SENATE BILL No. 378

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.5; IC 34-60.

Synopsis: Consumer lawsuit lending. Provides that a nonrecourse loan secured only by the proceeds of a lawsuit is subject to the same regulation as a traditional loan. Requires a plaintiff who has received a nonrecourse loan secured by the proceeds of a lawsuit to file a copy of the lending agreement with the court and provide a copy to the opposing party.

Effective: July 1, 2013.

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January 8, 2013, read first time and referred to Committee on Civil Law.

C o p y

Introduced

First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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SENATE BILL No. 378

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 24-4.5-3-106 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 106. Definition: "Loan" — "Loan" includes:

(1) the creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;

(2) the creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately;

(3) the creation of debt pursuant to a lender credit card or similar arrangement; ~~and~~

(4) the forbearance of debt arising from a loan; **and**

(5) a consumer lawsuit loan (as defined in IC 34-60-1-2(2)).

SECTION 2. IC 24-4.5-3-107, AS AMENDED BY P.L.145-2008, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 107. Definitions: "Lender"; "Precomputed"; "Principal" – (1) Except as otherwise provided, "lender" means a person regularly engaged in making consumer loans. The term includes

the following:

(a) A consumer lawsuit lender (as defined in IC 34-60-1-2(3)).

(b) An assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(2) A loan, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(3) "Principal" of a loan means the total of:

(a) the net amount paid to, receivable by, or paid or payable for the account of the debtor;

(b) the amount of any discount excluded from the loan finance charge (subsection (2) of IC 24-4.5-3-109); and

(c) to the extent that payment is deferred:

(i) amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a); and

(ii) additional charges permitted by this chapter (IC 24-4.5-3-202).

SECTION 3. IC 24-4.5-7-102, AS AMENDED BY P.L.35-2010, SECTION 82, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 102. (1) Except as otherwise provided, all provisions of this article applying to consumer loans apply to small loans, as defined in this chapter.

(2) This chapter applies to:

(a) a lender or to any person who facilitates, enables, or acts as a conduit for any person who is or may be exempt from licensing under IC 24-4.5-3-502;

(b) a bank, savings association, credit union, or other state or federally regulated financial institution except those that are specifically exempt regarding limitations on interest rates and fees; or

(c) a person, if the department determines that a transaction is:

(i) in substance a disguised loan; or

(ii) the application of subterfuge for the purpose of avoiding this chapter.

(3) A loan that:

(a) does not qualify as a small loan under section 104 of this chapter;

(b) is for a term shorter than that specified in section 401(1) of this chapter; or

(c) is made in violation of section 201, 401, 402, 404, or 410 of

C o p y

this chapter;

is subject to this article. The department may conform the finance charge for a loan described in this subsection to the limitations set forth in IC 24-4.5-3-508.

(4) This chapter does not apply to a consumer lawsuit loan (as defined in IC 34-60-1-2(2)) or a consumer lawsuit lender (as defined in IC 34-60-1-2(3)).

SECTION 4. IC 24-4.5-8 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

Chapter 8. Consumer Lawsuit Lending

Sec. 1. Notwithstanding any other provision of this article, other than IC 24-4.5-7-102, a consumer lawsuit loan (as defined in IC 34-60-1-2(2)), regardless of amount, is a loan subject to all provisions of this article that apply to a loan.

SECTION 5. IC 34-60 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

ARTICLE 60. CONSUMER LAWSUIT LOANS

Chapter 1. Consumer Lawsuit Lending

Sec. 1. This chapter applies to a consumer lawsuit loan entered into after June 30, 2013.

Sec. 2. The following definitions apply throughout this chapter:

(1) "Consumer" means an individual who is or may become a plaintiff in a proceeding.

(2) "Consumer lawsuit lending" or "consumer lawsuit loan" means:

(A) providing money to a consumer for any purpose other than prosecuting the consumer's proceeding, where the repayment of the money is:

(i) required only if the consumer prevails in the proceeding; and

(ii) sourced from the proceeds of the proceeding, by judgment, settlement, or otherwise; or

(B) purchasing from a consumer a contingent right to receive a share of the potential proceeds of the consumer's proceeding, by judgment, settlement, or otherwise.

(3) "Consumer lawsuit lender" means any person that engages in consumer lawsuit lending.

(4) "Proceeding" means:

(A) a civil action;

(B) mediation, arbitration, or any other alternative dispute

C o p y

resolution proceeding; or

(C) an administrative proceeding before an agency or instrumentality of the state.

Sec. 3. (a) If a consumer lawsuit lending agreement is executed before the consumer files a complaint or similar pleading, the consumer shall:

(1) file a copy of the agreement with the tribunal when the complaint or similar pleading is filed; and

(2) serve a copy of the agreement on the opposing party.

(b) If a consumer lawsuit lending agreement is executed after the consumer files a complaint or similar pleading, the consumer shall:

(1) file a copy of the agreement with the tribunal not later than ten (10) days after the agreement is executed; and

(2) serve a copy of the agreement on the opposing party.

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