

HB 853 -- Missouri Consumer Litigation Loan Act

Sponsor: Cox

This bill establishes the Missouri Consumer Litigation Loan Act to regulate consumer litigation loans. In its main provisions, the bill:

- (1) Defines "consumer lawsuit loan" as the provision of funds directly or indirectly to a consumer by a consumer lawsuit loan company in a consumer lawsuit loan transaction;
- (2) Defines "consumer lawsuit loan company" as a person or entity that enters into a consumer lawsuit loan transaction with a consumer;
- (3) Defines "consumer lawsuit loan contract" as a written agreement between a consumer and a consumer lawsuit loan company providing for a consumer lawsuit loan transaction;
- (4) Defines "consumer lawsuit loan transaction" as a transaction in which a consumer lawsuit loan company provides a consumer lawsuit loan to a consumer and 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, regardless of whether the right to receive the proceeds is non-recourse;
- (5) Limits the maximum loan finance charge, inclusive of fees and costs to the consumer, to an amount not to exceed the rate of interest applicable to transactions subject to Section 408.030, RSMo;
- (6) Specifies that if a person pays a rate of interest greater than permitted by law, that person or his legal representative may recover twice the amount of the interest paid if the action is brought within five years of when the interest should have been paid. The person charging a greater rate of interest will be liable for the costs of the suit, including reasonable attorney fees as determined by the court;
- (7) Allows a lender to charge an origination fee of up to \$50 only once in connection with a single consumer lawsuit loan to one borrower over any consecutive 60-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 60-day period;

(8) Prohibits any other fees or charges, except for reasonable attorney fees and costs awarded by a court, to be assessed or collected on a consumer lawsuit loan;

(9) Requires consumer lawsuit loan contracts to be in writing, dated, and signed by the consumer with a copy given to the consumer that includes specified information regarding cancellation of the contract, the terms and conditions of payment, and the address of the lawsuit lender's principal place of business and the name and address of its agent;

(10) Specifies that agreements in which the consumer consents to the jurisdiction of another state or agreements that fix venue are invalid with respect to consumer lawsuit loan transactions;

(11) Requires all consumer lawsuit loan transactions to comply with federal Regulation Z of the Board of Governors of the Federal Reserve System;

(12) Requires all loan transactions to accurately reflect the actual terms, conditions, applicable 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, interest on the loan must be computed by the actuarial or simple interest method when allocating payments made on the loan;

(13) Prohibits a consumer lawsuit loan company from attempting to cause a consumer to waive any rights under these provisions. Any waiver will be void;

(14) Prohibits a consumer lawsuit loan company or a salesperson, agent, or representative of a company from entering into a consumer lawsuit loan transaction with a consumer unless the funds extended to the consumer under the terms of the transaction are used for that consumer's personal living expenses;

(15) Requires, regardless of the amount and fees involved in a transaction, the company to ensure that the consumer who is a party to that transaction is guaranteed a recovery of at least 25% of the proceeds that are at issue in the consumer lawsuit loan transaction, exclusive of attorney fees;

(16) Prohibits practicing attorneys from having a direct or indirect interest in a consumer lawsuit loan company and 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;

(17) Prohibits a consumer lawsuit loan company from directly or

indirectly instigating or encouraging litigation by engaging or referring consumers who have entered into a consumer lawsuit loan transaction with that consumer lawsuit loan company and from controlling, directly or indirectly, or participating in the conduct of, the legal action that is related to a consumer lawsuit loan transaction;

(18) Specifies that a violation of any provision of the bill will be construed to be an unlawful act under Section 407.030, subject to the remedies contained in Chapter 408 or any remedy otherwise available under the law; and

(19) Requires a party in any civil action or part of a civil action pending in this state to disclose to the court and opposing party the existence and contents of any consumer lawsuit loan transaction under which any or all of a judgment, settlement, or other proceeds of the subject action are to be used to satisfy part or all of an obligation under the consumer lawsuit loan transaction. A party may, through interrogatories, deposition, and a request for documents and tangible things, discover facts related to a consumer lawsuit loan transaction that are related to the actual or potential judgment, settlement, or other proceeds of the subject action.

The bill contains an emergency clause.