

ARKANSAS SENATE

88th General Assembly - Regular Session, 2011

Amendment Form

Subtitle of Senate Bill No. 216

THE LAWSUIT LENDING ACT OF 2011.

Amendment No. 1 to Senate Bill No. 216

Amend Senate Bill No. 216 as originally introduced:

Page 1, delete lines 8 and 9 and substitute the following:

"AN ACT TO ESTABLISH THE CONSUMER LEGAL FUNDING ACT; AND FOR OTHER PURPOSES."

AND

Page 1, delete line 13 and substitute the following:

"TO ESTABLISH THE CONSUMER LEGAL FUNDING ACT."

AND

Page 1, delete everything after the enactment clause and substitute the following:

"SECTION 1. Arkansas Code Title 4, Chapter 70 is amended to add an additional subchapter to read as follows:

Subchapter 4 – Prohibited Business Practices

4-70-401. Title.

This subchapter shall be known and may be cited as the "Consumer Legal Funding Act".

4-70-402. Definitions.

As used in this subchapter:

(1) "Company" means a person or entity that enters into a consumer legal funding transaction with a consumer;

(2) "Consumer" means an individual who:

(A) Is a resident of this state;

(B) Has a pending civil claim or action; and

(C) Is represented by an attorney; and

(3) "Consumer legal funding" means a transaction in which a company makes a cash payment to a consumer who has a pending civil claim or action in exchange for the right to receive an amount out of the potential proceeds of a realized settlement or judgment the consumer may receive in the civil claim or action. If no proceeds in the civil claim or action are received, the consumer shall not pay the company.



4-70-403. Application.

This subchapter shall not apply to:

- (1) An advance made by a consumer's attorney to pay for expenses related to preparation for trial;
- (2) Consumer legal funding if an organization is the plaintiff;
- (3) Language or arrangements that are specifically needed by federal or state law, federal rule or regulation, rules of any state agency, or guidance or interpretation issued by an official state or federal agency; or
- (4) Agreements needed by a governmental instrumentality as a condition of whether or not the agreement can be assigned.

4-70-404. Requirements for consumer legal funding contracts.

(a) The contracts for consumer legal funding are to be:

- (1) In writing;
- (2) Completely filled in, with no blanks; and
- (3) Located on the front page, appropriately titled, and in at least 12-point bold type, contain these disclosures:
 - (A) The total dollar amount to be advanced to the consumer;
 - (B) An itemization of one-time fees and the due date for each fee;
 - (C) The total dollar amount to be repaid by the consumer, in six-month intervals for thirty-six (36) months, including without limitation the fees assessed to the consumer;
 - (D) The total dollar amount in broker fees that are involved in the transaction; and
 - (E) The annual percentage rate of return, computed as of the last day of each twelve-month interval, including without limitation the frequency of compounding of interest.

(b)(1) The contract shall provide that the consumer may cancel the contract within five (5) business days after the disbursement of funds to the consumer without penalty or obligation.

(2) The contract shall contain the following written notice: "ARKANSAS CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE (5) BUSINESS DAYS FROM THE DATE FUNDS WERE DISBURSED TO YOU FROM [insert name of consumer legal funding company]."

(3) The contract shall specify that with the disbursement of funds in order for the contract cancellation to be effective, the consumer shall:

(A) Return the full amount of disbursed funds to the company by delivering the consumer legal funding company's uncashed check to the company's offices in person within five (5) business days after the disbursement of funds to the consumer by the consumer legal funding company; or

(B) Mail a notice of cancellation via certified mail and include in the mailing a return of the full amount of disbursed funds in the form of the company's check or a certified check or money order, insured, and postmarked within five (5) business days after the disbursement of funds to

the consumer by the consumer legal funding company, at the address designated for the contract cancellation in the contract.

(4) The contract shall state in at least 12-point bold type: "THE CONSUMER LEGAL FUNDING COMPANY AGREES THAT IT HAS NO RIGHT TO AND WILL NOT MAKE ANY DECISIONS WITH RESPECT TO THE CONDUCT OF ANY UNDERLYING CIVIL ACTION OR CLAIM OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE THOSE DECISIONS REMAINS SOLELY WITH THE CONSUMER AND THE CONSUMER'S ATTORNEY."

(5) The contract shall state in at least 12-point bold type immediately above the consumer's signature: "DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS CONTRACT. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY."

(6) All contracts shall state in at least 15-point bold type in a box the following language: "IF THERE IS NO RECOVERY OF MONEY FROM YOUR LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO PAY THE CONSUMER LEGAL FUNDING COMPANY BACK IN FULL, YOU WILL NOT OWE THE CONSUMER LEGAL FUNDING COMPANY ANYTHING IN EXCESS OF YOUR RECOVERY UNLESS YOU HAVE VIOLATED THIS CONTRACT."

(7) The consumer's attorney shall provide a written acknowledgement that states:

(A) The attorney has reviewed the contract and the costs and fees have been disclosed, including the amount to be paid by the consumer;

(B) The attorney is being paid under a written fee agreement;

(C) The proceeds of the civil claim or action are to be disbursed through the attorney's trust account; and

(D) The attorney is following written instructions of the consumer with regard to the consumer legal funding.

(8) The consumer shall initial each page of the contract.

(9) For consumers whose primary language is not English, the contract shall be written or translated in the language in which the oral negotiations are conducted between the company and the consumer.

(10) To the extent the contract provides for attorney's fees and costs in addition to the amount due and owing under the contract, the contract shall provide that if a breach of the contract by either party occurs:

(A) Attorney's fees and costs may be recoverable by the prevailing party; and

(B) Contractual limitations on the attorney's fees and costs shall apply equally to both parties.

(c) The contract shall not require mandatory arbitration to resolve disputes under the contract.

4-70-405. Fee requirements.

(a) A consumer legal funding company shall not assess additional fees for a period exceeding thirty-six (36) months from the date of the contract with the consumer.

(b) Fees assessed by a consumer legal funding company may compound semiannually but shall not compound based on a lesser time period.

(c) In calculating the annual percentage fee or rate of return, a consumer legal funding company shall:

(1) Include the charges payable by the consumer; and

(2) Compute the rate based only on amounts received and kept by a consumer."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator J. Key
ANS/ANS - 03/09/11 03:31
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Secretary