

9241--C

I N A S S E M B L Y

February 4, 2016

Introduced by M. of A. SIMANOWITZ, GOTTFRIED, ZEBROWSKI, BRINDISI, TITONE, SEPULVEDA, HYNDMAN, DILAN -- Multi-Sponsored by -- M. of A. BRENNAN, COOK, FRIEND, ROBINSON, SIMON -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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 ASSEMBLY, DO ENACT AS FOLLOWS:

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

ARTICLE 39-H

THIRD PARTY LITIGATION FINANCING

SECTION 899-CCC. DEFINITIONS.

899-DDD. CONTRACT REQUIREMENTS.

899-EEE. PROHIBITIONS.

899-FFF. REGISTRATION.

899-GGG. PENALTY FOR VIOLATION.

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

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

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

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

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

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

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

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

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

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

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

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

18 (B) THE CHARGES OUTLINED AS A PERCENTAGE AMOUNT EXCEEDING THE FUNDED
19 AMOUNT; AND

20 (C) ITEMIZED ONE-TIME FEES INCLUDING PAPERWORK PROCESSING AND ADMINIS-
21 TRATIVE FEES.

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

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

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

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

35 4. CONSUMER LITIGATION FUNDING COMPANIES SHALL BE PROHIBITED FROM
36 ATTEMPTING TO OBTAIN, OR OBTAINING A WAIVER OF ANY REMEDY, INCLUDING BUT
37 NOT LIMITED TO, COMPENSATORY, STATUTORY OR PUNITIVE DAMAGES, THAT THE
38 CONSUMER MIGHT OTHERWISE HAVE.

39 5. CONSUMER LITIGATION FUNDING COMPANIES SHALL BE PROHIBITED FROM
40 ATTEMPTING TO EFFECT ARBITRATION OR OTHERWISE EFFECT WAIVER OF A CONSUM-
41 ER'S RIGHT TO TRIAL BY JURY FOR COMPLAINTS ARISING FROM THE CONSUMER
42 LITIGATION FUNDING TRANSACTION.

43 6. CONSUMER LITIGATION FUNDING COMPANIES SHALL BE PROHIBITED FROM
44 ASSIGNING A CONSUMER LITIGATION FUNDING CONTRACT IN WHOLE OR IN PART.

45 7. MAXIMUM AMOUNT OF CHARGES:

46 (A) THE MAXIMUM AMOUNT OF CHARGES WHICH MAY BE ASSESSED PURSUANT TO A
47 CONSUMER LITIGATION FUNDING CONTRACT SHALL NOT BE IN EXCESS OF THE RATE
48 PRESCRIBED IN SECTION FOURTEEN-A OF THE BANKING LAW, WHEN EXPRESSED AS A
49 PROPORTION OF THE FUNDED AMOUNT; AND

50 (B) ANY CONSUMER LITIGATION FUNDING CONTRACT WHICH EXCEEDS SUCH RATE
51 SHALL BE CONSIDERED USURIOUS AS DEFINED BY SECTION 5-501 OF THE GENERAL
52 OBLIGATIONS LAW.

53 S 899-FFF. REGISTRATION. 1. EACH CONSUMER LITIGATION FUNDING COMPANY
54 THAT WISHES TO ENGAGE IN BUSINESS IN THE STATE OF NEW YORK SHALL FIRST
55 REGISTER WITH THE NEW YORK DEPARTMENT OF FINANCIAL SERVICES.

1 2. EACH APPLICANT'S REGISTRATION MUST BE FILED IN A MANNER PRESCRIBED
2 BY THE NEW YORK DEPARTMENT OF FINANCIAL SERVICES WITH AN INITIAL ACCOM-
3 PANIED FEE OF FIVE HUNDRED DOLLARS. REGISTRATIONS MUST BE RENEWED EVERY
4 TWO YEARS ON OR BEFORE THE THIRTIETH DAY OF SEPTEMBER.

5 3. THE NEW YORK DEPARTMENT OF FINANCIAL SERVICES SHALL ISSUE CERTIF-
6 ICATES OF REGISTRATION AFTER BOTH UNDERSTANDING AND ATTESTING TO THE
7 CHARACTER AND FITNESS OF THE APPLICANT COMPANY WITH SUFFICIENT REASON TO
8 BELIEVE THE COMPANY WILL OPERATE HONESTLY AND FAIRLY.

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

13 S 2. This act shall take effect on the one hundred eightieth day after
14 it shall have become a law.