

BILL ANALYSIS

H.B. 2987
By: Nixon
Civil Practices
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Recently, companies have formed to take advantage of plaintiffs that find themselves in financial distress. The normal prospect for a contingent loan is an injured plaintiff of low or modest income who cannot work due to injuries suffered in some sort of accident. The plaintiff usually has exhausted their savings and is in need of cash to pay ordinary living expenses.

The company finds and evaluates lawsuits that have a high probability of success, including analyzing the plaintiff, venue, attorney, and defendant's ability to afford a settlement or pay a judgment. The company approaches the plaintiff with the offer of money now with no responsibility to repay if the case is not successful.

The interest rates charged are extremely high, in the 100% range. Because of the bureaucratic nature of the legal system the cases will take much longer than expected by the plaintiff and, in a very short period of time, the amount owed exceeds the plaintiff's share after attorney's fees and expenses. This usually results in the plaintiff not wanting/being able to settle for an amount that does not cover the cost of the advance.

HB 2987 would require these types of cash advances to adhere to the usury laws of the state of Texas. HB 2987 would also state that repayment contingent upon the person's recovery in a lawsuit is against state public policy.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

HB 2987 adds Chapter 151, Civil Practice and Remedies Code, to provide that all funding advanced to a person whose repayment is contingent upon the person's recover in a lawsuit is subject to usury laws and penalties. Provides that a contract to provide such funding that allows a rate of return in excess of the usurious interest prohibition is against the public policy of this state. Provides that this section does not apply to contracts entered into between an attorney and a client for the purpose of compensating the attorney for providing legal services.

EFFECTIVE DATE

September 1, 2005.