

9241

I N A S S E M B L Y

February 4, 2016

Introduced by M. of A. SIMANOWITZ -- read once and referred to the
Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to third party
litigation financing

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The general business law is amended by adding a new article
2 39-H to read as follows:

3 ARTICLE 39-H

4 THIRD PARTY LITIGATION FINANCING

5 SECTION 899-CCC. DEFINITIONS.

6 899-DDD. CONTRACT REQUIREMENTS.

7 899-EEE. PROHIBITIONS.

8 899-FFF. REGISTRATION.

9 899-GGG. PENALTY FOR VIOLATION.

10 S 899-CCC. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS
11 SHALL HAVE THE FOLLOWING MEANINGS:

12 1. "CHARGES" SHALL MEAN THE AMOUNT OF MONEY TO BE PAID TO THE CONSUMER
13 LITIGATION FUNDING COMPANY THAT EXCEEDS THE FUNDED AMOUNT OF PRINCIPAL
14 LOAN.

15 2. "CONSUMER LITIGATION FUNDING COMPANY" SHALL MEAN A PERSON OR ENTITY
16 THAT ENTERS INTO A NON-RECOURSE TRANSACTION WHEREIN THE COMPANY PROVIDES
17 FUNDS TO A CONSUMER ON THE CONTINGENT RIGHT TO RECEIVE THE FUNDED AMOUNT
18 AND AGREED UPON CHARGES OBTAINED IN THE EVENT OF A SETTLEMENT, JUDGMENT
19 OR AWARD.

20 3. "FUNDED AMOUNT" SHALL MEAN THE AMOUNT OF MONEY PROVIDED TO THE
21 CONSUMER IN CONSUMER LITIGATION FINANCING.

22 4. "RESOLUTION DATE" SHALL MEAN THE DATE THE FUNDED AMOUNT AND AGREED
23 UPON CHARGES ARE DELIVERED TO THE CONSUMER LITIGATION FINANCING COMPANY.

24 S 899-DDD. CONTRACT REQUIREMENTS. 1. CONTRACTS SHALL CONTAIN A RIGHT
25 OF RESCISSION, ALLOWING THE CONSUMER TO CANCEL THE CONTRACT WITHOUT A
26 PENALTY IF THE CONSUMER RETURNS THE FULL AMOUNT OF DISBURSED FUNDS TO
27 THE COMPANY WITHIN TEN BUSINESS DAYS.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD13354-03-6

1 2. CONTRACTS SHALL CONTAIN A WRITTEN ACKNOWLEDGEMENT BY THE ATTORNEY
2 RETAINED BY THE CONSUMER THAT ATTESTS:

3 (A) THE ATTORNEY IS BEING PAID ON A CONTINGENCY BASIS PURSUANT TO A
4 WRITTEN FEE AGREEMENT; AND

5 (B) THE ATTORNEY IS NOT RECEIVING A REFERRAL FEE FROM THE LITIGATION
6 FUNDING COMPANY IN CONNECTION WITH THE CONSUMER'S FUNDING.

7 3. CONTRACTS SHALL CLEARLY OUTLINE A SCHEDULED FEE STRUCTURE THAT
8 OUTLINES REPAYMENT TERMS INCLUDING:

9 (A) THE FUNDED AMOUNT PLUS CHARGES WRITTEN OUT AS ITEMIZED AMOUNTS;

10 (B) THE CHARGES OUTLINED AS A PERCENTAGE AMOUNT EXCEEDING THE FUNDED
11 AMOUNT; AND

12 (C) ITEMIZED ONE-TIME FEES INCLUDING PAPERWORK PROCESSING AND ADMINIS-
13 TRATIVE FEES.

14 4. CONTRACTS SHALL CONTAIN A NO PENALTY PROVISION FOR THE PRE-PAYMENT
15 OF THE FUNDED AMOUNT PRIOR TO THE SETTLEMENT OF HIS OR HER CASE. SUCH
16 PROVISION SHALL RELEASE THE CONSUMER FROM ANY OBLIGATION TO SHARE HIS OR
17 HER SETTLEMENT OR VERDICT.

18 S 899-EEE. PROHIBITIONS. 1. CONSUMER LITIGATION FUNDING COMPANIES
19 SHALL BE PROHIBITED FROM PAYING, ACCEPTING OR OFFERING REFERRAL FEES OR
20 ANY TYPE OF CONSIDERATION TO AND FROM ANY MEDICAL PROVIDERS, LICENSED
21 THERAPISTS OR ATTORNEYS FOR REFERRING A CONSUMER TO THE COMPANY.

22 2. THE COMPANY SHALL BE PROHIBITED FROM MAKING ANY INQUIRIES WITH THE
23 CONSUMER'S REPRESENTATIVE ATTORNEY THAT WOULD VIOLATE THE TERMS OF THE
24 ATTORNEY-CLIENT PRIVILEGE AT ANY POINT IN TIME.

25 3. NO ATTORNEY OR LAW FIRM RETAINED BY A CONSUMER THAT UTILIZES LITI-
26 GATION FINANCING MAY HAVE A FINANCIAL INTEREST IN SAID COMPANY.

27 S 899-FFF. REGISTRATION. 1. EACH CONSUMER LITIGATION FUNDING COMPANY
28 THAT WISHES TO ENGAGE IN BUSINESS IN THE STATE OF NEW YORK SHALL FIRST
29 REGISTER WITH THE NEW YORK STATE DEPARTMENT OF FINANCE.

30 2. EACH APPLICANT'S REGISTRATION MUST BE FILED IN A MANNER PRESCRIBED
31 BY THE NEW YORK STATE DEPARTMENT OF FINANCE WITH AN INITIAL ACCOMPANIED
32 FEE OF FIVE HUNDRED DOLLARS. REGISTRATIONS MUST BE RENEWED EVERY TWO
33 YEARS ON OR BEFORE THE THIRTIETH DAY OF SEPTEMBER.

34 3. THE NEW YORK STATE DEPARTMENT OF FINANCE SHALL ISSUE CERTIFICATES
35 OF REGISTRATION AFTER BOTH UNDERSTANDING AND ATTESTING TO THE CHARACTER
36 AND FITNESS OF THE APPLICANT COMPANY WITH SUFFICIENT REASON TO BELIEVE
37 THE COMPANY WILL OPERATE HONESTLY AND FAIRLY.

38 S 899-GGG. PENALTY FOR VIOLATION. ANY COMPANY FOUND IN VIOLATION OF
39 ANY PROVISIONS OF THIS ARTICLE IN A SPECIFIC FUNDING CASE, WAIVES ITS
40 RIGHT TO RECOVER BOTH THE FUNDED AMOUNT AND ANY ADDITIONAL FEES IN THAT
41 PARTICULAR CASE.

42 S 2. This act shall take effect immediately.