



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-2074/2
ARG:kjf&cjs

2021 ASSEMBLY BILL 858

January 18, 2022 - Introduced by Representatives TUSLER, MCGUIRE, ALLEN, BEHNKE, BORN, CABRERA, KITCHENS, KNODL, PENTERMAN, POPE, SKOWRONSKI, STEFFEN, STUBBS, SUBECK, THIESFELDT, VRUWINK and JAMES, cosponsored by Senators WIMBERGER, ROYS, AGARD, RINGHAND and WANGGAARD. Referred to Committee on Consumer Protection.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to amend** 138.04; and **to create** 100.56 of the statutes; **relating to:**
2 consumer lawsuit lending and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill creates provisions governing consumer lawsuit lending transactions. Under the bill, a “consumer” is an individual who is or may become a plaintiff or claimant in a civil action or other proceeding (dispute). “Consumer lawsuit lending” means 1) providing money to a consumer, for the consumer to use for any purpose other than prosecuting the consumer’s dispute, with repayment of the money conditioned on and derived from the consumer’s proceeds of the dispute; or 2) purchasing from a consumer a contingent right to receive a share of the potential proceeds of the consumer’s dispute. In a consumer lawsuit lending transaction, all of the following apply: 1) the lender may charge interest at a rate of no more than 18 percent per year; 2) the consumer may prepay the transaction at any time and, upon prepayment in full, is entitled to a refund of unearned interest charged; 3) the transaction term may not exceed 36 months; 4) the lender may not charge fees of more than \$360 per year; 5) the lender may not pay commissions or referral fees to attorneys or health care providers; and 6) there must be a written agreement between the lender and the consumer that contains specified information, including the interest rate and the consumer’s right to receive a refund of interest charged if prepayment is made in full, as well as provisions that disclose all one-time fees charged to the consumer, disclose the amount to be received by the consumer and the amount the consumer assigns to the lender, state that the consumer has a right to cancel the agreement within five days, state that the lender has no right to make

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decisions or otherwise participate in the dispute, and state that the lender may be paid only from the consumer's proceeds of the dispute and is not entitled to be repaid if there are no such proceeds. A lender that violates any of these requirements or restrictions is subject to a civil forfeiture of not less than \$25 nor more than \$5,000, unless the lender establishes that the violation was the result of an unintentional good faith error and the lender had in place policies or procedures designed to achieve compliance. The Department of Trade, Agriculture and Consumer Protection has enforcement authority over violations.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.56 of the statutes is created to read:

2 **100.56 Consumer lawsuit lending. (1)** In this section:

3 (a) "Consumer" means an individual who is or may become a plaintiff or
4 claimant or demandant in any dispute.

5 (b) "Consumer lawsuit lender" means any person that engages in consumer
6 lawsuit lending.

7 (c) "Consumer lawsuit lending" means any of the following:

8 1. Providing money to any consumer, for the consumer to use for any purpose
9 other than prosecuting the consumer's dispute, with repayment of the money
10 conditioned on and derived from the consumer's proceeds of the dispute, regardless
11 of whether these proceeds result from a judgment, settlement, or other source.

12 2. Purchasing from any consumer a contingent right to receive a share of the
13 potential proceeds of the consumer's dispute, regardless of whether these proceeds
14 result from a judgment, settlement, or other source.

15 (d) "Dispute" means any of the following:

16 1. Any civil action.

17 2. Any alternative dispute resolution proceeding.

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1 3. Any administrative proceeding before any agency or instrumentality of the
2 state.

3 **(2)** (a) A consumer lawsuit lender may charge or contract for interest in a
4 consumer lawsuit lending transaction at a rate not exceeding 18 percent per year.

5 (b) A consumer lawsuit lending transaction may be prepaid by the consumer
6 at any time in whole or in part. Upon prepayment of the consumer lawsuit lending
7 transaction in full by cash, renewal, or refinancing, the consumer is entitled to a
8 refund of unearned interest charged, which shall be determined as follows:

9 1. On a consumer lawsuit lending transaction that is repayable in substantially
10 equal, successive installments at approximately equal intervals of time and the face
11 amount of which includes predetermined interest charges, the amount of the refund
12 shall be as great a proportion of the total interest charged as the sum of the balances
13 scheduled to be outstanding during the full installment periods commencing with
14 the installment date nearest the date of prepayment bears to the sum of the balances
15 scheduled to be outstanding for all installment periods of the consumer lawsuit
16 lending transaction.

17 2. On any consumer lawsuit lending transaction other than one under subd.
18 1., the amount of the refund shall not be less than the difference between the interest
19 charged and interest, at the rate contracted for, computed upon the unpaid principal
20 balances of the consumer lawsuit lending transaction from time to time outstanding
21 prior to prepayment in full.

22 **(3)** (a) The term of a consumer lawsuit lending transaction may not exceed 36
23 months.

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1 (b) The maximum total annual fee charged by a consumer lawsuit lender in a
2 consumer lawsuit lending transaction, including any underwriting fee, organization
3 fee, or other fee or charge, may not exceed \$360 per year.

4 (4) (a) A consumer lawsuit lender may not enter into a consumer lawsuit
5 lending transaction unless there is a written agreement between the consumer
6 lawsuit lender and the consumer that includes all of the following:

7 1. The rate of interest agreed upon in terms either of simple interest computed
8 on the declining principal balance or of the actual interest cost in money.

9 2. A statement that the consumer lawsuit lending transaction may be prepaid
10 in full or in part and that, if the consumer lawsuit lending transaction is prepaid in
11 full, the consumer may receive a refund of interest charged.

12 3. On the front page of the agreement, a disclosure of the amount of money to
13 be provided to the consumer and the total amount of money to be assigned by the
14 consumer to the consumer lawsuit lender, described in 6-month intervals for a total
15 period of 36 months, along with an itemization of all one-time fees to be charged to
16 the consumer.

17 4. A provision that the consumer may cancel the agreement, without penalty
18 or further obligation, within 5 business days after entering into the consumer
19 lawsuit lending transaction if, during this period, the consumer returns to the
20 consumer lawsuit lender either the lender's unnegotiated check or all money
21 provided to the consumer as well as notice of cancellation.

22 5. A provision that the consumer lawsuit lender has no right to, and will not,
23 make any decisions with respect to the conduct of the dispute or any settlement or
24 resolution of the dispute and that those decisions remain solely with the consumer
25 and the consumer's attorney.

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1 6. A provision that the consumer lawsuit lender has no right to participate in
2 the prosecution of the dispute or to obtain documents or evidence connected with the
3 dispute.

4 7. A provision that the consumer lawsuit lender accepts only an assignment of
5 an amount of the potential proceeds from the dispute and does not accept an
6 assignment of the consumer's legal claim. This provision shall also specify that the
7 consumer lawsuit lender has no right to pursue the consumer's legal claim on behalf
8 of or in lieu of the consumer.

9 8. A provision that the consumer lawsuit lender may be paid only from the
10 consumer's proceeds of the dispute. This provision shall also specify that the
11 consumer does not owe the consumer lawsuit lender anything if there is no recovery
12 by the consumer in the dispute unless the consumer violates the terms of the
13 agreement. This provision shall also specify that, if there are insufficient proceeds
14 to pay the consumer lawsuit lender in full, the consumer lawsuit lender may be paid
15 only to the extent that there are available proceeds from the dispute, unless the
16 consumer violates the terms of the agreement.

17 9. A provision that, if the consumer is represented by an attorney, any proceeds
18 from the dispute paid to the consumer lawsuit lender may be paid only from the trust
19 account of the consumer's attorney.

20 (b) Each provision or disclosure required under this subsection shall be in
21 boldface type and of a type size no smaller than 12-point, except that the provision
22 under par. (a) 8. shall be of a type size no smaller than 15-point.

23 **(5)** (a) In this subsection, "health care provider" has the meaning given in s.
24 146.81 (1), but also includes any individual licensed or certified in another state for
25 the same or equivalent profession.

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1 (b) A consumer lawsuit lender may not pay or offer to pay commissions or
2 referral fees to any attorney or employee of a law firm, or to any health care provider
3 or employee of a health care provider, for referring a consumer to the consumer
4 lawsuit lender.

5 (6) (a) Except as provided in par. (b), any consumer lawsuit lender that violates
6 this section is subject to a forfeiture of not less than \$25 nor more than \$5,000 for each
7 violation.

8 (b) It is a defense to a violation of this section if the consumer lawsuit lender
9 establishes that the violation was the result of an unintentional good faith error and,
10 at the time of the violation, the consumer lawsuit lender had in place policies or
11 procedures designed to achieve compliance with this section.

12 **SECTION 2.** 138.04 of the statutes is amended to read:

13 **138.04 Legal rate.** The rate of interest upon the loan or forbearance of any
14 money, goods, or things in action shall be \$5 upon the \$100 for one year and according
15 to that rate for a greater or less sum or for a longer or a shorter time; but parties may
16 contract for the payment and receipt of a rate of interest not exceeding the rate
17 allowed in ss. 100.56 (2) (a), 138.041 to 138.056, 138.09 to 138.14, 218.0101 to
18 218.0163, or 422.201, in which case such rate shall be clearly expressed in writing.

19 **SECTION 3. Initial applicability.**

20 (1) CONSUMER LAWSUIT LENDING. This act first applies to consumer lawsuit
21 lending transactions first entered into on the effective date of this subsection.

22 (END)