

Regular Session, 2013

SENATE BILL NO. 166

BY SENATORS CLAITOR AND LAFLEUR

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

LOANS. Provides relative to consumer litigation loans. (gov sig)

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AN ACT

To enact R.S. 9:3512(9), 3560(A)(10), and Chapter 2-C of Code Title XII of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:3580.1 through 3580.9, relative to consumer litigation loans; to enact the Louisiana Consumer Lending Information and Protection Act – Litigation Lending; to provide certain definitions, terms, conditions, procedures, requirements, and prohibitions; to provide for legislative findings; to provide for certain maximum finance charges and fees; to provide for form and terms of contract; to provide for consumers rights and remedies; to authorize certain private rights of action; to provide for enforcement and remedies; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:3512(9), 3560(A)(10), and Chapter 2-C of Code Title XII of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:3580.1 through 3580.9, are hereby enacted to read as follows:

§3512. Exclusions

This law does not apply to:

* * *

1 **(9) Consumer lawsuit loans as defined in R.S. 9:3580.1 et seq., unless**
 2 **such loans are made by a Federal Deposit Insurance Corporation insured**
 3 **institution that is subject to this Chapter.**

4 * * *

5 §3560. Licenses not required

6 A. Notwithstanding R.S. 9:3557, the following persons shall be exempt from
 7 the consumer loan licensing requirements under this Part:

8 * * *

9 **(10) A person who makes only those loans subject to the provisions of**
 10 **R.S. 9:3580.1 et seq.**

11 * * *

12 **CHAPTER 2-C. CONSUMER LENDING INFORMATION & PROTECTION**

13 **ACT – LITIGATION LENDING**

14 **§3580.1. Short title**

15 **This Chapter shall be known and may be cited as the "Consumer**
 16 **Lending Information & Protection Act – Litigation Lending".**

17 **§3580.2. Legislative findings**

18 **The legislature finds that there is a need to limit certain consumer**
 19 **litigation loan transactions. While these loans may meet a legitimate credit need**
 20 **for many consumers, limits are necessary to protect consumers from hidden and**
 21 **excessive charges and to enhance transparency to the consumer and affected**
 22 **third parties.**

23 **§3580.3. Scope**

24 **A.(1) Except as provided in Paragraph (2) of this Subsection, the**
 25 **provisions of this Chapter shall apply to all consumer lawsuit loans that are**
 26 **entered into with a consumer in exchange for an interest in proceeds of the**
 27 **consumer's claim or legal action.**

28 **(2) The provisions of this Chapter shall not apply to a Federal Deposit**
 29 **Insurance Corporation insured institution that is subject to the Louisiana**

1 Consumer Credit Law, R.S. 9:3510 et seq.

2 B. Nothing in this Chapter shall be deemed to regulate an attorney client
3 relationship or any other matter regulated by the Louisiana Supreme Court.

4 C. Nothing in this Chapter shall be deemed to affect an attorney lien or
5 privilege arising under Louisiana law.

6 §3580.4. Definitions

7 As used in this Chapter, unless the context requires otherwise:

8 (1) "Consumer" means any individual person who is or may become a
9 plaintiff or claimant in any legal action.

10 (2) "Consumer lawsuit loan" means either of the following:

11 (a) Providing any money to any consumer to use for any purpose other
12 than prosecuting the consumer's legal action, with the repayment of such money
13 conditioned upon and sourced from the consumer's proceeds of the legal action
14 by judgment or settlement or otherwise.

15 (b) Purchasing from any consumer a contingent right to receive a share
16 of the potential proceeds of the consumer's legal action, by judgment or
17 settlement or otherwise.

18 (3) "Consumer lawsuit loan company" means any person or entity that
19 engages in providing consumer lawsuit loans. It shall not include an attorney
20 licensed in this state.

21 (4) "Consumer lawsuit loan contract" means a written agreement
22 between a consumer and a consumer lawsuit loan company providing for a
23 consumer lawsuit loan transaction.

24 (5) "Consumer lawsuit loan transaction" means a transaction in which
25 both of the following apply:

26 (a) A consumer lawsuit loan company provides a consumer lawsuit loan
27 to a consumer.

28 (b) The consumer assigns, conveys or otherwise confers to the consumer
29 lawsuit loan company the right to receive the proceeds, or part thereof, of the

1 settlement, insurance payment, or award of damages obtained in the consumer's
2 legal action.

3 (6) "Legal action" means any civil action, any alternative dispute-
4 resolution proceeding, or an administrative proceeding before any agency or
5 instrumentality of the government of this state.

6 (7) "Proceeds" means the funds from a settlement, insurance payment,
7 or award of damages obtained in the consumer's legal action.

8 §3580.5. Maximum finance charges and fees

9 A. The maximum loan finance charge for any consumer lawsuit loan
10 transaction that may be charged, contracted for, or received by a consumer
11 lawsuit loan company may equal but not exceed:

12 (1) Thirty-six percent per year for that portion of the unpaid principal
13 amount of the loan not exceeding one thousand four hundred dollars.

14 (2) Twenty-seven percent per year for that portion of the unpaid
15 principal amount of the loan exceeding one thousand four hundred dollars and
16 not exceeding four thousand dollars.

17 (3) Twenty-four percent per year for that portion of the unpaid
18 principal amount of the loan exceeding four thousand dollars and not exceeding
19 seven thousand dollars.

20 (4) Twenty-one percent per year for that portion of the unpaid principal
21 amount of the loan exceeding seven thousand dollars.

22 B.(1) A lender may charge an origination fee that does not exceed fifty
23 dollars on a consumer lawsuit loan.

24 (2) The origination fee may be charged only once in connection with a
25 single consumer lawsuit loan to one borrower over any consecutive sixty-day
26 period. When a consumer lawsuit loan is paid in full, an origination fee may be
27 charged on any subsequent new consumer lawsuit loan without regard to the
28 prior loan's consecutive sixty-day period.

29 C. Except for reasonable attorney fees and costs awarded by a court, no

1 other fees or charges may be assessed or collected on a consumer lawsuit loan.

2 §3580.6. Form and terms of contract

3 A. Each consumer lawsuit loan contract must be in writing, dated,
4 signed by the consumer, and shall include:

5 (1) A statement in bold-typed print of not less than fourteen point font,
6 in immediate proximity to the space reserved for the signature of the consumer,
7 as follows: "You may cancel this contract at any time before midnight of the
8 fifteenth day after the date of the transaction. See the attached notice of
9 cancellation form for an explanation of this right."

10 (2) The terms and conditions of payment, including the total of all
11 payments to be made by the consumer, and annualized rate of interest.

12 (3) The address of the lawsuit lender's principal place of business and
13 the name and address of its agent in the state authorized to receive service of
14 process.

15 B. The contract shall have attached two easily detachable copies of a
16 notice of cancellation. The notice shall be in boldfaced type and in the following
17 form:

18 "Notice of Cancellation

19 You may cancel this contract, without any penalty or obligation, within
20 fifteen days after the date the contract is signed.

21 To cancel this contract, send by mail, or deliver in person, a signed dated
22 copy of this cancellation notice, or other written notice to:

23 (Name of consumer lawsuit loan company) at (address) (place of
24 business) not later than midnight (date).

25 I hereby cancel this transaction.

26 (Date)

27 (Consumer's signature)"

28 C. The consumer lawsuit loan company shall give to the consumer a
29 copy of the completed contract and all other documents the lender requires the

1 consumer to sign at the time they are signed.

2 D.(1) No consumer lawsuit loan contract with a consumer of this state
3 shall contain any condition, stipulation, or agreement:

4 (a) Requiring it to be construed according to the laws of any other state
5 or country.

6 (b) Depriving the courts of this state of the jurisdiction of action against
7 the consumer lawsuit loan company.

8 (c) Stipulating to the venue of any particular court of this state.

9 (2) Any such condition, stipulation, or agreement in violation of this
10 Subsection shall be void, but such voiding shall not affect the validity of the
11 other provisions of the contract.

12 E. All consumer lawsuit loan transactions shall comply with federal
13 Regulation Z of the Board of Governors of the Federal Reserve System. Failure
14 to comply with Regulation Z is a violation of this Chapter.

15 F. All consumer lawsuit loan transactions shall accurately reflect the
16 actual terms, conditions, applicable amount of fees, and repayment schedule
17 agreed to by the parties. If a loan is to be repaid on demand, in a lump sum, or
18 at undefined intervals of time, interest on the loan shall be computed by the
19 actuarial or simple interest method when allocating payments made on the loan.

20 §3580.7. Waiver

21 A. A consumer lawsuit loan company shall not cause nor attempt to
22 cause a consumer to waive a right under this Chapter.

23 B. A waiver by a consumer of any part of this Chapter shall be null and
24 void.

25 §3580.8. Prohibited Conduct

26 A. A consumer lawsuit loan company or a salesperson, agent, or
27 representative of a consumer lawsuit loan company shall not enter into a
28 consumer lawsuit loan transaction with a consumer unless the funds extended
29 to the consumer pursuant to the terms of the consumer lawsuit loan transaction

1 are used for that consumer's personal expenses.

2 B. A consumer lawsuit loan company shall not do either of the following:

3 (1) Directly or indirectly instigate or encourage litigation, by engaging
 4 in referring consumers who have entered into a consumer lawsuit loan
 5 transaction with such consumer lawsuit loan company.

6 (2) Directly or indirectly control or participate in the conduct of the
 7 legal action that is related to a consumer lawsuit loan transaction.

8 §3580.9. Enforcement and Remedies

9 A. Violation of any provision of this Chapter shall constitute an unfair
 10 or deceptive act or practice for purposes of the Unfair Trade and Consumer
 11 Protection Law, R.S. 51:1401 et seq.

12 B. The remedies and rights provided under this Chapter are in addition
 13 to and do not preclude any remedy otherwise available under law to a
 14 consumer.

15 C. The provisions of this Chapter shall not be subject to regulation or
 16 enforcement by the office of financial institutions.

17 Section 2. This Act shall become effective upon signature by the governor or, if not
 18 signed by the governor, upon expiration of the time for bills to become law without signature
 19 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 20 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 21 effective on the day following such approval.

The original instrument was prepared by Julie J. Baxter. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michelle Broussard-Johnson.

DIGEST

Claitor (SB 166)

Present law provides for the Louisiana Consumer Credit Law.

Present law provides for exclusions to and licensing requirements under the La. Consumer Credit Law.

Proposed law excludes consumer lawsuit loans as defined in proposed law from the La. Consumer Credit Law and provides that any person who only makes such consumer credit loans is exempted from licensure under the La. Consumer Credit Law, unless such loans are

made by a FDIC insured institution subject to proposed law.

Proposed law provides for the Consumer Lending Information & Protection Act – Litigation Lending (act).

Proposed law applies to all consumer lawsuit loans that are entered into with a consumer in exchange for an interest in proceeds of the consumer's claim or legal action.

Proposed law provides an exemption from proposed law for a FDIC insured institution that is subject to the La. Consumer Credit Law.

Proposed law provides that nothing in the act shall be deemed to regulate an attorney client relationship or any other matter regulated by the Louisiana Supreme Court.

Proposed law further provides that nothing in the act shall be deemed to affect an attorney lien or privilege arising under Louisiana law.

Proposed law provides for certain legislative findings and definitions.

Proposed law provides that the maximum loan finance charge for any consumer lawsuit loan transaction that may be charged, contracted for or received by a consumer lawsuit loan company may equal but not exceed:

- (1) 35% per year for that portion of the unpaid principal amount of the loan not exceeding \$1,400.
- (2) 27% per year for that portion of the unpaid principal amount of the loan exceeding \$1,400 and not exceeding \$4,000.
- (3) 24% per year for that portion of the unpaid principal amount of the loan exceeding \$4,000 and not exceeding \$7,000.
- (4) 21% per year for that portion of the unpaid principal amount of the loan exceeding \$7,000.

Proposed law provides that a lender may charge an origination fee that does not exceed \$50 on a consumer lawsuit loan. Further provides that the origination fee may be charged only once in connection with a single consumer lawsuit loan to one borrower over any consecutive 60-day period. Proposed law provides that, when a consumer lawsuit loan is paid in full, an origination fee may be charged on any subsequent new consumer lawsuit loan without regard to the prior loan's consecutive 60-day period.

Proposed law provides that, except for reasonable attorney fees and costs awarded by a court, no other fees or charges may be assessed or collected on a consumer lawsuit loan.

Proposed law provides that each consumer lawsuit loan contract must be in writing, dated, signed by the consumer, and must include:

- (1) A statement in bold-typed print of not less than 14-point font, in immediate proximity to the space reserved for the signature of the consumer, as follows:

"You may cancel this contract at any time before midnight of the fifteenth day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right."

- (2) The terms and conditions of payment, including the total of all payments to be made by the consumer, and annualized rate of interest.

- (3) The address of the lawsuit lender's principal place of business and the name and address of its agent in the state authorized to receive service of process.

Proposed law provides that a consumer lawsuit loan contract must have attached two easily detachable copies of a notice of cancellation. Further provides that the notice must be in boldfaced type and in the following form:

"Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within fifteen days after the date the contract is signed. To cancel this contract, send by mail, or deliver in person, a signed dated copy of this cancellation notice, or other written notice to: (Name of consumer lawsuit loan company) at (address) (place of business) not later than midnight (date).

I hereby cancel this transaction.

(Date)

(Consumer's Signature)"

Proposed law provides that the consumer lawsuit loan company shall give to the consumer a copy of the completed contract and all other documents the lender requires the consumer to sign at the time they are signed.

Proposed law provides that no consumer lawsuit loan contract with a consumer of this state shall contain any condition, stipulation, or agreement:

- (1) Requiring it to be construed according to the laws of any other state or country.
- (2) Depriving the courts of this state of the jurisdiction of action against the consumer lawsuit loan company.
- (3) Stipulating to the venue of any particular court of this state.

Proposed law provides that any such condition, stipulation, or agreement in violation of proposed law shall be void, but such voiding shall not affect the validity of the other provisions of the contract.

Proposed law provides that all consumer lawsuit loan transactions shall comply with federal Regulation Z of the Board of Governors of the Federal Reserve System. Failure to comply with Regulation Z is a violation of the proposed law.

Proposed law provides that all consumer lawsuit loan transactions shall accurately reflect the actual terms, conditions, applicable amount of fees, and repayment schedule agreed to by the parties. Further provides that, if a loan is to be repaid on demand, in a lump sum, or at undefined intervals of time, interest on the loan shall be computed by the actuarial or simple interest method when allocating payments made on the loan.

Proposed law provides that a consumer lawsuit loan company shall not attempt to cause a consumer to waive a right under proposed law. Further provides that a waiver by a consumer of any part of proposed law is void.

Proposed law provides that a consumer lawsuit loan company or a salesperson, agent, or a representative of a consumer lawsuit loan company shall not enter into a consumer lawsuit loan transaction with a consumer unless the funds extended to the consumer pursuant to the terms of the consumer lawsuit loan transaction are used for that consumer's personal living expenses.

Proposed law provides that a consumer lawsuit loan company shall not directly or indirectly instigate or encourage litigation, by engaging in referring consumers that have entered into a consumer lawsuit loan transaction with that consumer lawsuit loan company, or directly or indirectly control or participate in the conduct of the legal action that is related to a consumer lawsuit loan transaction.

Proposed law further provides that a violation of any provision of proposed law shall constitute an unfair or deceptive act or practice for purposes of the Unfair Trade and Consumer Protection Law.

Proposed law further provides that the remedies and rights provided under proposed law are in addition to and do not preclude any remedy otherwise available under law to a consumer claiming relief under any provision of law.

Proposed law provides that the provisions of proposed law shall not be subject to regulation or enforcement by the office of financial institutions.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 9:3512(9), 3560(A)(10), and 3580.1 – 3580.9)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Technical.
2. Excludes consumer lawsuit loans as defined in proposed law from the La. Consumer Credit Law.
3. Exempts a person who only makes consumer lawsuit loans as defined in proposed law from the licensure requirements of the La. Consumer Credit Law.
4. Provides that proposed law shall not be deemed to regulate an attorney client relationship or any other matter regulated by the La. Supreme Court.
5. Provides that nothing in proposed law shall be deemed to affect an attorney lien or privilege arising under La. law.
6. Excludes attorneys licensed in this state from the definition of consumer lawsuit loan company.
7. Provides that consumer lawsuit loans shall not be subject to the office of financial institutions' regulation.

Senate Floor Amendments to engrossed bill

1. Makes Legislative Bureau technical changes.
2. Provides an exemption from proposed law for a FDIC insured institution subject to the La. Consumer Credit Law.