

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 SENATE BILL 1928

By: McAffrey

4
5
6 AS INTRODUCED

7 An Act relating to funding companies; creating the
8 Funding Company Regulation Act; providing short
9 title; defining terms; stating form of agreement;
10 requiring certain existing claim; granting right of
11 rescission; requiring certain disclosures; clarifying
12 agreement amount; prohibiting percentage of certain
13 claim; providing for licensure and application;
14 providing certain exception; authorizing bond or
15 letter of credit; granting issuance of license under
16 certain conditions; authorizing hearing for denial of
17 license; providing procedure for hearing; providing
18 for renewal of license; stating prohibited acts or
19 conduct; stating violations; providing penalty;
20 authorizing administrative fines; directing
21 promulgation of rules by certain date; construing
22 application of act; providing for codification; and
23 providing an effective date.
24

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 3-850 of Title 14A, unless there
21 is created a duplication in numbering, reads as follows:

22 This act shall be known and may be cited as the "Funding
23 Company Regulation Act".
24

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3-850.1 of Title 14A, unless
3 there is created a duplication in numbering, reads as follows:

4 DEFINITIONS.

5 As used in the Funding Company Regulation Act:

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

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

15 3. "Charge" or "charges" means the amount paid to a funding
16 company by or on behalf of the consumer/beneficiary, in addition to
17 the funded amount provided by or on behalf of the funder to a
18 consumer/beneficiary. The term includes an administrative fee,
19 origination fee, underwriting fee, and other fees, regardless of how
20 the fee is denominated, and any amounts denominated as interest;

21 4. "Consumer/beneficiary" means an individual who has a lawful
22 claim to a life insurance benefit distribution as a stated
23 beneficiary, and:

24 a. who resides in this state,

- b. who made the claim for the insurance benefit distribution in this state,
- c. where the life insurance policy was obtained by the owner of such policy in this state, or
- d. where the death of the insured under the life insurance policy occurred in this state;

5. "Funding company" or "funder" means a person or business entity that enters into a funding agreement with a qualified consumer/beneficiary for the purpose of advancing funds under a life insurance benefit distribution following the death of the insured.

The term does not include:

- a. an attorney who, at the time money is provided to or on behalf of a consumer/beneficiary under a funding agreement, has an attorney-client relationship with the consumer/beneficiary concerning the consumer/beneficiary's claim,
- b. an accountant who provides accounting services to the consumer/beneficiary, or
- c. an immediate family member of the consumer/beneficiary;

6. "Funding agreement" means an agreement:

- a. under which money is provided to or on behalf of a consumer/beneficiary by a funding company or funder for a purpose other than prosecuting a legal claim and

1 based upon the consumer/beneficiary's right to a life
2 insurance benefit distribution after the death of the
3 insured, and

- 4 b. the repayment of the money is in accordance with a
5 funding transaction, the terms of which are included
6 as part of the funding agreement;

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

10 8. "Funding date" means the date on which the funding company
11 or funder:

- 12 a. transfers the funded amount to the
13 consumer/beneficiary by personal delivery or by wire,
14 ACH debit, or other electronic means, or

- 15 b. mails the funded amount to the consumer/beneficiary by
16 insured, certified, or registered United States mail;

17 9. "Immediate family member" means:

- 18 a. a parent, sibling, spouse, grandparent, or grandchild
19 of an individual, or

- 20 b. a child related by blood, adoption, or marriage to an
21 individual;

22 10. "Legal claim" includes:

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

1 c. an administrative proceeding before an agency of this
2 state;

3 11. "Funding transaction" means a non-recourse transaction in
4 which a funding company or funder purchases, and a
5 consumer/beneficiary assigns to the funder, his or her right to
6 receive a life insurance policy benefit distribution following the
7 death of the insured; and

8 12. "Resolution date" means the date on which the sum of the
9 amount funded to the consumer/beneficiary and the agreed charges are
10 delivered to the funder.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 3-850.2 of Title 14A, unless
13 there is created a duplication in numbering, reads as follows:

14 FORM OF AGREEMENT; REQUIREMENT OF EXISTING LEGAL CLAIM.

15 A. A funding agreement shall:

16 1. Be in writing;

17 2. Contain the initials of the consumer/beneficiary on each
18 page; and

19 3. Be otherwise complete when presented to the
20 consumer/beneficiary for signature.

21 B. A funding agreement may be entered into only if the
22 agreement relates to:

23 1. A present and existing beneficiary claim for life insurance
24 benefit distribution following the death of the insured; or

1 DISCLOSURES.

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

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

8 1. The funded amount to be paid to the consumer/beneficiary by
9 the funder;

10 2. An itemization of one-time charges;

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

13 4. A payment schedule that:

14 a. includes the funded amount and charges, and

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

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

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

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

9 D. The agreement shall disclose that:

10 1. The funder may not participate in deciding whether, when, or
11 the amount for which a beneficiary's claim to life insurance benefit
12 distribution is settled or paid;

13 2. The funder may not interfere with the independent
14 professional judgment of the attorney handling a beneficiary's claim
15 to any life insurance benefit distribution; and

16 3. The consumer/beneficiary shall notify the funder of the
17 settlement or adjudication of the beneficiary's claim before the
18 resolution date.

19 E. The agreement shall contain in all capital letters the
20 following text within a box: "THE FUNDED AMOUNT AND AGREED TO
21 CHARGES SHALL BE PAID ONLY FROM YOUR BENEFICIARY CLAIM TO LIFE
22 INSURANCE BENEFITS DISTRIBUTIONS, AND SHALL BE PAID ONLY TO THE
23 EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR BENEFICIARY
24 CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE FUNDING COMPANY OR

1 FUNDER) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR BENEFICIARY
2 CLAIM, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF THIS AGREEMENT
3 OR YOU HAVE COMMITTED FRAUD AGAINST THE FUNDER."

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

12 SECTION 6. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 3-850.5 of Title 14A, unless
14 there is created a duplication in numbering, reads as follows:

15 AGREEMENT AMOUNT.

16 A funding company or funder shall require the amount due under a
17 funding agreement to be paid to the funder in a predetermined amount
18 based on periodic intervals from the funding date through the
19 resolution date, and not an amount determined as a percentage of the
20 beneficiary's claim to life insurance benefits.

21 SECTION 7. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 3-850.6 of Title 14A, unless
23 there is created a duplication in numbering, reads as follows:

24 LICENSE REQUIRED; APPLICATION.

1 A. A funding company or funder shall obtain a license from the
2 Administrator before engaging in an activity in this state that
3 shall be performed under a funding agreement that complies with the
4 Funding Company Regulation Act.

5 B. A funder shall file a license application in the form and
6 manner prescribed by the Administrator. The application shall:

7 1. Contain all information the Administrator requires to
8 evaluate the character and fitness of the applicant, and if the
9 applicant is a business entity, the character and fitness of each
10 officer and director of the applicant funder; and

11 2. Be accompanied by a fee of Five Hundred Dollars (\$500.00).

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

18 SECTION 8. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 3-850.7 of Title 14A, unless
20 there is created a duplication in numbering, reads as follows:

21 BOND; LETTER OF CREDIT.

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

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

4 1. Faithfully conform to and abide by:

5 a. the requirements of the Funding Company Regulation
6 Act, and

7 b. the rules adopted by the Administrator to administer
8 the Funding Company Regulation Act; and

9 2. Provide any amount that may become due or owing to the state
10 from the license holder under the Funding Company Regulation Act.

11 C. In lieu of a bond, the applicant or license holder, at the
12 applicant's or license holder's option, may request to post an
13 irrevocable letter of credit, under the approval of the
14 Administrator.

15 SECTION 9. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 3-850.8 of Title 14A, unless
17 there is created a duplication in numbering, reads as follows:

18 ISSUANCE OF LICENSE.

19 The Administrator may not issue a license under the Funding
20 Company Regulation Act unless the Administrator, following an
21 investigation, determines that the character and fitness of the
22 applicant or of the applicant funder's officers and directors
23 warrant belief that the business will be operated honestly and
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1 fairly in this state in accordance with the Funding Company
2 Regulation Act.

3 SECTION 10. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3-850.9 of Title 14A, unless
5 there is created a duplication in numbering, reads as follows:

6 HEARING.

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

10 1. The Administrator has notified the applicant in writing of
11 the denial of the application; or

12 2. The Administrator has not issued a license not later than
13 the 60th day after the date the applicant filed the application.

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

18 SECTION 11. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 3-850.10 of Title 14A, unless
20 there is created a duplication in numbering, reads as follows:

21 RENEWAL OF LICENSE.

22 A funding company or funder shall renew its license on December
23 1 every two (2) years by paying a renewal fee as determined by the
24 Administrator.

1 SECTION 12. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3-850.11 of Title 14A, unless
3 there is created a duplication in numbering, reads as follows:

4 PROHIBITED ACTIVITIES OR CONDUCT.

5 A funding company or funder may not:

- 6 1. Pay or offer to pay a commission, referral fee, or other
7 form of consideration to an attorney, law firm, medical provider, or
8 an employee of such a person for referring a consumer/beneficiary to
9 the funder;
- 10 2. Accept any commission, referral fee, rebate, or other form
11 of consideration from an attorney, law firm, medical provider, or an
12 employee of such a person;
- 13 3. Intentionally advertise materially false or misleading
14 information about the funder's products or services;
- 15 4. Refer, to further an initial funding, a customer or
16 potential customer to a specific attorney, law firm, or an employee
17 of such a person, except that the funder may refer a consumer or
18 potential consumer who needs legal representation regarding a
19 beneficiary claim to a local or state bar association referral
20 service;
- 21 5. Fail to promptly supply a copy of the executed agreement to
22 the consumer/beneficiary's attorney;
- 23 6. Knowingly provide funding to a consumer/beneficiary who has
24 previously assigned or sold a portion of his or her beneficiary's

1 claim without first paying to or purchasing from a previously
2 unsatisfied funder that funder's entire funded amount and charges
3 due under that funder's applicable agreement, unless:

4 a. a lesser amount is otherwise agreed to in writing by
5 the funders, or

6 b. multiple funders have agreed to concurrently provide
7 funding to a consumer, if the consumer consents to the
8 arrangement in writing;

9 7. Make a decision relating to the settlement or adjudication
10 of the underlying beneficiary's claim to life insurance benefits,
11 the power of which shall remain solely with the consumer/beneficiary
12 and the attorney handling the beneficiary's claim; or

13 8. Knowingly pay or offer to pay, using funds from the funding
14 transaction after the resolution of the beneficiary's claim.

15 SECTION 13. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 3-850.12 of Title 14A, unless
17 there is created a duplication in numbering, reads as follows:

18 VIOLATION OF ACT.

19 A. If a court finds that a funding company or funder has not
20 been properly licensed pursuant to the Funding Company Regulation
21 Act or has intentionally violated any provision of such act with
22 respect to a funding transaction, the funder is entitled to recover
23 the funded amount provided to the consumer/beneficiary and may not
24 receive any additional charges.

1 B. In addition to any other applicable investigative and
2 enforcement provisions of the Uniform Consumer Credit Code, the
3 Administrator shall have the authority to assess an administrative
4 penalty pursuant to the provisions of the Uniform Consumer Credit
5 Code against a person who knowingly and willfully violates or causes
6 a violation of the Funding Company Regulation Act or a rule adopted
7 thereto.

8 SECTION 14. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 3-850.13 of Title 14A, unless
10 there is created a duplication in numbering, reads as follows:

11 As soon as practicable after the effective date of this act, but
12 not later than January 1, 2015, the Commission on Consumer Credit
13 shall adopt the rules and procedures necessary to implement the
14 Funding Company Regulation Act.

15 SECTION 15. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 3-850.14 of Title 14A, unless
17 there is created a duplication in numbering, reads as follows:

18 The Funding Company Regulation Act shall apply only to a funding
19 agreement entered into on or after the effective date of this act.
20 A funding agreement entered into before the effective date of this
21 act is governed by the law in effect on the date the agreement was
22 entered into, and the former law is continued in effect for that
23 purpose. Nothing in this act shall in any way affect or invalidate
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1 any funding agreement previously effectuated prior to the effective
2 date of this act.

3 SECTION 16. This act shall become effective November 1, 2014.
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