



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-0942/1
ARG:wlj&cdc

2023 ASSEMBLY BILL 464

September 28, 2023 - Introduced by Representatives TUSLER, O'CONNOR, BORN, ALLEN, STEFFEN, KITCHENS and CALLAHAN, cosponsored by Senators WIMBERGER and BALLWEG. Referred to Committee on Consumer Protection.

- 1 **AN ACT to amend** 138.04; and **to create** 100.56 of the statutes; **relating to:**
2 nonrecourse civil litigation advances and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill creates provisions governing nonrecourse civil litigation advance transactions. Under the bill, a “consumer” is an individual who is or may become a plaintiff or claimant in a civil action or other proceeding (dispute), and a “company” is a person that enters into a nonrecourse civil litigation advance transaction with a consumer. A “nonrecourse civil litigation advance” (advance) is a transaction in which a company makes a cash payment to or on behalf of a consumer who has a pending dispute in exchange for the right to receive an amount out of the proceeds of any realized settlement, judgment, or award the consumer may receive in the dispute. In a nonrecourse civil litigation advance transaction, all of the following apply: 1) there must be a written contract between the company and the consumer governing the transaction; 2) the company may not contract for, or otherwise require, repayment in an amount that would result in a finance charge greater than the prime interest rate plus 10 percent; 3) the consumer may prepay the advance at any time and, upon a prepayment, is entitled to a pro rata reduction in the finance charge imposed; 4) the contract may not provide for repayment of the advance later than 36 months after the contract is entered into; 5) the company may not pay commissions or referral fees to attorneys or health care providers; and 6) the contract must contain specified information, including the annual percentage rate of the finance charge imposed and the consumer’s right to receive a reduction in the finance charge imposed if prepayment is made, as well as provisions that disclose all one-time fees

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charged to the consumer, disclose the amount to be received by the consumer and the amount the consumer assigns to the company, state that the consumer has a right to cancel the contract within five days, state that the company has no right to make decisions or otherwise participate in the dispute, and state that, except for the consumer's prepayments, the company may be paid only from the consumer's proceeds of the dispute and is not entitled to be repaid if there are no such proceeds. A company that violates any of these requirements or restrictions is subject to a civil forfeiture of not less than \$25 nor more than \$5,000, unless the company establishes that the violation was the result of an unintentional good faith error and the company had in place policies or procedures designed to achieve compliance. The Department of Trade, Agriculture and Consumer Protection has enforcement authority over violations.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.56 of the statutes is created to read:

2 **100.56 Nonrecourse civil litigation advances.** (1) In this section:

3 (a) "Company" means a person that enters into a nonrecourse civil litigation
4 advance transaction with a consumer.

5 (b) "Consumer" means an individual who is or may become a plaintiff or
6 claimant or demandant in any dispute.

7 (c) "Dispute" means any of the following:

8 1. Any civil claim or action.

9 2. Any alternative dispute resolution proceeding.

10 3. Any administrative proceeding before any agency or instrumentality of the
11 state.

12 (d) "Finance charge" means the sum of all charges, including interest, fees, and
13 assigned proceeds from a dispute, payable directly or indirectly by the consumer to
14 the company as an incident to or as a condition of the company's cash payment
15 described in par. (e).

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1 (e) “Nonrecourse civil litigation advance” means a transaction in which a
2 company makes a cash payment to or on behalf of a consumer who has a pending
3 dispute in exchange for the right to receive an amount out of the proceeds of any
4 realized settlement, judgment, award, or verdict the consumer may receive in the
5 dispute.

6 (2) (a) A company may not enter into a nonrecourse civil litigation advance
7 transaction unless there is a written contract between the company and the
8 consumer governing the transaction.

9 (b) A company may not contract for, or otherwise require, repayment of a
10 nonrecourse civil litigation advance in an amount that would result in the finance
11 charge imposed by the company exceeding the weekly prime interest rate for the
12 week prior to the date on which the contract was entered into, as reported by the
13 federal reserve board in federal reserve statistical release H.15, plus 10 percent.

14 (c) A nonrecourse civil litigation advance may be prepaid by the consumer at
15 any time in whole or in part. Upon a prepayment of the nonrecourse civil litigation
16 advance, the consumer is entitled to a pro rata reduction in any finance charge
17 imposed as part of the nonrecourse civil litigation advance transaction.

18 (3) A contract under sub. (2) (a) may not provide for repayment of the
19 nonrecourse civil litigation advance later than 36 months after the contract is
20 entered into.

21 (4) (a) A contract under sub. (2) (a) shall include all of the following:

22 1. The annual percentage rate of the finance charge imposed under the
23 contract, determined consistently with the provisions of section 107 of the federal
24 Truth in Lending Act, 15 USC 1606, and federal Regulation Z adopted under that act,
25 12 CFR 226.

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1 2. A statement that the nonrecourse civil litigation advance may be prepaid in
2 full or in part and that, if the nonrecourse civil litigation advance is prepaid, the
3 consumer may receive a pro rata reduction in any finance charge imposed as part of
4 the nonrecourse civil litigation advance transaction.

5 3. On the front page of the contract, a disclosure of the total amount of money
6 to be provided to the consumer and the total amount of money to be assigned by the
7 consumer to the company, described in 6-month intervals for a total period not
8 exceeding 36 months, along with an itemization of all one-time fees to be charged to
9 the consumer.

10 4. A provision that the consumer may cancel the contract, without penalty or
11 further obligation, within 5 business days after entering into the contract if, during
12 this period, the consumer returns to the company the cash payment described in sub.
13 (1) (e) with a notice of cancellation.

14 5. A provision that the company has no right to, and will not, make any
15 decisions with respect to the conduct of the dispute or any settlement or resolution
16 of the dispute and that those decisions remain solely with the consumer and the
17 consumer's attorney.

18 6. A provision that the company has no right to participate in the prosecution
19 of the dispute or to obtain documents or evidence connected with the dispute.

20 7. A provision that the company accepts only an assignment of an amount of
21 the potential proceeds from the dispute and does not accept an assignment of the
22 consumer's legal claim. This provision shall also specify that the company has no
23 right to pursue the consumer's legal claim on behalf of or in lieu of the consumer.

24 8. A provision that, except for any amount prepaid by the consumer, the
25 company may be paid only from the consumer's proceeds of the dispute. This

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1 provision shall also specify that the consumer does not owe the company anything
2 if there is no recovery by the consumer in the dispute unless the consumer violates
3 the terms of the contract. This provision shall also specify that, if there are
4 insufficient proceeds to pay the company in full, the company may be paid only to the
5 extent that there are available proceeds from the dispute, unless the consumer
6 violates the terms of the contract.

7 9. A provision that, if the consumer is represented by an attorney, any proceeds
8 from the dispute paid to the company may be paid only from the trust account of the
9 consumer's attorney.

10 (b) Each provision or disclosure required under this subsection shall be in
11 boldface type and of a type size no smaller than 12-point, except that the provision
12 under par. (a) 8. shall be of a type size no smaller than 15-point.

13 (5) (a) In this subsection, "health care provider" has the meaning given in s.
14 146.81 (1), but also includes any individual licensed or certified in another state for
15 the same or equivalent profession.

16 (b) A company may not pay or offer to pay commissions or referral fees to any
17 attorney or employee of a law firm, or to any health care provider or employee of a
18 health care provider, for referring a consumer to the company.

19 (6) (a) Except as provided in par. (b), any company that violates this section is
20 subject to a forfeiture of not less than \$25 nor more than \$5,000 for each violation.

21 (b) It is a defense to a violation of this section if the company establishes that
22 the violation was the result of an unintentional good faith error and, at the time of
23 the violation, the company had in place policies or procedures designed to achieve
24 compliance with this section.

25 **SECTION 2.** 138.04 of the statutes is amended to read:

