliate of</u>	174
<u>the company that is under the legal control of the company.</u>	175
<u>(J) Structure a non-recourse civil litigation advance</u>	176
<u>arising from the same civil proceeding or claim as more than one</u>	177
<u>transaction;</u>	178
<u>(K) Enter into a non-recourse civil litigation advance if</u>	179
<u>an attorney or a law firm retained by a consumer in a civil</u>	180
<u>claim or action on which a non-recourse civil litigation advance</u>	181
<u>is based has any financial interest or ownership in the company.</u>	182
<u>Sec. 1349.553. (A) A company shall not charge any consumer</u>	183
<u>entering into a non-recourse civil litigation advance contract</u>	184
<u>an annual fee in excess of ten per cent of the original amount</u>	185
<u>of money provided to the consumer for the non-recourse civil</u>	186
<u>litigation advance. The annual fee authorized in this division</u>	187
<u>shall not be charged more than once each year with regard to any</u>	188
<u>single legal claim regardless of the number of non-recourse</u>	189
<u>civil litigation advances that the company enters into with the</u>	190
<u>consumer with respect to that legal claim.</u>	191

(B) Non-recourse civil litigation advances shall not 192
exceed a term of three years. 193

(C) A company shall not enter into an agreement with a 194
consumer that has the effect of incorporating the consumer's 195
obligations to the company that are contained in the original 196
non-recourse civil litigation advance into a subsequent non- 197
recourse civil litigation advance. 198

(D) Any interest rate charged for the non-recourse civil 199
litigation advance shall be reasonable and not overly excessive. 200
In determining what constitutes a reasonable interest rate, the 201
rate established under section 5703.47 of the Revised Code shall 202
be considered. In no circumstance shall the interest rate exceed 203
the rate established under section 5703.47 of the Revised Code 204
plus an additional three per cent. 205

Sec. 1349.554. (A) If a non-recourse civil litigation 206
advance is executed before the consumer files a complaint or 207
similar demand in the consumer's underlying claim or action, the 208
consumer shall file with the court or other tribunal and serve 209
on the opposing party or parties a copy of the executed non- 210
recourse civil litigation advance at the same time as the 211
original complaint. The consumer shall file with the court or 212
other tribunal and serve on the opposing party or parties a copy 213
of any amendments or modifications made to the previously 214
executed non-recourse civil litigation advance. 215

(B) If a non-recourse civil litigation advance is executed 216
after the consumer files a complaint or similar demand in the 217
consumer's underlying civil claim or action, the consumer shall 218
file with the court or other tribunal and serve on the opposing 219
party or parties a copy of the executed non-recourse civil 220
litigation advance within fourteen days of execution of the non- 221

recourse civil litigation advance contract. The consumer shall 222
file with the court or other tribunal and serve on the opposing 223
party or parties a copy of any amendments or modifications made 224
to the previously executed non-recourse civil litigation 225
advance. 226

Sec. 1349.555. (A) A violation of or failure to comply 227
with sections 1349.55 to 1349.554 of the Revised Code 228
constitutes an unfair or deceptive act or practice in violation 229
of section 1345.02 of the Revised Code. A consumer injured by a 230
violation of or failure to comply with sections 1349.55 to 231
1349.554 of the Revised Code shall have a cause of action and be 232
entitled to the same relief available to a consumer under 233
section 1345.09 of the Revised Code, and all powers and remedies 234
available to the attorney general to enforce sections 1345.01 to 235
1345.13 of the Revised Code are available to the attorney 236
general to enforce sections 1349.55 to 1345.554 of the Revised 237
Code. 238

(B) In addition to remedies set forth in division (A) of 239
this section, any violation of or failure to comply with 240
sections 1349.55 to 1349.554 of the Revised Code renders the 241
non-recourse civil litigation advance contract legally 242
unenforceable by the company, the consumer, or any successor in 243
interest to the non-recourse civil litigation advance contract. 244

Section 2. That existing section 1349.55 of the Revised 245
Code is hereby repealed. 246