

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 67

Representative Young

A BILL

To amend sections 1337.53, 2323.12, and 2323.13 and 1
to repeal sections 1907.09 and 2323.14 of the 2
Revised Code to prohibit a person from obtaining 3
a confession of judgment from another person 4
except in connection with the settlement of a 5
dispute. 6

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

Section 1. That sections 1337.53, 2323.12, and 2323.13 of 7
the Revised Code be amended to read as follows: 8

Sec. 1337.53. Unless the power of attorney otherwise 9
provides, language in a power of attorney granting general 10
authority with respect to claims and litigation authorizes the 11
agent to do all of the following: 12

(A) Assert and maintain before a court or administrative 13
agency a claim, claim for relief, cause of action, counterclaim, 14
offset, recoupment, or defense, including an action to recover 15
property or other thing of value, recover damages sustained by 16
the principal, eliminate or modify tax liability, or seek an 17
injunction, specific performance, or other relief; 18

(B) Bring an action to determine adverse claims or 19

intervene or otherwise participate in litigation; 20

(C) Seek an attachment, garnishment, order of arrest, or 21
other preliminary, provisional, or intermediate relief and use 22
an available procedure to effect or satisfy a judgment, order, 23
or decree; 24

(D) Make or accept a tender, offer of judgment, or 25
admission of facts, submit a controversy on an agreed statement 26
of facts, consent to examination, and bind the principal in 27
litigation; 28

(E) Submit to alternative dispute resolution, settle, and 29
propose or accept a compromise; 30

(F) (1) Waive the issuance and service of process upon the 31
principal, accept service of process, appear for the principal, 32
designate persons upon which process directed to the principal 33
may be served, execute and file or deliver stipulations on the 34
principal's behalf, verify pleadings, seek appellate review, 35
procure and give surety and indemnity bonds, contract and pay 36
for the preparation and printing of records and briefs, receive, 37
execute, and file or deliver a consent, waiver, release, 38
~~confession of judgment~~, satisfaction of judgment, notice, 39
agreement, or other instrument in connection with the 40
prosecution, settlement, or defense of a claim or litigation; 41

(2) File or deliver a confession of judgment in this state 42
in connection with the settlement of a dispute or in another 43
state where a confession of judgment is otherwise permitted. 44

(G) Act for the principal with respect to bankruptcy or 45
insolvency, whether voluntary or involuntary, concerning the 46
principal or some other person, or with respect to a 47
reorganization, receivership, or application for the appointment 48

of a receiver or trustee that affects an interest of the 49
principal in property or other thing of value; 50

(H) Pay a judgment, award, or order against the principal 51
or a settlement made in connection with a claim or litigation; 52

(I) Receive money or other thing of value paid in 53
settlement of or as proceeds of a claim or litigation. 54

Sec. 2323.12. ~~A~~ Except as authorized by power of attorney 55
under section 1337.53 of the Revised Code or in connection with 56
the settlement of a dispute under section 2323.13 of the Revised 57
Code, no person shall knowingly cause another person who is 58
indebted, or against whom a cause of action exists, ~~may~~ 59
~~personally appear in a court of competent jurisdiction, and,~~ 60
~~with the assent of the creditor, or person having such cause of~~ 61
~~action, to confess judgment; whereupon judgment shall be entered~~ 62
accordingly with regard to the debt or cause of action. 63

~~The debt or cause of action shall be briefly stated in the~~ 64
~~judgment, or in a writing to be filed as pleadings in other~~ 65
~~actions.~~ 66

~~Such judgment shall authorize the same proceedings for its~~ 67
~~enforcement as judgments rendered in actions regularly brought~~ 68
~~and prosecuted. The confession shall operate as a release of~~ 69
~~errors~~ Whoever violates this section is guilty of illegally 70
obtaining a confession of judgment, a misdemeanor of the first 71
degree. 72

Sec. 2323.13. (A) A confession of judgment may be made 73
under this section only in connection with the settlement of a 74
dispute. 75

(B) An attorney who confesses judgment in a case, at the 76
time of making ~~such the~~ confession, ~~must~~ shall produce the 77

warrant of attorney for making it to the court before which ~~he~~ 78
the attorney makes the confession. Notwithstanding any agreement 79
to the contrary, if the maker or any of several makers resides 80
within the territorial jurisdiction of a municipal court 81
established under section 1901.01 of the Revised Code, or signed 82
the warrant of attorney authorizing confession of judgment in 83
~~such that~~ territory, judgment on ~~such the~~ warrant of attorney 84
shall be confessed in the municipal court having jurisdiction in 85
~~such that~~ territory, provided the court has jurisdiction over 86
the subject matter; otherwise, judgment may be confessed in any 87
court in the county where the maker or any of several makers 88
resides or signed the warrant of attorney. The original or a 89
copy of the warrant shall be filed with the clerk. 90

~~(B)~~ (C) The attorney who represents the judgment creditor 91
shall include in the petition a statement setting forth to the 92
best of ~~his~~ the attorney's knowledge the last known address of 93
the defendant. 94

~~(C)~~ (D) Immediately upon entering any ~~such~~ judgment under 95
this section, the court shall notify the defendant of the entry 96
of the judgment by personal service or by registered or 97
certified letter mailed to ~~him~~ the defendant at the address set 98
forth in the petition. 99

~~(D)~~ (E) A warrant of attorney to confess judgment 100
contained in any promissory note, bond, security agreement, 101
lease, contract, or other evidence of indebtedness executed on 102
or after January 1, 1974, the effective date of this amendment is 103
invalid and the courts are without authority to render a 104
judgment based upon ~~such a the~~ warrant unless there appears on 105
the instrument evidencing the indebtedness, directly above or 106
below the space or spaces provided for the signatures of the 107

makers, or other person authorizing the confession, in such type 108
size or distinctive marking that it appears more clearly and 109
conspicuously than anything else on the document: 110

"Warning--By signing this paper you give up your right to 111
notice and court trial. If you do not pay on time a court 112
judgment may be taken against you without your prior knowledge 113
and the powers of a court can be used to collect from you 114
regardless of any claims you may have against the creditor 115
whether for returned goods, faulty goods, failure on ~~his~~the 116
creditor's part to comply with the agreement, or any other 117
cause." 118

~~(E)~~(F) A warrant of attorney to confess judgment 119
contained in any instrument executed on or after January 1, 120
1974, arising out of a consumer loan or consumer transaction, is 121
invalid and the courts shall have no jurisdiction to render a 122
judgment based upon ~~such a~~the warrant. An action founded upon 123
an instrument arising out of a consumer loan or a consumer 124
transaction as defined in this section is commenced by the 125
filing of a complaint as in any ordinary civil action. 126

Notice of the filing shall be served on the defendant and 127
returned in the same manner as in other cases and shall read as 128
follows: 129

"To: (HERE INSERT THE NAME OF THE DEFENDANT OR DEFENDANTS) 130

"(HERE INSERT THE NAME OF PLAINTIFF OR PLAINTIFFS) ask 131
judgment in this court against you for (HERE INSERT THE AMOUNT 132
CLAIMED IN DOLLARS AND CENTS) upon the following claim (HERE 133
INSERT THE NATURE OF THE CLAIM AND DESCRIPTION OF THE 134
INSTRUMENT) . 135

"The court may enter judgment upon this claim if no answer 136

is filed within the time allowed by law. If an answer is filed, 137
a trial shall be held within sixty days of the date of filing of 138
the answer. 139

"You have a right to retain an attorney. If you do not 140
file an answer, judgment may be entered against you by default, 141
and your earnings may be subjected to garnishment or your 142
property may be attached to satisfy the judgment. If your 143
defense is supported by witnesses, account books, receipts, or 144
other documents, you must produce them at the trial. Subpoenas 145
for witnesses and subpoenas duces tecum, if requested by a 146
party, will be issued by the clerk." 147

If an answer is filed, a trial shall be held within sixty 148
days of the date of filing of the answer, unless for good cause 149
shown the court may continue the same. 150

As used in this section: 151

(1) "Consumer loan" means a loan to a natural person and 152
the debt incurred is primarily for a personal, family, 153
educational, or household purpose. The term "consumer loan" 154
includes the creation of debt by the lender's payment of or 155
agreement to pay money to the debtor or to a third party for the 156
account of the debtor; the creation of a debt by a credit to an 157
account with the lender upon which the debtor is entitled to 158
draw; and the forbearance of debt arising from a consumer loan. 159

(2) "Consumer transaction" means a sale, lease, 160
assignment, award by chance, or other transfer of an item of 161
goods, a service, franchise, or an intangible, to an individual 162
for purposes that are primarily personal, family, educational, 163
or household. 164

Section 2. That existing sections 1337.53, 2323.12, and 165

2323.13 and sections 1907.09 and 2323.14 of the Revised Code are	166
hereby repealed.	167