

An Act

ENROLLED SENATE
BILL NO. 1016

By: Crain of the Senate

and

Osborn of the House

An Act relating to consumer litigation funding agreements; defining terms; clarifying nonapplicability of act; prohibiting certain transactions by certain persons; providing exception; specifying duty of attorney in certain claims; establishing requirements for certain funding agreements; establishing procedures for rescission of certain funding agreements; requiring inclusion of certain disclosures in certain funding agreements; specifying format for certain disclosures; establishing requirements for certain payment; establishing certain licensing requirements; permitting certain bond requirement; specifying terms for certain bond; establishing procedures for certain hearing; requiring certain license renewal; providing for renewal fee; prohibiting certain activities by consumer litigation funders; authorizing penalties for certain violations; providing for adoption of certain rules and procedures; stating applicability of act; providing for codification; and providing an effective date.

SUBJECT: Consumer litigation funding agreement

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-701 of Title 14A, unless there is created a duplication in numbering, to read as follows:

DEFINITIONS.

As used in this act:

1. "Administrator" means the Administrator of Consumer Credit;

2. "Advertise" means to publish or disseminate a written, electronic, or printed communication, or to publish, disseminate, circulate, or place directly or indirectly before the public a communication by means of a recorded telephone message or a communication transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, for the purpose of inducing a person to enter into a consumer litigation funding agreement;

3. "Charge" or "charges" means the amount paid to a consumer litigation funder by or on behalf of the consumer, in addition to the funded amount provided by or on behalf of the funder to a consumer. The term includes an administrative fee, origination fee, underwriting fee, and other fees, regardless of how the fee is denominated, and any amounts denominated as interest;

4. "Consumer" means an individual who has a pending legal claim and who:

- a. resides in this state, or
- b. has a legal claim in this state;

5. "Consumer litigation funder" or "funder" means a person that enters into a consumer litigation funding agreement with a consumer. The term does not include:

- a. an attorney who, at the time money is provided to or on behalf of a consumer under a consumer litigation funding agreement, has an attorney-client relationship with the consumer concerning the consumer's legal claim,
- b. an accountant who provides accounting services to the consumer, or

c. an immediate family member of the consumer;

6. "Consumer litigation funding agreement" means an agreement:

- a. under which money is provided to or on behalf of a consumer by a consumer litigation funder for a purpose other than prosecuting the consumer's legal claim, and
- b. the repayment of the money is in accordance with a litigation funding transaction the terms of which are included as part of the consumer litigation funding agreement;

7. "Funded amount" means the amount provided to or on behalf of the consumer under a consumer litigation funding agreement. The term does not include a charge;

8. "Funding date" means the date on which the consumer litigation funder:

- a. transfers the funded amount to the consumer by personal delivery or by wire, ACH debit, or other electronic means, or
- b. mails the funded amount to the consumer by insured, certified, or registered United States mail;

9. "Immediate family member" means:

- a. a parent, sibling, spouse, grandparent, or grandchild of an individual, or
- b. a child related by blood, adoption, or marriage to an individual;

10. "Legal claim" includes:

- a. a civil action,
- b. an alternative dispute resolution proceeding, or

- c. an administrative proceeding before an agency of this state, except for workers' compensation claims, which are not assignable;

11. "Litigation funding transaction" means a non-recourse transaction in which a consumer litigation funder purchases, and a consumer assigns to the funder, 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; and

12. "Resolution date" means the date on which the sum of the amount funded to the consumer and the agreed to charges is delivered to the consumer litigation funder.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-702 of Title 14A, unless there is created a duplication in numbering, to read as follows:

NONAPPLICABILITY OF ACT.

Except as specifically provided by this act, this act does not apply to the following persons who enter into a consumer litigation funding agreement with a consumer:

1. An immediate family member of the consumer;
2. An accountant who provides accounting services to the consumer; or
3. An attorney who, at the time money is provided to or on behalf of a consumer under a consumer litigation funding agreement, has an attorney-client relationship with the consumer concerning the consumer's legal claim.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-703 of Title 14A, unless there is created a duplication in numbering, to read as follows:

AGREEMENT REQUIRED.

A person who is not described by Section 2 of this act may not enter into a litigation funding transaction with a consumer except

under a consumer litigation funding agreement that complies with this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-704 of Title 14A, unless there is created a duplication in numbering, to read as follows:

DUTY OF ATTORNEY.

An attorney representing a consumer in the legal claim is not under a duty to assign any portion of payments from a settlement, judgment, award, or verdict to the consumer litigation funder unless the attorney has agreed to do so in writing.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-705 of Title 14A, unless there is created a duplication in numbering, to read as follows:

FORM OF AGREEMENT; REQUIREMENT OF EXISTING LEGAL CLAIM.

A. A consumer litigation funding agreement shall:

1. Be in writing;
2. Contain the initials of the consumer on each page; and
3. Be otherwise complete when presented to the consumer for signature.

B. A consumer litigation funding agreement may be entered into only if the agreement relates to:

1. An existing legal claim that has been made by or on behalf of the consumer against another person, including the other person's insurer or the consumer's own insurer; or
2. An existing proceeding in which the consumer's legal claim is intended to be resolved and with regard to which the consumer is represented by an attorney.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-706 of Title 14A, unless there is created a duplication in numbering, to read as follows:

RIGHT OF RESCISSION.

A consumer litigation funding agreement shall contain inside a text box, in bold type, a right of rescission permitting the consumer to cancel the agreement without penalty or further obligation if, not later than the fifth business day after the funding date, the consumer:

1. Returns to the consumer litigation funder the full amount of the disbursed funds by personally delivering the funder's uncashed check to the funder's office; or

2. Sends by insured, certified, or registered United States mail to the address specified in the agreement a notice of cancellation and the full amount of disbursed funds in the form of the funder's uncashed check or a registered or certified check or money order.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-707 of Title 14A, unless there is created a duplication in numbering, to read as follows:

DISCLOSURES.

A. A consumer litigation funding agreement shall contain the disclosures required by this section. The disclosures shall be clear and conspicuous and in at least twelve-point bold type, except as provided by subsection F of this section.

B. On the front page of the agreement under appropriate headings, the agreement shall disclose:

1. The funded amount to be paid to the consumer by the consumer litigation funder;

2. An itemization of one-time charges;

3. The total amount to be assigned by the consumer to the funder, including the funded amount and all charges; and

4. A payment schedule that:

a. includes the funded amount and charges, and

b. lists all dates and the amount due at the end of each one-hundred-eighty-day period from the funding date until the due date of the maximum amount due to the funder by the consumer to satisfy the amount owed under the agreement.

C. Pursuant to the requirements set forth in this act, the agreement shall contain the following statement: "CONSUMER'S RIGHT TO CANCELLATION: You may cancel this agreement without penalty or further obligation within five business days after the funding date if you either:

1. Return to the consumer litigation funder the full amount of the disbursed funds by delivering the funder's uncashed check to the funder's office in person; or

2. Send, by insured, certified, or registered United States mail, to the funder at the address specified in the agreement, a notice of cancellation and include in the mailing a return of the full amount of disbursed funds in the form of the funder's uncashed check or a registered or certified check or money order."

D. The agreement shall disclose that:

1. The consumer litigation funder may not participate in deciding whether, when, or the amount for which a legal claim is settled;

2. The funder may not interfere with the independent professional judgment of the attorney handling the legal claim or any settlement of the legal claim; and

3. The consumer shall notify the funder of the settlement or adjudication of the legal claim before the resolution date.

E. The agreement shall contain in all capital letters the following text within a box: "THE FUNDED AMOUNT AND AGREED TO 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 FUNDER) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF THIS AGREEMENT OR YOU HAVE COMMITTED FRAUD AGAINST THE CONSUMER LITIGATION FUNDER."

F. Immediately above the line for the consumer's signature, the agreement shall contain the following disclosure in twelve-point type: "Do not sign this agreement before you read it completely or if it contains any blank spaces. You are entitled to a completed copy of the agreement. Before you sign this agreement, you should obtain the advice of an attorney. Depending on the circumstances, you may want to consult a tax, public or private benefits planning, or financial professional.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-708 of Title 14A, unless there is created a duplication in numbering, to read as follows:

AGREEMENT AMOUNT.

A consumer litigation funder shall require the amount due under the agreement to be paid to the funder in a predetermined amount based on periodic intervals from the funding date through the resolution date, and not an amount determined as a percentage of the recovery from the legal claim.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-709 of Title 14A, unless there is created a duplication in numbering, to read as follows:

LICENSE REQUIRED; APPLICATION.

A. A consumer litigation funder shall obtain a license from the Administrator before engaging in an activity in this state that shall be performed under a consumer litigation funding agreement that complies with this act.

B. A consumer litigation funder shall file a licensing application in the form and manner prescribed by the Administrator. The application shall:

1. Contain all information the Administrator requires to evaluate the character and fitness of the applicant, and if the applicant is an entity, the character and fitness of each officer and director of the applicant funder; and

2. Be accompanied by a fee of Two Hundred Ninety Dollars (\$290.00).

C. Nothing in this section shall prohibit a company doing business as a consumer litigation funder in this state on the effective date of this act from continuing to do so during the time period in which the initial licensure application is being processed by the Administrator, and until such time as the application is approved or denied.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-710 of Title 14A, unless there is created a duplication in numbering, to read as follows:

BOND; LETTER OF CREDIT.

A. The Administrator may require an applicant or license holder to file a bond with the application in an amount not to exceed Fifty Thousand Dollars (\$50,000.00).

B. The bond terms shall run concurrent with the licensing period. The bond shall provide that the license holder will, during the licensing period:

1. Faithfully conform to and abide by:

a. the requirements of this act, and

b. the rules adopted by the Administrator to administer this act; and

2. Provide any amount that may become due or owing to the state from the license holder under this act.

C. In lieu of the bond, the applicant or license holder, at the applicant's or license holder's option, may post an irrevocable letter of credit.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-711 of Title 14A, unless there is created a duplication in numbering, to read as follows:

ISSUANCE OF LICENSE.

The Administrator may not issue a license under this act unless the Administrator, following an investigation, determines that the character and fitness of the applicant or of the applicant funder's officers and directors warrant belief that the business will be operated honestly and fairly in accordance with this act.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-712 of Title 14A, unless there is created a duplication in numbering, to read as follows:

HEARING.

A. On written request, the Administrator shall set a hearing before an independent hearing examiner to determine an applicant's qualifications for licensure if:

1. The Administrator has notified the applicant in writing of the denial of the application; or
2. The Administrator has not issued a license not later than the 60th day after the date the applicant filed the application.

B. An applicant may not request a hearing under this section after the 16th day after the date the Administrator sends written notice to the applicant that the application has been denied and stating the reasons for the denial.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-713 of Title 14A, unless there is created a duplication in numbering, to read as follows:

RENEWAL OF LICENSE.

A consumer litigation funder shall renew its license on December 1 every two (2) years by paying a renewal fee as determined by the Administrator.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-714 of Title 14A, unless there is created a duplication in numbering, to read as follows:

PROHIBITED ACTIVITIES OR CONDUCT.

A consumer litigation funder may not:

1. Pay or offer to pay a commission, referral fee, or other form of consideration to an attorney, law firm, medical provider, chiropractor, or physical therapist or an employee of such a person for referring a consumer to the funder;
2. Accept any commission, referral fee, rebate, or other form of consideration from an attorney, law firm, medical provider, chiropractor, or physical therapist or an employee of such a person;
3. Intentionally advertise materially false or misleading information about the funder's products or services;
4. Refer, to further an initial legal funding, a customer or potential customer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist or an employee of such a person, except that the funder may refer a customer or potential customer who needs legal representation to a local or state bar association referral service;
5. Fail to promptly supply a copy of the executed agreement to the consumer's attorney;
6. Knowingly provide funding to a consumer who has previously assigned or sold a portion of the consumer's right to proceeds from the consumer's legal claim without first paying to or purchasing from a previously unsatisfied consumer litigation funder that funder's entire funded amount and charges due under that funder's applicable agreement, unless:

- a. a lesser amount is otherwise agreed to in writing by the consumer litigation funders, or
- b. multiple funders have agreed to concurrently provide funding to a consumer, if the consumer consents to the arrangement in writing;

7. Make a decision relating to the conduct, settlement, or resolution of the underlying legal claim, the power of which shall remain solely with the consumer and the attorney handling the legal claim; or

8. Knowingly pay or offer to pay, using funds from the litigation funding transaction, court costs, filing fees, or attorneys' fees during or after the resolution of the legal claim.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-715 of Title 14A, unless there is created a duplication in numbering, to read as follows:

VIOLATION OF ACT.

A. If a court finds that a consumer litigation funder has not been properly licensed pursuant to this act or has intentionally violated this act with respect to a litigation funding transaction, the funder is entitled to recover the funded amount provided to the consumer and may not receive any additional charges.

B. In addition to any other applicable investigative and enforcement provisions of the Uniform Consumer Credit Code, the Administrator shall have the authority to assess an administrative penalty pursuant to the provisions of the Uniform Consumer Credit Code against a person who knowingly and willfully violates or causes a violation of this act or a rule adopted under this act.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-716 of Title 14A, unless there is created a duplication in numbering, to read as follows:

As soon as practicable after the effective date of this act, but not later than July 1, 2014, the Commission on Consumer Credit shall adopt the rules and procedures necessary to implement this act.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-717 of Title 14A, unless there is created a duplication in numbering, to read as follows:

The changes in law made by this act apply only to a consumer litigation funding agreement entered into on or after the effective date of this act. A consumer litigation funding agreement entered into before the effective date of this act is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose. Nothing in this act shall in any way affect or invalidate any consumer litigation funding agreement previously effectuated prior to the effective date of this act.

SECTION 18. This act shall become effective November 1, 2013.

Passed the Senate the 20th day of May, 2013.

Presiding Officer of the Senate

Passed the House of Representatives the 22nd day of May, 2013.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____