

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 net 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.

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, as defined in subdivision 2200(10) of this title.

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 (9) “Net proceeds” means the amount recovered by a consumer as a
15 result of a legal claim after payment of all attorney’s fees, attorney liens,
16 litigation costs, and any claims of health care providers, employers in workers’
17 compensation proceedings, health insurers, employer’s with self-funded health
18 care plans, or any publicly-financed health care plan, related to the legal claim
19 or the underlying events giving rise to the legal claim.

20 § 2252. REGISTRATION; FEE; FINANCIAL STABILITY

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

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

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

13 § 2253. CONTRACTS; DISCLOSURES AND REQUIREMENTS

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

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

- 1 (1) a description of possible alternatives to a litigation funding contract,
2 including secured or unsecured personal loans, and life insurance policies;
- 3 (2) notification that some or all of the funded amount may be taxable;
- 4 (3) a description of the consumer’s right of rescission;
- 5 (4) the total funded amount provided to the consumer under the contract;
- 6 (5) an itemization of all fees, interest, or other consideration owed or
7 that may become due under the contract and a statement that no other fees or
8 charges shall be owed by the consumer;
- 9 (6) the maximum annual percentage rate the consumer may be charged
10 under the contract, including fees, interest, and other consideration;
- 11 (7) the total amount due from the consumer, including all fees, interest,
12 or other consideration under the contract, if repayment is made any time after
13 the funding contract is executed;
- 14 (8) a statement that there are no fees or charges to be paid by the
15 consumer other than what is disclosed on the disclosure form;
- 16 (9) in the event the consumer seeks more than one litigation funding
17 contract, a disclosure providing the cumulative amount due from the consumer
18 for all transactions, including fees, interest, or other consideration under all
19 contracts, if repayment is made in any time after the contracts are executed;
- 20 (10) a statement that the company has no right to make any decisions
21 regarding the conduct of the legal claim or any settlement or resolution thereof

1 and that the right to make such decisions remains solely with the consumer and
2 his or her attorney;

3 (11) a statement that, if there is no recovery of any money from the
4 consumer’s legal claim, the consumer shall owe nothing to the company and
5 that, if the net proceeds of the claim are insufficient to repay the consumer’s
6 indebtedness to the company, then the consumer shall owe the company no
7 money in excess of the net proceeds; and

8 (12) any other statements or disclosures deemed necessary or
9 appropriate by the Commissioner.

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

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

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

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

1 (4) An acknowledgment that the consumer is represented by an attorney
2 in the legal dispute and has had an opportunity to discuss the contract with his
3 or her attorney.

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) Receive any right to nor make any decisions with respect to the
18 conduct of the consumer’s legal claim or any settlement or resolution. The
19 right to make such decisions shall remain solely with the consumer and his or
20 her attorney.

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

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

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

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

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

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

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

15 (12) Require binding arbitration in the event of a dispute between the
16 consumer and the company. A consumer has the right to a trial in the event of
17 a contractual dispute.

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

1 § 2255. EFFECT OF COMMUNICATION ON PRIVILEGES

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

6 § 2256. EXAMINATIONS; CHARGES

7 For the purpose of protecting consumer interests and determining a
8 company’s financial stability and compliance with the requirements of this
9 chapter, the Commissioner may conduct an examination of a company engaged
10 in the business of consumer litigation funding. The company shall reimburse
11 the Department of Financial Regulation all reasonable costs and expenses of
12 such examination. In unusual circumstances and in the interests of justice, the
13 Commissioner may waive reimbursement for the costs and expenses of an
14 examination under this section.

15 § 2257. PENALTIES; ENFORCEMENT

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

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

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

1 (3) impose a penalty of not more than \$1,000.00 for each violation or
2 \$10,000.00 for each violation the Commissioner finds to be willful; and

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

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

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

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

17 § 2258. ANNUAL REPORTS

18 (a) Annually, on or before April 1, each company licensed under this
19 chapter shall file a report with the Commissioner under oath and in the form
20 and manner prescribed by the Commissioner. The report shall include any
21 information the Commissioner requires concerning the company's business

1 and operations during the preceding calendar year within Vermont and, in
2 addition, shall include:

3 (1) the number of contracts entered into;

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

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

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

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

11 (b) To assist the general public with more fully understanding the nature of
12 consumer litigation funding in Vermont, the Commissioner shall summarize
13 and analyze relevant data submitted under this section and publish the
14 summary and analysis on a web page maintained by the Department of
15 Financial Regulation.

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

20 Sec. 2. EFFECTIVE DATE

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

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

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5 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE