

Regular Session, 2013

SENATE BILL NO. 166

BY SENATOR CLAITOR

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 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 3580.10, 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 regulation of providers of litigation loans; to provide for enforcement and remedies; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. 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 3580.10, is hereby enacted to read as follows:

CHAPTER 2-C. CONSUMER LENDING INFORMATION & PROTECTION ~~ten~~
ACT – LITIGATION LENDING

§3580.1. Short title

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

3 §3580.2. Legislative findings

4 The legislature finds that there is a need to regulate certain consumer
5 litigation loan transactions. While these loans may meet a legitimate credit need
6 for many consumers, regulation is necessary to protect consumers from hidden
7 and excessive charges and to enhance transparency to the consumer and
8 affected third parties.

9 §3580.3. Scope

10 This Chapter shall apply to all consumer lawsuit loans that are entered
11 into with a consumer in exchange for an interest in proceeds of the consumer's
12 claim or legal action.

13 §3580.4. Definitions

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

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

17 (2) "Consumer lawsuit loan" means:

18 (a) Providing any money to any consumer to use for any purpose other
19 than prosecuting the consumer's legal action, with the repayment of such money
20 conditioned upon and sourced from the consumer's proceeds of the legal action
21 by judgment or settlement or otherwise; or

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

25 (3) "Consumer lawsuit loan company" means any person or entity that
26 engages in providing consumer lawsuit loans.

27 (4) "Consumer lawsuit loan contract" means a written agreement
28 between a consumer and a consumer lawsuit loan company providing for a
29 consumer lawsuit loan transaction.

1 (5) "Consumer lawsuit loan transaction" means a transaction in which:

2 (a) a consumer lawsuit loan company provides a consumer lawsuit loan
3 to a consumer; and

4 (b) the consumer assigns, conveys or otherwise confers to the consumer
5 lawsuit loan company the right to receive the proceeds, or part thereof, of the
6 settlement, insurance payment, or award of damages obtained in the consumer's
7 legal action.

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

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

13 §3580.5. Maximum finance charges and fees

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

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

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

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

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

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

29 (2) The origination fee may be charged only once in connection with a

1 single consumer lawsuit loan to one borrower over any consecutive sixty-day
2 period. When a consumer lawsuit loan is paid in full, an origination fee may be
3 charged on any subsequent new consumer lawsuit loan without regard to the
4 prior loan's consecutive sixty-day period.

5 C. Except for reasonable attorney fees and costs awarded by a court, no
6 other fees or charges may be assessed or collected on a consumer lawsuit loan.

7 §3580.6. Form and terms of contract

8 A. Each consumer lawsuit loan contract must be in writing, dated,
9 signed by the consumer, and must include:

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

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

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

20 B. The contract must have attached two easily detachable copies of a
21 notice of cancellation. The notice must be in boldfaced type and in the following
22 form:

23 "Notice of Cancellation

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

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

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

1 **I hereby cancel this transaction.**

2 **(Date)**

3 **(Consumer's signature)'**

4 **C. The consumer lawsuit loan company shall give to the consumer a**
5 **copy of the completed contract and all other documents the lender requires the**
6 **consumer to sign at the time they are signed.**

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

9 **(a) Requiring it to be construed according to the laws of any other state**
10 **or country.**

11 **(b) Depriving the courts of this state of the jurisdiction of action against**
12 **the consumer lawsuit loan company.**

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

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

17 **E. All consumer lawsuit loan transactions shall comply with federal**
18 **Regulation Z of the Board of Governors of the Federal Reserve System. Failure**
19 **to comply with Regulation Z is a violation of this Chapter.**

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

25 **§3580.7. Waiver**

26 **A. A consumer lawsuit loan company shall not cause nor attempt to**
27 **cause a consumer to waive a right under this Chapter.**

28 **B. A waiver by a consumer of any part of this Chapter is null and void.**

29 **§3580.8. Licensing**

1 A consumer lawsuit loan company shall be subject to the licensing
2 requirements in the Louisiana Consumer Credit Law, R.S. 9:3557 – 3561.1.

3 §3580.9. Prohibited Conduct

4 A. A consumer lawsuit loan company or a salesperson, agent, or
5 representative of a consumer lawsuit loan company shall not enter into a
6 consumer lawsuit loan transaction with a consumer unless the funds extended
7 to the consumer pursuant to the terms of the consumer lawsuit loan transaction
8 are used for that consumer's personal living expenses.

9 B. Regardless of the amount and fees involved in a consumer lawsuit
10 loan transaction, such transaction shall ensure that the consumer who is a party
11 to that transaction is guaranteed a recovery of a minimum of twenty-five
12 percent of the proceeds that are at issue in the consumer lawsuit loan
13 transaction, exclusive of attorney fees.

14 C. Practicing attorneys in this state are prohibited from having a direct
15 or indirect interest in a consumer lawsuit loan company or from receiving
16 referral fees or other forms of direct or indirect compensation from a consumer
17 lawsuit loan company or a salesperson, agent or representative of a consumer
18 lawsuit loan company.

19 D. A consumer lawsuit loan company shall not:

20 (1) Directly or indirectly instigate or encourage litigation, by engaging
21 in referring consumers that have entered into a consumer lawsuit loan
22 transaction with that consumer lawsuit loan company; or

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

25 §3580.10. Enforcement and Remedies

26 A. Violation of any provision of this Chapter shall be subject to the
27 remedies in the Louisiana Consumer Credit Law, R.S. 9:3551 – 3553, and shall
28 constitute an unfair or deceptive act or practice for purposes of the Unfair
29 Trade and Consumer Protection Law, R.S. 51:1405 et seq.

1 **B. The remedies and rights provided under this Chapter are in addition**
 2 **to and do not preclude any remedy otherwise available under law to a consumer**
 3 **claiming relief under any provision of law.**

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

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

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

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 shall be subject to the licensing requirements in the Louisiana Consumer Credit Law, R.S. 9:3557 - 3561.1.

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, regardless of the amount and fees involved in a consumer lawsuit loan transaction, such transaction shall ensure that the consumer who is a party to that transaction is guaranteed a recovery of a minimum of 25% of the proceeds that are at issue in the consumer lawsuit loan transaction, exclusive of attorney fees.

Proposed law provides that practicing attorneys in this state are prohibited from having a direct or indirect interest in a consumer lawsuit loan company or from receiving referral fees or other forms of direct or indirect compensation from a consumer lawsuit loan company or a salesperson, agent or representative of a consumer lawsuit loan company.

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 be subject to the remedies in the Louisiana Consumer Credit Law, R.S. 9:3551 – 3553, and shall constitute an unfair or deceptive act or practice for purposes of the Unfair Trade and Consumer Protection Law, R.S. 51:4105, et seq.

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.

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

(Adds R.S. 9:3580.1 – 3580.10)