



OHIO HOUSE OF REPRESENTATIVES

Majority Communications Department

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Rep. Young Endorses New OJC Benchcard Legislation Marked the Beginning of Fight for Small Businesses

COLUMBUS —State Representative Ron Young (R-Leroy Township) announced today that the Ohio Judicial Conference has posted a new benchcard. The subject matter is one that Rep. Young has been working on for several years, *cognovit notes*.

Right now, many financial institutions in Ohio offering private commercial loans add a clause onto their promissory notes that allow them to immediately call for and collect a debt without informing the debtor or giving the debtor any opportunity to defend themselves in court. Due to the unfair nature of these cognovit notes, confessions of judgment are outlawed in Ohio consumer loans, such as for cars or homes. The same problems that led to banning them in consumer loans exist in commercial contracts. In fact, a number of other states have actually banned or limited the application of cognovit notes such as Indiana, where it is a crime for lenders to use cognovit notes in consumer as well as commercial loans.

When a borrower signs a cognovit note, they are essentially signing away all of their rights. The real effect is that nearly every commercial contractor, doctor, dentist, veterinarian and small mom and pop business in Ohio, potentially signs away their business, their homes, their checking accounts, and their personal property, without notice and without the right to defend themselves even in cases where the lender was at fault.

Representative Young first championed cognovit legislation in June of 2015 after many local business owners from his district laid out their concerns with the predatory practices that some of the local financial institutions had taken during the downturn of the economy in 2008-2010.

The benchcard, which is a guide for courts and was authored by the Ohio Judicial Conference, states "IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE." Many financial institutions throughout the state were simply ignoring the phrase "If you do not pay on time" and were declaring judgement for reasons beyond a clear reading of the law. The benchcard will help prevent that and will increase uniformity of decision-making across Ohio.

The benchcard declares that six questions must be able to be answered in the affirmative in order to validate a cognovit judgement against a debtor. The major change is that courtrooms across the state will now be advised to only approve a judgement against the debtor where nonpayment has been verified. The questions are as follows:

- Original Note produced and Complaint has copy of note attached as exhibit?
- Complaint includes statement regarding last known address of the defendant either in averment or within caption?
- At least one maker resides in jurisdiction or Note executed in jurisdiction where Complaint is filed?
- Note includes “warrant of attorney” with statutory language above or below signature?
“Warning — By signing this paper you give up your right to notice and court trial. If you do not pay on time a court judgment may be taken against you without your prior knowledge and the powers of a court can be used to collect from you regardless of any claims you may have against the creditor whether for returned goods, faulty goods, failure on his part to comply with the agreement, or any other cause.”
- The Note does not arise from a consumer transaction?
- Default consists of nonpayment on note, rather than default of other provision unrelated to payment?

“As a result of this action from the OJC, my initial offering in the form of a bill, that would support a literal reading of state law, is now unnecessary,” according to Rep. Young. He continued by saying, “I am grateful to the Ohio Judicial Conference and the Ohio Supreme Court for their work on this issue.” It is good to know that small business owners across the state will uniformly be protected and there is a state-wide standard of judicial interpretation of cognovit judgements.”