

STATE OF NEW YORK

1104

2025-2026 Regular Sessions

IN SENATE

January 8, 2025

Introduced by Sens. COONEY, BORRELLO, MYRIE, RHOADS, SEPULVEDA -- 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 consumer litigation funding

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "consumer litigation funding act".

§ 2. Legislative intent. In an effort to promote consumer protections related to consumer litigation funding transactions, this act establishes that such transactions should be subject to state regulation and sets forth requirements regarding disclosure, licensing, funding company and attorney responsibilities and limitations, violations and other items.

§ 3. 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; right of rescission.

899-eee. Prohibitions and charge limitations.

899-fff. Contracted amounts.

899-ggg. Disclosures.

899-hhh. Violations.

899-iii. Assignability; liens.

899-jjj. Effect of communication on privileges.

899-kkk. Registration.

899-lll. Reporting.

899-mmm. Severability.

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

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§ 899-ccc. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Advertise" means publishing or disseminating any written, oral, electronic or printed communication or any communication by means of recorded telephone messages or transmitted or broadcast on radio, television, the internet or similar communications media, including audio recordings, film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of inducing a consumer to enter into a consumer litigation funding.

2. "Charges" means the amount of money to be paid to the consumer litigation funding company by or on behalf of the consumer, above the funded amount provided by or on behalf of the company to a New York consumer pursuant to this article. Charges include all administrative, origination, underwriting or other fees, including interest, no matter how denominated. Such charges shall not exceed the maximum annual percentage rate applicable to consumer credit extended to a member of the military as provided for in Title 10, United States Code, section 987(b). Any contract which exceeds such rate shall be considered usurious as defined by section 5-501 of the general obligations law.

3. "Consumer litigation funding" means a non-recourse transaction in which a consumer litigation funding company purchases and a consumer assigns to the company a contingent right to receive an amount of the potential proceeds of a settlement, judgment, award, or verdict obtained in the consumer's legal claim.

4. "Consumer litigation funding company" or "company" means a person or entity that enters into a consumer litigation funding contract of no more than five hundred thousand dollars with a consumer. This term shall not include:

(a) an immediate family member of the consumer;
(b) a bank, lender, financing entity, or other special purpose entity;
(i) that provides financing to a consumer litigation funding company;
or
(ii) to which a consumer litigation funding company grants a security interest or transfers any rights or interest in a consumer litigation funding; or

(c) an attorney or accountant who provides services to a consumer.

5. "Consumer" means a natural person who has a pending legal claim and who resides or is domiciled in New York.

6. "Funded amount" means the amount of monies provided to, or on behalf of, the consumer in the consumer litigation funding. "Funded amount" excludes charges.

7. "Funding date" means the date on which the funded amount is transferred to the consumer by the consumer litigation funding company either by personal delivery or via wire, ACH or other electronic means or mailed by insured, certified or registered United States mail.

8. "Immediate family member" means a parent; sibling; child by blood, adoption, or marriage; spouse; grandparent; or grandchild.

9. "Legal claim" means a bona fide civil claim or cause of action.

10. "Resolution date" means the date the funded amount, plus the agreed upon charges, are delivered to the consumer litigation funding company by the consumer, the consumer's attorney or otherwise.

§ 899-ddd. Contract requirements; right of rescission. 1. All consumer litigation funding contracts shall meet the following requirements:

(a) a contract shall be written in a clear and coherent manner using words with common, everyday meanings to enable the average consumer who

1 makes a reasonable effort under ordinary circumstances to read and
2 understand the terms of the contract without having to obtain the
3 assistance of a professional;

4 (b) the contract shall be completely filled in when presented to the
5 consumer for signature;

6 (c) the contract shall contain, in twelve point bold type font, a
7 right of rescission, allowing the consumer to cancel the contract with-
8 out penalty or further obligation if, within ten business days after the
9 funding date, the consumer returns to the consumer litigation funding
10 company the full amount of the disbursed funds;

11 (d) the contract shall contain the initials of the consumer on each
12 page;

13 (e) a statement that there are no fees or charges to be paid by the
14 consumer other than what is disclosed on the disclosure form;

15 (f) in the event the consumer seeks more than one litigation funding
16 contract from the same company, a disclosure providing the cumulative
17 amount due from the consumer for all transactions, including charges
18 under all contracts, if repayment is made any time after the contracts
19 are executed;

20 (g) a statement of the maximum amount the consumer may be obligated to
21 pay under the contract other than in a case of material breach, fraud or
22 misrepresentation by or on behalf of the consumer; and

23 (h) clear and conspicuous detail of how charges, including any appli-
24 cable fees, are incurred or accrued.

25 2. The contract shall contain a written acknowledgement by the attor-
26 ney retained by the consumer in the legal claim that attests to the
27 following:

28 (a) the attorney has reviewed the mandatory disclosures in section
29 eight hundred ninety-nine-ggg of this article with the consumer;

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

32 (c) all proceeds of the legal claim will be disbursed via either the
33 trust account of the attorney or a settlement fund established to
34 receive the proceeds of the legal claim on behalf of the consumer;

35 (d) the attorney is obligated to disburse funds from the legal claim
36 and take any other steps to ensure that the terms of the litigation
37 funding contract are fulfilled;

38 (e) the attorney has not received a referral fee or other consider-
39 ation from the consumer litigation funding company in connection with
40 the consumer litigation funding, nor will the attorney receive such fee
41 or other consideration in the future; and

42 (f) the attorney in the legal claim has provided no tax, public or
43 private benefit planning, or financial advice regarding this trans-
44 action.

45 3. In the event that the acknowledgement required pursuant to para-
46 graph (c) of subdivision two of this section is not completed by the
47 attorney or firm retained by the consumer in the legal claim, the
48 contract shall be null and void. The contract shall remain valid and
49 enforceable in the event the consumer terminates the initial attorney
50 and/or retains a new attorney with respect to the legal claim.

51 4. Notwithstanding paragraph b of subdivision three of section 5-501
52 of the general obligations law, no prepayment penalties or fees shall be
53 charged or collected on consumer litigation funding. A prepayment
54 penalty on consumer litigation funding shall be unenforceable.

55 § 899-eee. Prohibitions and charge limitations. 1. Consumer liti-
56 gation funding companies shall be prohibited from:

1 (a) paying or offering to pay commissions, referral fees, or other
2 forms of consideration to any attorney, law firm, medical provider,
3 chiropractor or physical therapist or any of their employees for refer-
4 ring a consumer to the company;

5 (b) accepting any commissions, referral fees, rebates or other forms
6 of consideration from an attorney, law firm, medical provider, chiro-
7 practor or physical therapist or any of their employees;

8 (c) intentionally advertising materially false or misleading informa-
9 tion regarding its products or services;

10 (d) referring, in furtherance of an initial legal funding, a customer
11 or potential customer to a specific attorney, law firm, medical provid-
12 er, chiropractor or physical therapist or any of their employees;
13 provided, however, if a customer needs legal representation, the company
14 may refer the customer to a local or state bar association referral
15 service;

16 (e) knowingly providing funding to a consumer who has previously
17 assigned and/or sold a portion of the consumer's right to proceeds from
18 the consumer's legal claim without first making payment to and/or
19 purchasing a prior unsatisfied consumer litigation funding company's
20 entire funded amount and contracted charges, unless a lesser amount is
21 otherwise agreed to in writing by the consumer litigation funding compa-
22 nies, except that multiple companies may agree to contemporaneously
23 provide funding to a consumer provided that the consumer and the consum-
24 er's attorney consent to the arrangement in writing;

25 (f) receiving any right to, or making, any decisions with respect to
26 the conduct of the underlying legal claim or any settlement or resol-
27 ution thereof. The right to make such decisions shall remain solely with
28 the consumer and the attorney in the legal claim;

29 (g) attempting to obtain a waiver of any remedy or right by the
30 consumer, including but not limited to the right to trial by jury;

31 (h) knowingly paying or offering to pay for court costs, filing fees
32 or attorney's fees either during or after the resolution of the legal
33 claim, using funds from the consumer litigation funding transaction;

34 (i) knowingly offering or colluding to provide funding as an induce-
35 ment to a consumer who is presently represented by counsel to terminate
36 that engagement and engage such lawyer or law firm to represent them in
37 the same matter. Any consumer litigation funding contract entered into
38 in violation of this paragraph shall be void ab initio; and

39 (j) colluding with or knowingly assisting a lawyer or law firm that is
40 enticing or intends to entice a consumer to bring a claim that the
41 company knows or has reason to know is fabricated or otherwise not
42 brought in good faith. Any consumer litigation funding contract entered
43 into in violation of this paragraph shall be void ab initio.

44 2. An attorney or law firm retained by the consumer in the legal claim
45 shall not have a financial interest in the consumer litigation funding
46 company offering consumer litigation funding to that consumer.

47 3. Any attorney who has referred the consumer to the consumer's
48 retained attorney shall not have a financial interest in the consumer
49 litigation funding company offering consumer litigation funding to that
50 consumer.

51 4. The attorney may only disclose privileged information to the
52 consumer litigation funding company with the written consent of the
53 consumer.

54 § 899-fff. Contracted amounts. The contracted amount to be paid to the
55 consumer litigation funding company shall be a predetermined amount
56 based upon intervals of time from the funding date through the resol-

ution date, and shall not be determined as a percentage of the recovery from the legal claim.

§ 899-ggg. Disclosures. All consumer litigation funding contracts shall contain the disclosures specified in this section, which shall constitute material terms of the contract. Unless otherwise specified, such disclosures shall be typed in at least twelve point bold type font and be placed clearly and conspicuously within the contract, as follows:

1. On the front page under appropriate headings, language specifying:

(a) the funded amount to be paid to the consumer by the consumer litigation funding company;

(b) an itemization of one-time charges;

(c) the maximum total amount to be assigned by the consumer to the company, including the funded amount and all charges; and

(d) a payment schedule to include the funded amount and charges, listing all dates and the amount due at the end of each one hundred eighty day period from the funding date, until the date the maximum amount due to the company pursuant to the contract is paid.

2. Pursuant to the provisions set forth in this section, within the body of the contract: "Consumer's right to cancellation: you may cancel this contract without penalty or further obligation within ten business days after the funding date if you return to the consumer litigation funding company the full amount of the disbursed funds."

3. The consumer litigation funding company shall have no role in deciding whether, when and how much the legal claim is settled for, however, the consumer and consumer's attorney must notify the company of the outcome of the legal claim by settlement or adjudication prior to the resolution date. The company may seek updated information about the status of the legal claim but in no event shall the company interfere with the independent professional judgement of the attorney in the handling of the legal claim or any settlement thereof.

4. Within the body of the contract, in all capital letters in at least twelve point bold type font contained within a box: "THE FUNDED AMOUNT AND AGREED UPON CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM, AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE CONSUMER LITIGATION FUNDING COMPANY) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST (INSERT NAME OF CONSUMER LITIGATION FUNDING COMPANY)."

5. Located immediately above the place on the contract where the consumer's signature is required, in twelve point bold type font: "Do not sign this contract before you read it completely. Do not sign this contract if it contains any blank spaces. You are entitled to a completely filled-in copy of the contract before you sign this contract. You should obtain the advice of any attorney. Depending on the circumstances, you may want to consult a tax, public or private benefits planning, or financial professional. You acknowledge that your attorney in the legal claim has provided no tax, public or private benefit planning, or financial advice regarding this transaction. You further acknowledge that your attorney has explained the terms and conditions of the consumer litigation funding contract."

6. A copy of the executed contract shall promptly be delivered to the attorney for the consumer.

§ 899-hhh. Violations. 1. Any consumer litigation funding company found in willful violation of any provision of this article in a specific funding case: (a) waives its right to recover both the funded amount

1 and any and all charges, as defined in subdivision two of section eight
2 hundred ninety-nine-ccc of this article, in that particular case; and
3 (b) shall be liable for a civil penalty of not more than five thousand
4 dollars for each violation, which shall accrue to the state of New York
5 and may be recovered in a civil action brought by the attorney general.

6 2. Nothing in this article shall be construed to restrict the exercise
7 of powers or the performance of the duties of the New York state attor-
8 ney general, which the attorney general is authorized to exercise or
9 perform by law.

10 § 899-iii. Assignability; liens. 1. The contingent right to receive an
11 amount of the potential proceeds of a legal claim is assignable by a
12 consumer.

13 2. Only attorney's liens related to the legal claim which is the
14 subject of the consumer litigation funding or medicare or other statuto-
15 ry liens related to the legal claim shall take priority over any lien of
16 the consumer litigation funding company. All other liens shall take
17 priority by normal operation of law.

18 § 899-jjj. Effect of communication on privileges. All communication
19 between the consumer's attorney in the legal claim and the consumer
20 legal funding company as it pertains to the consumer legal funding shall
21 fall within the scope of the attorney client privilege, including, with-
22 out limitation, the work-product doctrine.

23 § 899-kkk. Registration. 1. Unless a consumer litigation funding
24 company has first registered with the state of New York pursuant to this
25 article, the company may not engage in the business of consumer liti-
26 gation funding in this state.

27 2. An applicant's registration must be filed in the manner prescribed
28 by the secretary of state and must contain all the information required
29 by the department of state to make an evaluation of the character and
30 fitness of the applicant company. The initial application must be accom-
31 panied by a five hundred dollar fee. A renewal registration must include
32 a two hundred dollar fee. A registration must be renewed every two years
33 and expires on the thirtieth of September.

34 3. A certificate of registration may not be issued unless the depart-
35 ment of state, upon investigation, finds that the character and fitness
36 of the applicant company, and of the officers and directors thereof, are
37 such as to warrant belief that the business will be operated honestly
38 and fairly within the purposes of this article.

39 4. Every registrant shall also, at the time of filing such applica-
40 tion, file with the department of state, if the department of state so
41 requires, a bond satisfactory to the department of state in an amount
42 not to exceed fifty thousand dollars. In lieu of the bond at the option
43 of the registrant, the registrant may post an irrevocable letter of
44 credit. The terms of the bond must run concurrent with the period of
45 time during which the registration will be in effect. The bond must
46 provide that the registrant will faithfully conform to and abide by the
47 provisions of this article and to all rules lawfully made by the admin-
48 istrator under this act and to any such person or persons any and all
49 amounts of money that may become due or owing to the state or to such
50 person or persons from the registrant under and by virtue of this arti-
51 cle during the period for which the bond is given.

52 5. Upon written request, the applicant shall be entitled to a hearing
53 on the question of the applicant's qualifications for registration if:

54 (a) the department of state has notified the applicant in writing that
55 the application has been denied, or

1 (b) the department of state has not issued a registration within sixty
2 days after the application for the registration was filed.

3 6. A request for a hearing may not be made more than fifteen days
4 after the department has mailed a written notice to the applicant that
5 the application has been denied and stating in substance the department
6 of state's findings supporting denial of the application.

7 7. Notwithstanding the prior approval requirement of subdivision one
8 of this section, a consumer litigation funding company that registered
9 with the department of state between the effective date of this article
10 or when the department of state has made applications available to the
11 public, whichever is later, and one hundred eighty days thereafter may
12 engage in consumer litigation funding while the company's registration
13 is pending approval with the department of state. All funding agreements
14 entered into prior to the effective date of this article are not subject
15 to the terms of this article.

16 8. No consumer litigation funding company may use any form of consumer
17 litigation funding contract in this state unless it has been filed with
18 the department of state in accordance with the filing procedures set
19 forth by the secretary of state.

20 9. The secretary of state is hereby authorized to adopt rules and
21 regulations to implement the provisions of this section as needed.

22 § 899-lll. Reporting. 1. Each consumer litigation funding company that
23 engages in business in the state shall submit a report to the department
24 of state no later than the thirty-first of January of each year specify-
25 ing:

26 (a) number of consumer litigation fundings by the company;
27 (b) summation of funded amounts in dollar figure; and
28 (c) annual percentage charged to each consumer where repayment was
29 made.

30 2. The department of state shall make such information available to
31 the public, in a manner which maintains the confidentiality of the name
32 of each company and consumer, no later than ninety days after the
33 reports are submitted.

34 § 899-mmm. Severability. If any provision of this article is, for any
35 reason, declared unconstitutional or invalid, in whole or in part, by
36 any court of competent jurisdiction, such portion shall be deemed sever-
37 able, and such unconstitutionality or invalidity shall not affect the
38 validity of the remaining portions of this article, which remaining
39 portions shall continue in full force and effect.

40 § 4. This act shall take effect on the one hundred eightieth day after
41 it shall have become a law; provided, however, it shall not apply to or
42 in any way affect or invalidate any consumer litigation funding previ-
43 ously effectuated prior to the effective date of this act.