

SENATE, No. 2541

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED OCTOBER 27, 2014

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

SYNOPSIS

Regulates litigation funding providers.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT regulating litigation funding providers and supplementing
2 Title 56 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. As used in this act:

8 "Commissioner" means the Commissioner of Banking and
9 Insurance.

10 "Consumer" means a person or entity residing or domiciled in
11 this State with a pending civil claim or action and represented by an
12 attorney.

13 "Legal funding" means a transaction in which a company makes
14 a cash payment to a consumer in exchange for the right to receive
15 an amount out of the potential proceeds of any realized settlement,
16 judgment, award or verdict the consumer may receive in a civil
17 claim or action.

18 "Litigation funding provider" means a person or entity that
19 provides legal funding to a consumer.

20

21 2. Any contract to provide legal funding to a consumer shall
22 meet with the following requirements:

23 a. The contract shall be written in a simple, clear,
24 understandable, and easily readable way, using words with
25 common, everyday meanings to enable the average consumer who
26 makes a reasonable effort under ordinary circumstances to read and
27 understand the terms of the legal funding contract without having to
28 obtain the assistance of a professional. The contract shall have a
29 meaningful arrangement that is appropriately divided and captioned
30 by its various sections.

31 b. The contract shall contain a disclosure form on the front
32 page in at least 12-point bold type, which provides:

- 33 (1) The total amount of legal funding received by the consumer;
34 (2) An itemized list of fees to be paid by the consumer;
35 (3) The total amount to be repaid by the consumer, in six-month
36 intervals for 36 months, including all fees; and
37 (4) The annual percentage rate of return, calculated as of the last
38 day of each six-month interval, including frequency of
39 compounding.

40 c. The contract shall provide that the consumer may cancel the
41 contract within five business days following the consumer's receipt
42 of funds without penalty or further obligation. The contract must
43 contain the following notice written in a clear and conspicuous
44 manner: "CONSUMER'S RIGHT TO CANCELLATION: YOU
45 MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR
46 FURTHER OBLIGATION WITHIN FIVE BUSINESS DAYS
47 FROM THE DATE YOU RECEIVE FUNDING FROM [insert
48 name of litigation funding provider]." The contract shall also

1 specify that in order for the cancellation to be effective, the
2 consumer must either:

3 (1) return the full amount of disbursed funds to the company by
4 delivering the litigation funding provider's uncashed check to the
5 provider's offices in person within five business days of the
6 disbursement of funds; or

7 (2) mail a notice of cancellation and include in the mailing a
8 return of the full amount of disbursed funds in the form of the
9 provider's check, or a registered or certified check or money order,
10 by insured, registered or certified United States mail postmarked
11 within five business days of receiving funds from the litigation
12 funding provider, at the address specified for the cancellation in the
13 contract.

14 d. The contract shall contain the following statement in at least
15 12-point boldface type: "THE CIVIL LITIGATION FUNDING
16 COMPANY AGREES THAT IT SHALL HAVE NO RIGHT TO
17 AND WILL NOT MAKE ANY DECISIONS WITH RESPECT TO
18 THE CONDUCT OF THE UNDERLYING LEGAL CLAIM OR
19 ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT
20 THE RIGHT TO MAKE THOSE DECISIONS REMAINS
21 SOLELY WITH YOU AND YOUR ATTORNEY IN THE LEGAL
22 CLAIM."

23 e. The contract shall contain a written acknowledgment, to be
24 completed by the consumer's attorney, that states that:

25 (1) The attorney has reviewed the contract and all costs and fees
26 have been disclosed, including the amount to be paid by the
27 consumer;

28 (2) The attorney is being paid per a written fee agreement;

29 (3) All proceeds of the civil claim or action will be disbursed
30 via the attorney's trust account; and

31 (4) The attorney is following written instructions of the
32 consumer with regard to the legal funding.

33 f. The contract shall contain an acknowledgement by the
34 consumer that the consumer has reviewed the contract in its
35 entirety.

36

37 3. A litigation funding provider shall not:

38 a. Provide legal funding to a consumer without completing a
39 contract that meets with the requirements of section 2 of this act;

40 b. Assess fees for any period exceeding 42 months from the
41 date of the contract with the civil litigant;

42 c. Compound fees based on any lesser time period than
43 semiannually;

44 d. Require a consumer to pay the litigation funding provider if
45 the consumer receives no proceeds in the civil claim or action; or

46 e. In calculating the annual percentage fee or rate of return:

1 (1) Fail to include all charges payable directly or indirectly by
2 the consumer or compute the rate based only on amounts actually
3 received and retained by a consumer; or

4 (2) Exceed the criminal usury rate established pursuant to N.J.S.
5 2C:21-19 or the civil usury rate established pursuant to R.S. 31:1-1.
6

7 4. a. A litigation funding provider shall not engage in legal
8 funding unless the litigation funding provider has first registered
9 with the Department of Banking and Insurance pursuant to this act.

10 b. Registration shall be filed in the manner prescribed by the
11 commissioner and shall contain any information the commissioner
12 requires to make an evaluation of the character, fitness and financial
13 responsibility of the applicant. The initial application and renewal
14 registration shall be accompanied by a fee to be determined by the
15 commissioner. A registration shall be renewed every 2 years.

16 c. Registration shall not be issued unless the commissioner,
17 upon investigation, finds that the character and fitness of the
18 applicant warrant belief that the business will be operated honestly
19 and fairly within the purposes of this act.

20 d. For purposes of this section, an applicant demonstrates
21 financial responsibility if:

22 (1) The applicant has net assets of at least \$25,000 available for
23 the operation of the registered business; and

24 (2) Following the issuance of a registration under this section,
25 the registrant maintains net assets of at least \$25,000 that are either
26 used or readily available for use in the conduct of the business of
27 each office of the registrant in which a legal funding is made.

28 e. Every applicant shall, at the time of filing an application, file
29 with the commissioner, if the commissioner so requires, a bond
30 satisfactory to the commissioner in an amount not to exceed
31 \$50,000.

32 f. The commissioner shall maintain a list of all registered
33 litigation funding providers and make that list available on a
34 publicly accessible website.

35 g. The commissioner shall require litigation funding providers
36 to annually submit certain data, in a form and manner acceptable to
37 the commissioner, regarding the number of legal fundings, the
38 amount of legal fundings, the number of legal fundings required to
39 be repaid by the consumer and the amount charged to the consumer,
40 including but not limited to the annual percentage fee charged to the
41 consumer and the itemized fees charged to the consumer.

42 h. If any litigation funding provider violates the provisions of
43 this act, the commissioner may suspend the provider's registration,
44 fine the provider up to \$5,000 for each violation, or both suspend
45 and fine the provider.
46

47 5. This act shall take effect on the 90th day next following
48 enactment.

STATEMENT

This bill regulates litigation funding providers. Litigation funding is a transaction in which a company makes a cash payment to a consumer in exchange for the right to receive an amount out of the potential proceeds of any realized settlement, judgment, award or verdict the consumer may receive in a civil claim or action. Under current law, litigation funding providers are largely unregulated in New Jersey.

The bill requires any transaction to provide legal funding to a consumer to be evidenced by a contract that meets with the certain requirements. The bill requires the contract to be written in a clear and coherent manner using words with common, everyday meanings. The contract must contain a disclosure form on the front page in at least 12-point bold type, which provides the total amount of legal funding received by the consumer; an itemized list of fees to be paid by the consumer; the total amount to be repaid by the consumer, in six-month intervals for 36 months; and the annual percentage rate of return.

The bill requires the contract to provide that the consumer may cancel the contract within 5 business days following the consumer's receipt of funds without penalty or further obligation, and to provide a statement that the litigation funding provider has no right to make decisions regarding the underlying legal claims. The contract must contain a written acknowledgment, to be completed by the consumer's attorney, that states that the attorney has reviewed the contract and all costs and fees have been disclosed; the attorney is being paid per a written fee agreement; all proceeds of the civil claim or action will be disbursed via the attorney's trust account; and the attorney is following written instructions of the consumer with regard to the legal funding.

The bill requires the contract to contain an acknowledgement by the consumer that the consumer has reviewed the contract in its entirety.

The bill provides that no litigation funding provider may assess fees for any period exceeding 42 months from the date of the contract with the civil litigant; compound fees based on any lesser time period than semiannually; require a consumer to pay the litigation funding provider if the consumer receives no proceeds in the civil claim or action; or in calculating the annual percentage fee or rate of return, fail to include all charges payable directly or indirectly by the consumer or compute the rate based only on amounts actually received and retained by a consumer, or exceed the civil or criminal usury rate.

The bill requires litigation funding providers to register with the Department of Banking and Insurance before providing consumers with litigation funding. Registration is to be filed in the manner prescribed by the commissioner and must contain any information

1 the commissioner requires to make an evaluation of the character,
2 fitness and financial responsibility of the applicant. The initial
3 application and renewal registration shall be accompanied by a fee
4 to be determined by the commissioner. The bill requires a
5 registration to be renewed every 2 years.

6 The bill provides that registration may not be issued unless the
7 commissioner, upon investigation, finds that the character and
8 fitness of the applicant warrant belief that the business will be
9 operated honestly and fairly within the purposes of this act. The
10 bill requires the commissioner to investigate the financial
11 responsibility of the applicant based on certain standards. Under
12 the bill, the commissioner may require litigation funding providers
13 to file a bond with the commissioner not to exceed \$50,000.

14 Under the bill, the commissioner is required to maintain a list of
15 all registered companies and make that list available on a publicly
16 accessible website. Additionally, litigation funding providers must
17 annually submit certain data, in a form and manner acceptable to
18 the commissioner, regarding the number of legal fundings, the
19 amount of legal fundings, the number of legal fundings required to
20 be repaid by the consumer and the amount charged to the consumer,
21 including but not limited to the annual percentage fee charged to the
22 consumer and the itemized fees charged to the consumer.

23 The bill also provides that if any litigation funding provider
24 violates the provisions of the bill, the commissioner may suspend
25 the provider's registration, fine the provider up to \$5,000 for each
26 violation, or both suspend and fine the provider.