

2020 Regular Session

HOUSE BILL NO. 348

BY REPRESENTATIVE BAGLEY

ATTORNEYS: Provides relative to advanced client costs by an attorney

1 AN ACT

2 To enact R.S. 37:223, relative to attorneys; to provide relative to attorneys providing  
3 financial assistance to clients; to establish limitations on attorneys providing  
4 financial assistance to clients; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 37:223 is hereby enacted to read as follows:

7 §223. Limitation on financial assistance to clients

8 A. A lawyer shall not directly or indirectly provide financial assistance to a  
9 client in connection with pending or contemplated litigation, except as follows:

10 (1) A lawyer may advance court costs and expenses of litigation, the  
11 repayment of which may be contingent on the outcome of the matter, provided the  
12 expenses are reasonably incurred and do not exceed fifty thousand dollars.

13 (2) A lawyer representing an indigent client may pay court costs and  
14 expenses of litigation on behalf of the client.

15 (3) In addition to costs of court and expenses of litigation, a lawyer may  
16 provide financial assistance to a client who is in necessitous circumstances, subject  
17 to the following restrictions:

18 (a) The lawyer shall determine, after reasonable inquiry, that the client's  
19 necessitous circumstance, without minimal financial assistance, would adversely

1 affect the client's ability to initiate or maintain the cause for which the lawyer's  
2 services were sought.

3 (b) The financial assistance or the offer thereof shall not be used as an  
4 inducement by the lawyer or anyone acting on the lawyer's behalf to secure  
5 employment.

6 (c) Neither the lawyer nor anyone acting on the lawyer's behalf may offer to  
7 provide financial assistance prior to being hired by a client. The lawyer shall not  
8 publicize nor advertise a willingness to provide such financial assistance to clients.

9 (d) Financial assistance provided shall not exceed that minimum sum  
10 necessary to meet the client's, the client's spouse's, and the client's dependents'  
11 documented obligations for food, shelter, utilities, insurance, non-litigation related  
12 medical care and treatment, transportation expenses, education, or other documented  
13 expenses necessary for subsistence.

14 (4) Any financial assistance provided by a lawyer to a client, whether for  
15 court costs, expenses of litigation, or for necessitous circumstances shall be subject  
16 to the following additional restrictions:

17 (a) Any financial assistance provided directly from the funds of the lawyer  
18 to a client shall not bear interest, fees, or charges of any nature.

19 (b) Financial assistance provided by a lawyer to a client may be made using  
20 a lawyer's line of credit or loans obtained from financial institutions in which the  
21 lawyer has no ownership, control, or security interest. This prohibition shall not  
22 apply to any federally insured bank, savings and loan association, savings bank, or  
23 credit union where the lawyer's ownership, control, or security interest is less than  
24 fifteen percent.

25 (c) In the instance where the lawyer uses a line of credit or loans obtained  
26 from financial institutions to provide financial assistance to a client, the lawyer shall  
27 not pass on to the client interest charges, including any fees or other charges  
28 attendant to such loans, in an amount exceeding the actual charge by the third-party  
29 lender or ten percentage points above the bank prime loan rate of interest as reported

1 by the Federal Reserve Board on January fifteenth of each year in which the loan is  
2 outstanding, whichever is less.

3 (d) A lawyer providing a guarantee or security on a loan made in favor of a  
4 client may do so only to the extent that the interest charges, including any fees or  
5 other charges attendant to such a loan, do not exceed ten percentage points above the  
6 bank prime loan rate of interest as reported by the Federal Reserve Board on January  
7 fifteenth of each year in which the loan is outstanding. Interest together with other  
8 charges attendant to such loans which exceeds this maximum may not be the subject  
9 of the lawyer's guarantee or security.

10 (e) The lawyer shall procure the client's written consent to the terms and  
11 conditions under which such financial assistance is made. Nothing in this Section  
12 shall require client consent in those matters in which a court has certified a class  
13 under applicable state or federal law, provided that the court must have accepted and  
14 exercised responsibility for making the determination that interest and fees are owed  
15 and that the amount of interest and fees chargeable to the client is fair and reasonable  
16 considering the facts and circumstances presented.

17 (f) In every instance where the client has been provided financial assistance  
18 by the lawyer, the full text of this Section shall be provided to the client at the time  
19 of execution of any settlement documents, approval of any disbursement sheet, or  
20 upon submission of a bill for the lawyer's services.

21 B. For purposes of this Section, the term "financial institution" shall include  
22 a federally insured financial institution and any of its affiliates, bank, savings and  
23 loan, credit union, savings bank, loan or finance company, thrift, and any other  
24 business or person that, for a commercial purpose, loans or advances money to  
25 attorneys or the clients of attorneys for court costs, litigation expenses, or for  
26 necessitous circumstances.

27 Section 2. This Act shall take effect and become operative if and when the proposed  
28 amendment of Article V of the Constitution of Louisiana contained in the Act which

- 1 originated as House Bill No. \_\_\_\_ of this 2020 Regular Session of the Legislature is adopted  
2 at a statewide election and becomes effective.
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## DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 348 Original

2020 Regular Session

Bagley

**Abstract:** Establishes limitations on attorneys providing financial assistance to clients.

Proposed law prohibits an attorney from directly or indirectly providing financial assistance to clients in connection with pending or contemplated litigation except in the following instances:

- (1) A lawyer may advance court costs and expenses of litigation when expenses are reasonably incurred and do not exceed \$50,000.
- (2) A lawyer may provide financial assistance to a client who is in necessitous circumstances, subject to proposed law restrictions.

Proposed law imposes the following restrictions on lawyers providing financial assistance to necessitous clients:

- (1) The lawyer has determined after reasonable inquiry that not providing financial assistance would adversely affect the client's ability to initiate or maintain the cause for which the lawyer's services were retained.
- (2) The financial assistance must not be used as an inducement to secure employment.
- (3) Neither the lawyer nor anyone acting on the lawyer's behalf may offer to make advances prior to being hired by the client. The lawyer must not publicize or advertise a willingness to provide financial assistance to clients.
- (4) The financial assistance provided must not exceed the minimum sum necessary to meet the client's documented obligations necessary for subsistence.

Proposed law imposes the following additional restrictions on all financial assistance given to clients whether for court costs, expenses of litigation, or for necessitous circumstances:

- (1) The financial assistance provided to the client must not bear interest, fees, or charges of any nature.
- (2) The financial assistance provided may be made using the lawyer's line of credit or loans obtained from financial institutions that the lawyer has no ownership, control, or security interest. However, that proposed law provision is not applicable to any federally insured bank, savings and loan association, savings bank, or credit union where the lawyer's ownership, control, or security interest is less than 15%.
- (3) When the lawyer uses a line of credit or loans to provide financial assistance to the client, the lawyer must not pass the interest charges to the client.

- (4) A lawyer providing guarantee or security on a loan made in favor of the client may only do so to the extent that the interest charges do not exceed ten percentage points above the bank prime loan rate of interest.
- (5) The lawyer must procure the client's written consent to the terms and conditions under which such financial assistance is made.
- (6) Every time a client is given financial assistance by the lawyer, the full text of proposed law must be provided to the client at the time of the execution of any settlement documents, approval of any disbursement sheet, or upon submission of a bill for the lawyer's services.

Proposed law defines the term "financial institution" as including a federally insured financial institution and any of its affiliates, bank, savings and loan, credit union, savings bank, loan or finance company, thrift, and any other business or person that, for a commercial purpose, loans or advances money to attorneys or the clients of attorneys for court costs, litigation expenses, or for necessitous circumstances.

Effective if the proposed amendment of Article V the Constitution of La. contained in the Act which originated as House Bill No. \_\_\_\_\_ of this 2020 R.S. of the Legislature is adopted at a statewide election and becomes effective.

(Adds R.S. 37:223)