

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 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:

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(9) Consumer lawsuit loans as defined in R.S. 9:3580.1 et seq.

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§3560. Licenses not required

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

* * *

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

* * *

CHAPTER 2-C. CONSUMER LENDING INFORMATION & PROTECTION

ACT – LITIGATION LENDING

§3580.1. Short title

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

§3580.2. Legislative findings

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

§3580.3. Scope

A. This Chapter shall apply 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.

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

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

§3580.4. Definitions

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

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

4 **(2) "Consumer lawsuit loan" means:**

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

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

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

15 **(4) "Consumer lawsuit loan contract" means a written agreement**
16 **between a consumer and a consumer lawsuit loan company providing for a**
17 **consumer lawsuit loan transaction.**

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

19 **(a) a consumer lawsuit loan company provides a consumer lawsuit loan**
20 **to a consumer; and**

21 **(b) the consumer assigns, conveys or otherwise confers to the consumer**
22 **lawsuit loan company the right to receive the proceeds, or part thereof, of the**
23 **settlement, insurance payment, or award of damages obtained in the consumer's**
24 **legal action.**

25 **(6) "Legal action" means any civil action, any alternative dispute-**
26 **resolution proceeding, or an administrative proceeding before any agency or**
27 **instrumentality of the government of this state.**

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

1 **§3580.5. Maximum finance charges and fees**

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

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

7 **(2) Twenty-seven percent per year for that portion of the unpaid**
8 **principal amount of the loan exceeding one thousand four hundred dollars and**
9 **not exceeding four thousand dollars.**

10 **(3) Twenty-four percent per year for that portion of the unpaid**
11 **principal amount of the loan exceeding four thousand dollars and not exceeding**
12 **seven thousand dollars.**

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

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

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

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

24 **§3580.6. Form and terms of contract**

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

27 **(1) A statement in bold typed print of not less than fourteen point font,**
28 **in immediate proximity to the space reserved for the signature of the consumer,**
29 **as follows: "You may cancel this contract at any time before midnight of the**

1 fifteenth day after the date of the transaction. See the attached notice of
2 cancellation form for an explanation of this right."

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

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

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

11 "Notice of Cancellation

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

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

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

18 I hereby cancel this transaction.

19 (Date)

20 (Consumer's signature)"

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

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

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

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

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

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

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

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

13 §3580.7. Waiver

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

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

18 §3580.8. Prohibited Conduct

19 A. A consumer lawsuit loan company or a salesperson, agent, or
20 representative of a consumer lawsuit loan company shall not enter into a
21 consumer lawsuit loan transaction with a consumer unless the funds extended
22 to the consumer pursuant to the terms of the consumer lawsuit loan transaction
23 are used for that consumer's personal expenses.

24 B. A consumer lawsuit loan company shall not:

25 (1) Directly or indirectly instigate or encourage litigation, by engaging
26 in referring consumers who have entered into a consumer lawsuit loan
27 transaction with such consumer lawsuit loan company; or

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

1 **§3580.9. Enforcement and Remedies**

2 **A. Violation of any provision of this Chapter shall constitute an unfair**
3 **or deceptive act or practice for purposes of the Unfair Trade and Consumer**
4 **Protection Law, R.S. 51:1405 et seq.**

5 **B. The remedies and rights provided under this Chapter are in addition**
6 **to and do not preclude any remedy otherwise available under law to a**
7 **consumer.**

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

10 Section 2. This Act shall become effective upon signature by the governor or, if not
11 signed by the governor, upon expiration of the time for bills to become law without signature
12 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
13 vetoed by the governor and subsequently approved by the legislature, this Act shall become
14 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 Ducharme.

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.

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

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.