

# STATE OF NEW YORK

3911

2017-2018 Regular Sessions

## IN SENATE

January 30, 2017

Introduced by Sen. ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer 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 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.

§ 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.

3. "Funded amount" shall mean the amount of money provided to the consumer in consumer litigation financing.

4. "Resolution date" shall mean the date the funded amount and agreed upon charges are delivered to the consumer litigation financing company.

§ 899-ddd. Contract requirements. 1. Contracts shall contain a right of rescission, allowing the consumer to cancel the contract without a

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

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1 penalty if the consumer returns the full amount of disbursed funds to  
2 the company within ten business days.

3 2. Contracts shall contain a written acknowledgement by the attorney  
4 retained by the consumer that attests:

5 (a) the attorney is being paid on a contingency basis pursuant to a  
6 written fee agreement; and

7 (b) the attorney is not receiving a referral fee from the litigation  
8 funding company in connection with the consumer's funding.

9 3. Contracts shall clearly outline a scheduled fee structure that  
10 outlines repayment terms including:

11 (a) the funded amount plus charges written out as itemized amounts;

12 (b) the charges outlined as a percentage amount exceeding the funded  
13 amount; and

14 (c) itemized one-time fees including paperwork processing and adminis-  
15 trative fees.

16 4. Contracts shall contain a no penalty provision for the pre-payment  
17 of the funded amount prior to the settlement of his or her case. Such  
18 provision shall release the consumer from any obligation to share his or  
19 her settlement or verdict.

20 § 899-eee. Prohibitions. 1. Consumer litigation funding companies  
21 shall be prohibited from paying, accepting or offering referral fees or  
22 any type of consideration to and from any medical providers, licensed  
23 therapists or attorneys for referring a consumer to the company.

24 2. The company shall be prohibited from making any inquiries with the  
25 consumer's representative attorney that would violate the terms of the  
26 attorney-client privilege at any point in time.

27 3. No attorney or law firm retained by a consumer that utilizes liti-  
28 gation financing may have a financial interest in said company.

29 4. Consumer litigation funding companies shall be prohibited from  
30 attempting to obtain, or obtaining a waiver of any remedy, including but  
31 not limited to, compensatory, statutory or punitive damages, that the  
32 consumer might otherwise have.

33 5. Consumer litigation funding companies shall be prohibited from  
34 attempting to effect arbitration or otherwise effect waiver of a consum-  
35 er's right to trial by jury for complaints arising from the consumer  
36 litigation funding transaction.

37 6. Consumer litigation funding companies shall be prohibited from  
38 assigning a consumer litigation funding contract in whole or in part.

39 7. Maximum amount of charges:

40 (a) the maximum amount of charges which may be assessed pursuant to a  
41 consumer litigation funding contract shall not be in excess of the rate  
42 prescribed in section fourteen-a of the banking law, when expressed as a  
43 proportion of the funded amount; and

44 (b) any consumer litigation funding contract which exceeds such rate  
45 shall be considered usurious as defined by section 5-501 of the general  
46 obligations law.

47 § 899-fff. Registration. 1. Each consumer litigation funding company  
48 that wishes to engage in business in the state of New York shall first  
49 register with the New York department of financial services.

50 2. Each applicant's registration must be filed in a manner prescribed  
51 by the New York department of financial services with an initial accom-  
52 panied fee of five hundred dollars. Registrations must be renewed every  
53 two years on or before the thirtieth day of September.

54 3. The New York department of financial services shall issue certif-  
55 icates of registration after both understanding and attesting to the

1 character and fitness of the applicant company with sufficient reason to  
2 believe the company will operate honestly and fairly.

3 § 899-ggg. Penalty for violation. Any company found in violation of  
4 any provisions of this article in a specific funding case, waives its  
5 right to recover both the funded amount and any additional fees in that  
6 particular case.

7 § 2. This act shall take effect on the one hundred eightieth day after  
8 it shall have become a law.