STATE OF NEW YORK

3911--B

2017-2018 Regular Sessions

IN SENATE

January 30, 2017

Introduced by Sens. ORTT, AKSHAR, GALLIVAN, HANNON, HELMING, JACOBS, MARCHIONE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, 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.

§ 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 consumer litigation funding contract to provide non-recourse funding of no more than five hundred thousand dollars to a consumer.

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

LBD04763-05-8

3. "Consumer litigation funding contract" shall mean a contract to provide non-recourse funding of no more than five hundred thousand dollars 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.

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

5. "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. Consumer litigation funding contracts shall contain a right of rescission, allowing the consumer to cancel the consumer litigation funding contract without a penalty if the consumer returns the full amount of disbursed funds to the company within ten business days.

2. Consumer litigation funding contracts shall contain a written acknowledgement by the attorney retained by the consumer that attests:

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

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

3. Consumer litigation funding contracts shall clearly outline a scheduled fee structure that outlines repayment terms including:

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

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

(c) itemized one-time fees including paperwork processing and administrative fees.

4. Consumer litigation funding contracts shall contain a no penalty provision for the pre-payment of the funded amount prior to the settlement of his or her case. Such provision shall release the consumer from any obligation to share his or her settlement or verdict.

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

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

3. No attorney or law firm retained by a consumer who has entered into a consumer litigation funding contract with a consumer litigation funding company may have a financial interest in said company.

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

5. Consumer litigation funding companies shall be prohibited from attempting to effect arbitration or otherwise effect waiver of a consumer's right to trial by jury for complaints arising from the consumer litigation funding contract.

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

7. Maximum amount of charges:

(a) the maximum amount of charges which may be assessed pursuant to a consumer litigation funding contract shall not be in excess of the rate

prescribed in section 190.42 of the penal law (criminal usury in the first degree), when expressed as a proportion of the funded amount; and

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

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

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

3. The New York department of financial services shall issue certificates of registration after both understanding and attesting to the character and fitness of the applicant company with sufficient reason to believe the company will operate honestly and fairly.

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

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