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

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; to provide for an effective date; 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:

* * *

Coding: Words which are struck through are deletions from existing law; words in **boldface type and underscored** are additions.
(9) Consumer lawsuit loans as defined in R.S. 9:3580.1 et seq., unless such loans are made by an institution insured by the Federal Deposit Insurance Corporation that is subject to this Chapter.

§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 makes only those 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.(1) Except as provided in Paragraph (2) of this Subsection, the provisions of 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 legal claim or action.

(2) The provisions of this Chapter shall not apply to an institution insured by the Federal Deposit Insurance Corporation that is subject to the
Louisiana Consumer Credit Law, R.S. 9:3510 et seq.

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.A. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

§3580.5. Maximum finance charges and fees

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

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

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

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

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

(2) The origination fee may be charged only once in connection with a single consumer lawsuit loan to one borrower over any consecutive sixty-day period. 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 sixty-day period.

C. 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.

§3580.6. Form and terms of contract

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

(1) A statement in boldfaced type of not less than fourteen 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.

B. The contract shall have attached two easily detachable copies of a notice of cancellation. The notice shall 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:

(Consumer's signature)"

C. 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.

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

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

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

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

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

E. 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 this Chapter.

F. All consumer lawsuit loan transactions shall accurately reflect the
actual terms, conditions, applicable amount of fees, and repayment schedule
agreed to by the parties. 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.

§3580.7. Waiver

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

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

§3580.8. Prohibited Conduct

A. A consumer lawsuit loan company or a salesperson, agent, or
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 the consumer’s personal expenses.

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

(1) Directly or indirectly instigate or encourage litigation, by engaging

in referring consumers who have entered into a consumer lawsuit loan

transaction with such consumer lawsuit loan company.

(2) Directly or indirectly control or participate in the conduct of the

legal action that is related to a consumer lawsuit loan transaction.

§3580.9. Enforcement and Remedies

A. Violation of any provision of this Chapter shall constitute an unfair

or deceptive act or practice for purposes of the Unfair Trade and Consumer

Protection Law, R.S. 51:1401 et seq.

B. The remedies and rights provided under this Chapter are in addition

to and do not preclude any remedy otherwise available under law to a

consumer.

C. The provisions of this Chapter shall not be subject to regulation or

enforcement by the office of financial institutions.

Section 2. This Act shall become effective upon signature by the governor or, if not

signed by the governor, upon expiration of the time for bills to become law without signature

by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

vetoed by the governor and subsequently approved by the legislature, this Act shall become

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 Michelle Ducharme.

DIGEST

Murray (SB 414)

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 an institution insured by the FDIC 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 an institution insured by the FDIC 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 La. Supreme Court.

Proposed law further provides that nothing in the act shall be deemed to affect an attorney lien or privilege arising under La. 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. 36% 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 include:

1. A statement in boldfaced type 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 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)