

# STATE OF NEW YORK

4478

2019-2020 Regular Sessions

## IN SENATE

March 12, 2019

Introduced by Sens. KAPLAN, 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:

1 Section 1. The general business law is amended by adding a new article  
2 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.

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

19 3. "Consumer litigation funding contract" shall mean a contract to  
20 provide non-recourse funding of no more than five hundred thousand  
21 dollars to a consumer on the contingent right to receive the funded  
22 amount and agreed upon charges obtained in the event of a settlement,  
23 judgment or award.

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

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

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

3 § 899-ddd. Contract requirements. 1. Consumer litigation funding  
4 contracts shall contain a right of rescission, allowing the consumer to  
5 cancel the consumer litigation funding contract without a penalty if the  
6 consumer returns the full amount of disbursed funds to the company with-  
7 in ten business days.

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

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

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

14 3. Consumer litigation funding contracts shall clearly outline a sche-  
15 duled fee structure that outlines repayment terms including:

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

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

19 (c) itemized one-time fees including paperwork processing and adminis-  
20 trative fees.

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

25 § 899-eee. Prohibitions. 1. Consumer litigation funding companies  
26 shall be prohibited from paying, accepting or offering referral fees or  
27 any type of consideration to and from any medical providers, licensed  
28 therapists or attorneys for referring a consumer to the company for the  
29 purpose of entering into a consumer litigation funding contract.

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 who has entered into  
34 a consumer litigation funding contract with a consumer litigation fund-  
35 ing company may have a financial interest in said company.

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

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

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

46 7. Maximum amount of charges:

47 (a) the maximum amount of charges which may be assessed pursuant to a  
48 consumer litigation funding contract shall not be in excess of the rate  
49 prescribed in section 190.42 of the penal law (criminal usury in the  
50 first degree), when expressed as a proportion of the funded amount; and

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

54 § 899-fff. Registration. 1. Each consumer litigation funding company  
55 that wishes to engage in business in the state of New York shall first  
56 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 § 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 § 2. This act shall take effect on the one hundred eightieth day after  
14 it shall have become a law.