

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred House Bill No. 12 entitled “An act relating to licensing consumer
4 litigation funding companies” respectfully reports that it has considered the
5 same and recommends that the bill be amended by striking out all after the
6 enacting clause and inserting in lieu thereof the following:

7 Sec. 1. 8 V.S.A. chapter 74 is added to read:

8 CHAPTER 74. CONSUMER LITIGATION FUNDING COMPANIES

9 § 2251. DEFINITIONS

10 As used in this chapter:

11 (1) “Commissioner” means the Commissioner of Financial Regulation.

12 (2) “Consumer” means a natural person who is seeking or has obtained
13 consumer litigation funding for a pending legal claim, provided:

14 (A) the claim is in Vermont; or

15 (B) the person resides or is domiciled in Vermont, or both.

16 (3) “Consumer litigation funding” or “funding” means a nonrecourse
17 transaction in which a company purchases and a consumer assigns to the
18 company a contingent right to receive an amount of the proceeds of a
19 settlement or judgment obtained from the consumer’s legal claim. If no
20 proceeds are obtained, the consumer is not required to repay the company the
21 funded amount, fees, interest, or other consideration.

Comment [PB1]: I would clarify that it may be claim in state or federal court, as well as before any administrative body (e.g., Workers’ Compensation Board)

1 (4) “Consumer litigation funding company,” “litigation funding
2 company,” or “company” means a person that provides consumer litigation
3 funding to a consumer. The term does not include an immediate family
4 member of the consumer.

5 (5) “Funded amount” means the amount of monies provided to, or on
6 behalf of, the consumer pursuant to a litigation funding contract. The term
7 excludes fees, interest, and other consideration.

8 (6) “Health care facility” has the same meaning as in 18 V.S.A.
9 § 9402(6).

10 (7) “Health care provider” has the same meaning as in 18 V.S.A.
11 § 9402(7).

12 (8) “Litigation funding contract” or “contract” means a contract between
13 a company and a consumer for the provision of consumer litigation funding.

14 § 2252. REGISTRATION; FEE; FINANCIAL STABILITY

15 (a) A company shall not engage in the business of consumer litigation
16 funding without first filing a registration with the Commissioner on a form
17 prescribed by the Commissioner and submitting a registration fee and proof of
18 financial stability, as required by this section.

19 (b) A company shall submit a \$9600.00 fee at the time of registration and
20 at the time of each renewal. Registrations shall be renewed every ~~three~~ two
21 years.

Comment [PB2]: These companies are making money hand over fist. They can afford to pay more, and more often.

1 (c) A company shall file with the Commissioner evidence of its financial
2 stability which shall include proof of a surety bond or irrevocable letter of
3 credit issued and confirmed by a financial institution authorized by law to
4 transact business in Vermont that is equal to double the amount of the
5 company's largest funded amount in the prior calendar year or \$50,000.00,
6 whichever is greater.

7 § 2253. CONTRACTS; DISCLOSURES AND REQUIREMENTS

8 (a) A contract shall be written in a clear and coherent manner using words
9 with common, everyday meanings to enable the average consumer who makes
10 a reasonable effort under ordinary circumstances to read and understand the
11 terms of the contract without having to obtain the assistance of a professional.

Comment [PB3]: Should be available in Spanish
(and preferably other languages) upon request

12 (b) Each contract shall include consumer disclosures on the front page.
13 The consumer disclosures shall be in a form prescribed by the Commissioner
14 and shall include:

15 (1) a description of possible alternatives to a litigation funding contract,
16 including secured or unsecured personal loans, and life insurance policies;

17 (2) notification that some or all of the funded amount may be taxable;

18 (3) a description of the consumer's right of rescission;

19 (4) the total funded amount provided to the consumer under the contract;

20 (5) an itemization of all fees, interest, or other consideration under the
21 contract;

1 (6) the maximum annual percentage rate the consumer may be charged
2 under the contract, including fees, interest, and other consideration;

3 (7) the total amount due from the consumer, including all fees, interest,
4 or other consideration under the contract, if repayment is made in any month
5 after the funding contract is executed;

6 (8) a statement that there are no fees or charges to be paid by the
7 consumer other than what is disclosed on the disclosure form;

8 (9) in the event the consumer seeks more than one litigation funding
9 contract, a disclosure providing the cumulative amount due from the consumer
10 for all transactions, including fees, interest, or other consideration under all
11 contracts, if repayment is made in any month after the contracts are executed;

12 (10) a statement that the company agrees it has no right to make any
13 decisions regarding the conduct of the legal claim or any settlement or
14 resolution thereof and that the right to make such decisions remains solely with
15 the consumer and his or her attorney;

16 (11) a statement that, if there is no recovery of any money from the
17 consumer's legal claim, the consumer shall owe nothing to the company and
18 that, if the net proceeds of the claim as defined in the contract are insufficient
19 to repay the consumer's indebtedness to the company, then the consumer shall
20 owe the company no money in excess of the net proceeds; and

1 (12) any other statements or disclosures deemed necessary or
2 appropriate by the Commissioner.

3 (c) Each contract shall include the following provisions:

4 (1) Definitions of the terms “consumer,” “consumer litigation funding,”
5 and “consumer litigation funding company.”

6 (2) A definition of “net proceeds,” ~~designed to which~~ limits the
7 company’s recovery to amounts not needed by the consumer to repay
8 attorney’s fees, litigation costs, or medical bills.

Comment [PB4]: Liens should be added to this

9 (3) A right of rescission, allowing the consumer to cancel the contract
10 without penalty or further obligation if, within five business days following the
11 execution of the contract or the consumer’s receipt of the funded amount, or a
12 portion thereof, whichever is later, the consumer gives notice of the rescission
13 to the company and returns any funds provided to the consumer by the
14 company.

15 (4) A provision specifying that, in the event of litigation involving the
16 contract and at the election of the consumer, venue shall lie in the Vermont
17 Superior Court for the county where the consumer resides, and that the dispute
18 shall be resolved under Vermont law.;

19 (5) An acknowledgment that the consumer is represented by an attorney
20 in the legal dispute and has had an opportunity to discuss the contract with his
21 or her attorney.

1 (6) A signed acknowledgment by the consumer’s attorney stating that he
2 or she has not received or been paid a referral fee or any other consideration
3 from the company and shall not in the future.

4 § 2254. PROHIBITED ACTS

5 (a) A consumer litigation funding company shall not engage in any of the
6 following conduct or practices:

7 (1) Pay or offer to pay commissions, referral fees, or any other form of
8 consideration to any attorney, law firm, health care provider, health care
9 facility, or an employee of a law firm, health care provider, or health care
10 facility for referring a consumer to the company.

11 (2) Accept any commissions, referral fees, or any other form of
12 consideration from any attorney, law firm, health care provider, health care
13 facility, or an employee of a law firm, health care provider, or health care
14 facility.

15 (3) Advertise false or misleading information regarding its products or
16 services.

17 (4) Knowingly provide funding to a consumer who has previously sold
18 or assigned an amount of the consumer’s potential proceeds from the civil
19 action or legal claim to another litigation funding company without first
20 making payment to or purchasing a prior unsatisfied company’s entire accrued

1 balance, including the funded amount and contracted fees, unless a lesser
2 amount is otherwise agreed to in writing by the companies.

3 (5) Receive any right to nor make any decisions with respect to the
4 conduct of the consumer’s legal claim or any settlement or resolution. The
5 right to make such decisions shall remain solely with the consumer and his or
6 her attorney.

7 (6) Knowingly pay or offer to pay for court costs, filing fees, or
8 attorney’s fees either during or after the resolution of the civil action or legal
9 claim using all or any portion of the funded amount.

10 (7) Refer a consumer to a specific attorney, law firm, health care
11 provider, or health care facility.

12 (8) Fail to promptly provide copies of contract documents to the
13 consumer or to the consumer’s attorney.

14 (9) Obtain a waiver of any remedy the consumer might otherwise have
15 against the company.

16 (10) Provide legal advice to the consumer regarding the funding or the
17 underlying legal claim.

18 (11) Pay for court costs, filing fees, or attorney’s fees in connection with
19 the consumer’s legal claim.

20 (12) Assign its rights under a contract in whole or in part to a third
21 party.

1 (13) Report a consumer to a credit reporting agency if insufficient funds
2 remain from the net proceeds to repay the company.

3 (14) Require binding arbitration in the event of a dispute between the
4 consumer and the company. A consumer has the right to a jury trial in the
5 event of a contractual dispute.

6 (b) An attorney or law firm retained by a consumer shall not have a
7 financial interest in a company offering litigation funding to the consumer and
8 shall not receive a referral fee or other consideration from such company or its
9 affiliates.

10 § 2255. EFFECT OF COMMUNICATION ON PRIVILEGES

11 A communication between a consumer’s attorney and the company shall
12 not be discoverable or limit, waive, or abrogate the scope or nature of any
13 statutory or common-law privilege, including the work-product doctrine and
14 the attorney-client privilege.

15 § 2256. EXAMINATIONS; CHARGES

16 For the purpose of protecting consumer interests and determining a
17 company’s financial stability and compliance with the requirements of this
18 chapter, the Commissioner may conduct an examination of a company engaged
19 in the business of consumer litigation funding. The company shall reimburse
20 the Department of Financial Regulation all reasonable costs and expenses of
21 such examination. In unusual circumstances and in the interests of justice, the

1 Commissioner may waive reimbursement for the costs and expenses of an
2 examination under this section.

3 § 2257. PENALTIES; ENFORCEMENT

4 (a) After notice and opportunity for hearing in accordance with the
5 Administrative Procedures Act, 3 V.S.A. chapter 25, the Commissioner may
6 take action to enforce the provisions of this chapter and may:

7 (1) revoke or suspend a company's registration;

8 (2) order a company to cease and desist from further consumer litigation
9 funding;

10 (3) impose a penalty of not more than \$1,000.00 for each violation or
11 \$~~1025~~1,000.00 for each violation the Commissioner finds to be willful; and

12 (4) order the company to make restitution to consumers.

13 (b) The powers vested in the Commissioner by this chapter shall be in
14 addition to any other powers of the Commissioner to enforce any penalties,
15 finer, or forfeitures authorized by law.

16 (c) A company's failure to comply with the requirements of this chapter
17 shall constitute an unfair or deceptive act in commerce enforceable under
18 9 V.S.A. chapter 63, the Consumer Protection Act.

19 (d) The powers vested in the Commissioner by this chapter shall be in
20 addition to any other powers or rights of consumers or the Attorney General or
21 others under any other applicable law or rule, including the Vermont

1 Consumer Protection Act and any applicable rules adopted thereunder,
2 provided the Commissioner’s determinations concerning the interpretation and
3 administration of the provisions of this chapter and rules adopted thereunder
4 shall carry a presumption of validity.

5 § 2258. ANNUAL REPORTS

6 (a) Annually, on or before April 1, each company licensed under this
7 chapter shall file a report with the Commissioner under oath and in the form
8 and manner prescribed by the Commissioner. The report shall include any
9 information the Commissioner requires concerning the company’s business
10 and operations during the preceding calendar year within Vermont and, in
11 addition, shall include:

12 (1) the number of contracts entered into;

13 (2) the dollar value of funded amounts to consumers;

14 (3) the dollar value of fees charged to consumers, including the annual
15 percentage fee and any other charges or consideration;

16 (4) the dollar amount and number of litigation funding transactions in
17 which the realization to the company was as contracted; and

18 (5) the dollar amount and number of litigation funding transactions in
19 which the realization to the company was less than contracted.

20 (b) To assist the general public with more fully understanding the nature of
21 consumer litigation funding in Vermont, the Commissioner shall summarize

1 and analyze relevant data submitted under this section and publish the
2 summary and analysis on a web page maintained by the Department of
3 Financial Regulation.

4 (c) The Commissioner shall report annually to the General Assembly on
5 the status of consumer litigation funding in Vermont and make any
6 recommendations he or she deems necessary to improve the regulatory
7 framework of consumer litigation funding.

8 Sec. 2. EFFECTIVE DATE

9 This act shall take effect on July 1, 2016.

10 and that after passage the title of the bill be amended to read: “An act relating
11 to consumer litigation funding companies”

12
13
14 (Committee vote: _____)

15 _____

16 Representative _____

17 FOR THE COMMITTEE