

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) “Charges” means the amount a consumer owes to a company in
12 addition to the funded amount and includes an administrative fee, origination
13 fee, underwriting fee, processing fee, and any other fee regardless of how the
14 fee is denominated, and any amounts denominated as interest or rate.

15 (2) “Commissioner” means the Commissioner of Financial Regulation.

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

18 (A) the claim is in Vermont; or

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

20 (4) “Consumer litigation funding” or “funding” means a nonrecourse
21 transaction in which a company purchases and a consumer assigns to the

1 company a contingent right to receive an amount of the potential net proceeds
2 of a settlement or judgment obtained from the consumer’s legal claim. If no
3 proceeds are obtained, the consumer is not required to repay the company the
4 funded amount or charges.

5 (5) “Consumer litigation funding company,” “litigation funding
6 company,” or “company” means a person that provides consumer litigation
7 funding to a consumer. The term does not include an immediate family
8 member of the consumer, as defined in subdivision 2200(10) of this title.

9 (6) “Funded amount” means the amount of monies provided to, or on
10 behalf of, the consumer pursuant to a litigation funding contract. The term
11 excludes charges.

12 (7) “Health care facility” has the same meaning as in 18 V.S.A.
13 § 9402(6).

14 (8) “Health care provider” has the same meaning as in 18 V.S.A.
15 § 9402(7).

16 (9) “Litigation funding contract” or “contract” means a contract between
17 a company and a consumer for the provision of consumer litigation funding.

18 **(10)(A) “Net proceeds” means the amount recovered by a consumer**
19 **as a result of a legal claim less costs associated with the legal claim or the**
20 **underlying events giving rise to the legal claim, including:**

21 **(i) attorney’s fees, attorney liens, litigation costs;**

1 (ii) claims or liens for related medical services;

2 (iii) claims or liens for reimbursement arising from third

3 parties who have paid related medical expenses, including claims from

4 health care insurers, employers with self-funded health care plans, and

5 publicly-financed health care plans; and

6 (iv) liens or claims for lost wages or workers' compensation

7 benefits.

8 (B) This definition of "net proceeds" shall in no way affect the

9 priority of claims or liens other than those for payments to the consumer

10 litigation funding company under a consumer litigation funding contract

11 governed by this chapter. [Definition proposed by the AGO. TBD.]

12 § 2252. REGISTRATION; FEE; FINANCIAL STABILITY

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

17 (b) A company shall submit a \$600.00 fee at the time of registration and at
18 the time of each renewal. Registrations shall be renewed every three years.

19 (c) A company shall file with the Commissioner evidence of its financial
20 stability which shall include proof of a surety bond or irrevocable letter of
21 credit issued and confirmed by a financial institution authorized by law to

1 transact business in Vermont that is equal to double the amount of the
2 company's largest funded amount in Vermont in the prior three calendar years
3 or \$50,000.00, whichever is greater.

4 § 2253. CONTRACTS; DISCLOSURES AND REQUIREMENTS

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

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

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

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

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

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

17 (5) an itemization of charges, including all fees or other consideration
18 owed or that may become due under the contract and a statement that no other
19 fees or charges shall be owed by the consumer;

20 (6) the maximum annual percentage rate of return the consumer may be
21 charged under the contract, including fees, interest, and other consideration;

1 (7) the total amount due from the consumer, including charges or other
2 consideration under the contract, if repayment is made any time after the
3 funding contract is executed;

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

6 (9) in the event the consumer seeks more than one litigation funding
7 contract, a disclosure providing the cumulative amount due from the consumer
8 for all transactions, including charges under all contracts, if repayment is made
9 any time after the contracts are executed;

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

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

19 (12) any other statements or disclosures deemed necessary or
20 appropriate by the Commissioner.

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

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

3 (2) A right of rescission, allowing the consumer to cancel the contract
4 without penalty or further obligation if, within five business days following the
5 execution of the contract or the consumer’s receipt of any portion of the funded
6 amount, ~~whichever is later,~~ the consumer gives notice of the rescission to the
7 company and returns any funds provided to the consumer by the company.

8 (3) A provision specifying that, in the event of litigation involving the
9 contract and at the election of the consumer, venue shall lie in the Vermont
10 Superior Court for the county where the consumer resides.

11 (4) An acknowledgment that the consumer is represented by an attorney
12 in the legal claim and has had an opportunity to discuss the contract with his or
13 her attorney.

14 § 2254. PROHIBITED ACTS

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

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

1 (2) Accept any commissions, referral fees, or any other form of
2 consideration from any attorney, law firm, health care provider, health care
3 facility, or an employee of a law firm, health care provider, or health care
4 facility.

5 (3) Advertise false or misleading information regarding its products or
6 services.

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

11 (5) Knowingly pay or offer to pay for court costs, filing fees, or
12 attorney’s fees either during or after the resolution of the legal claim.

13 (6) Refer a consumer to a specific attorney, law firm, health care
14 provider, or health care facility.

15 (7) Fail to promptly provide copies of contract documents to the
16 consumer or to the consumer’s attorney.

17 (8) Obtain a waiver of any remedy the consumer might otherwise have
18 against the company.

19 (9) Provide legal advice to the consumer regarding the funding or the
20 underlying legal claim.

1 **(10) Assign its rights under a contract in whole or in part to a third**
2 **partv. [Proposal by Jack Kelly to strike or amend. TBD]**

3 (11) Report a consumer to a credit reporting agency if insufficient funds
4 remain from the net proceeds to repay the company.

5 (12) Require binding arbitration in the event of a dispute between the
6 consumer and the company. A consumer has the right to a trial in the event of
7 a contractual dispute.

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

12 § 2255. EFFECT OF COMMUNICATION ON PRIVILEGES

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

17 § 2256. EXAMINATIONS; CHARGES

18 For the purpose of protecting consumer interests and determining a
19 company’s financial stability and compliance with the requirements of this
20 chapter, the Commissioner may conduct an examination of a company engaged
21 in the business of consumer litigation funding. The company shall reimburse

1 the Department of Financial Regulation all reasonable costs and expenses of
2 such examination. In unusual circumstances and in the interests of justice, the
3 Commissioner may waive reimbursement for the costs and expenses of an
4 examination under this section.

5 **§ 2257. NATIONWIDE LICENSING REGISTRY; RULEMAKING**

6 (a) In furtherance of the Commissioner’s duties under this chapter, and in
7 order to promote more effective regulation and reduce regulatory burden, the
8 Commissioner may adopt rules requiring a company to participate in the
9 Nationwide Mortgage Licensing System and Registry. For purposes of this
10 subsection, “Nationwide Mortgage Licensing System and Registry” means a
11 licensing system developed and maintained by the Conference of State Bank
12 Supervisors and the American Association of Residential Mortgage Regulators
13 as defined in 12 U.S.C. § 5102(6), or its successor in interest, or any alternative
14 or replacement licensing system and registry designated by the Commissioner.

15 (b) The Commissioner may adopt rules he or she deems necessary for the
16 proper conduct of business and enforcement of this chapter.

17 **§ 2258. PENALTIES; ENFORCEMENT**

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

- 21 (1) revoke or suspend a company’s registration;

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

3 (3) impose a penalty of not more than \$1,000.00 for each violation or
4 \$10,000.00 for each violation the Commissioner finds to be willful; and

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

6 (b) The powers vested in the Commissioner by this chapter shall be in
7 addition to any other powers of the Commissioner to enforce any penalties,
8 fines, or forfeitures authorized by law.

9 (c) A company's failure to comply with the requirements of this chapter
10 shall constitute an unfair or deceptive act in commerce enforceable under
11 9 V.S.A. chapter 63, the Consumer Protection Act.

12 (d) The powers vested in the Commissioner by this chapter shall be in
13 addition to any other powers or rights of consumers or the Attorney General or
14 others under any other applicable law or rule, including the Vermont
15 Consumer Protection Act and any applicable rules adopted thereunder,
16 provided the Commissioner's determinations concerning the interpretation and
17 administration of the provisions of this chapter and rules adopted thereunder
18 shall carry a presumption of validity.

19 § 2259. ANNUAL REPORTS

20 (a) Annually, on or before April 1, each company **registered** under this
21 chapter shall file a report with the Commissioner under oath and in the form

1 and manner prescribed by the Commissioner. The report shall include any
2 information the Commissioner requires concerning the company's business
3 and operations during the preceding calendar year within Vermont and, in
4 addition, shall include:

5 (1) the number of contracts entered into;

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

7 (3) the dollar value of charges under each contract, itemized and
8 including the annual rate of return fees charged to consumers, including the
9 annual percentage fee rate and any other charges or consideration;

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

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

14 (b) To assist the general public with more fully understanding the nature of
15 consumer litigation funding in Vermont, the Commissioner shall summarize
16 and analyze relevant data submitted under this section and publish the
17 summary and analysis on a web page maintained by the Department of
18 Financial Regulation, as well as on a web page maintained by the Office of the
19 Attorney General.

20 (c) Annually, beginning on or before October 1, 2017, the Commissioner
21 and Attorney General shall report jointly to the General Assembly on the status

1 of consumer litigation funding in Vermont and make any recommendations
2 they deem necessary to improve the regulatory framework of consumer
3 litigation funding, including a recommendation on whether Vermont should
4 limit charges imposed under a consumer litigation funding contract.

5 Sec. 2. EFFECTIVE DATE

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

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

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10

11 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE