

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce & 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. § 2201(a) is amended to read:

8 (a) ~~No person shall without~~ Without first obtaining a license under this  
9 chapter from the Commissioner, a person shall not:

10 (1) engage in the business of making loans of money, credit, goods, or  
11 things in action and charge, contract for, or receive on any such loan interest, a  
12 finance charge, discount, or consideration therefor;

13 (2) act as a mortgage broker;

14 (3) engage in the business of a mortgage loan originator; ~~or~~

15 (4) act as a sales finance company; or

16 (5) act as a consumer litigation funding company, as defined in section  
17 2201a of this chapter.

18 Sec. 2. 8 V.S.A. § 2201a is added to read:

19 § 2201a. CONSUMER LITIGATION FUNDING

20 (a) Purpose. In an effort to promote consumer protections related to  
21 consumer litigation funding transactions, consumer litigation funding

1 companies are subject to State regulations like other licensed lenders subject to  
2 this chapter, except as otherwise provided in this section.

3 (b) Definitions. As used in this section:

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

6 (A) the claim is in Vermont; or

7 (B) the person resides or is domiciled in Vermont.

8 (2) “Consumer litigation funding” or “funding” means a nonrecourse  
9 transaction in which a consumer litigation funding company purchases and a  
10 consumer assigns to the company a contingent right to receive an amount of  
11 the proceeds of a settlement or judgment obtained from the consumer’s legal  
12 claim. If no proceeds are obtained, the consumer is not required to repay the  
13 company the funded amount, any fees or charges, or any other sums.

14 (c) Requirements. Except as otherwise provided in this section, a company  
15 is subject to the requirements of this chapter as well as to 9 V.S.A. chapter 63  
16 (Consumer Protection Act). A company shall pay to the Commissioner the  
17 application, investigation, and renewal fees specified in subdivisions  
18 2202(b)(1) and 2209(a)(1) of this chapter. A company is not subject to the  
19 provisions of this chapter that apply only to a mortgage broker or mortgage  
20 loan originator, or both, but do not apply to other lenders licensed under this  
21 chapter.

1        (d) Rate of interest. Notwithstanding any other provision of law to the  
2        contrary, the finance charge for consumer litigation funding shall not exceed  
3        28 percent per annum.

4        (e) Consumer litigation funding contract. A consumer litigation funding  
5        contract shall:

6            (1) contain a right of rescission, allowing the consumer to cancel the  
7            contract without penalty or further obligation if, within five business days  
8            following the consumer's receipt of the funds, or execution of the contract,  
9            whichever is later, the consumer gives notice of the rescission and returns any  
10           money already provided to the consumer by the company.

11           (2) contain a written acknowledgment by the consumer of whether the  
12           consumer is represented by an attorney in the dispute. If the consumer  
13           acknowledges that he or she is represented by an attorney in the dispute, the  
14           contract shall include written acknowledgment executed by the consumer's  
15           attorney in which the attorney acknowledges all of the following:

16            (A) The attorney had the opportunity to review the contract.

17            (B) All proceeds of the legal claim shall be disbursed by either the  
18            trust account of the attorney representing the consumer in the dispute or a  
19            settlement fund established to receive proceeds of the dispute from the  
20            defendant on behalf of the consumer.

1           (C) The attorney is representing the consumer with regard to the  
2           dispute that is the subject of the contract.

3           (D) The attorney or the attorney’s law firm has neither received nor  
4           paid a referral fee or any other consideration from or to the company, and will  
5           not in the future.

6           (f) Attorney prohibitions. An attorney or law firm retained by a consumer  
7           shall not have a financial interest in the company offering funding to the  
8           consumer, nor shall the attorney or law firm receive a referral fee or other  
9           consideration from the company in connection with such funding.

10          (g) Company prohibitions. A consumer litigation funding company shall  
11          not:

12           (1) pay or offer to pay commissions, referral fees or other forms of  
13           consideration to any attorney, law firm, medical provider, chiropractor, or  
14           physical therapist, or any of their employees for referring a consumer to a  
15           company;

16           (2) accept any commissions, referral fees, rebates, or other forms of  
17           consideration from an attorney, law firm, medical provider, chiropractor, or  
18           physical therapist or any of their employees;

19           (3) advertise false or misleading information regarding its products or  
20           services;

1           (4) refer a consumer or potential consumer to a specific attorney, law  
2           firm, medical provider, chiropractor, or physical therapist or any of their  
3           employees, provided, if a consumer does not have legal representation, the  
4           provider shall refer the consumer to a local or State bar referral service  
5           operated by a bar association or a non-profit organization;

6           (5) fail to promptly supply copies of any and all complete contracts to  
7           the consumer and the attorney representing the consumer in the dispute;

8           (6) attempt to obtain a waiver of any remedy, including to  
9           compensatory, statutory, or punitive damages that the consumer might  
10          otherwise have;

11          (7) attempt to effect arbitration or otherwise effect waiver of a  
12          consumer's right to trial by jury;

13          (8) offer to provide legal advice to the consumer regarding the litigation  
14          funding or the underlying dispute;

15          (9) make, or receive the right to make, any decisions with respect to the  
16          conduct, settlement, or resolution of a consumer's legal claim;

17          (10) pay or offer to pay for court costs, filing fees, or attorney's fees in  
18          connection with a consumer's legal claim using funds from the litigation  
19          funding contract or any other funds; or

20          (11) assign a litigation funding contract in whole or in part.

21          Sec. 3. EFFECTIVE DATE

1        This act shall take effect on September 1, 2015.

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7        (Committee vote: \_\_\_\_\_)

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Representative \_\_\_\_\_

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FOR THE COMMITTEE