

SECOND REGULAR SESSION

SENATE BILL NO. 967

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time January 29, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6179S.01I

AN ACT

To amend chapter 436, RSMo, by adding thereto ten new sections relating to litigation financing.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 436, RSMo, is amended by adding thereto ten new sections, to be known as sections 436.600, 436.605, 436.610, 436.615, 436.620, 436.625, 436.630, 436.635, 436.640, and 436.645, to read as follows:

436.600. Sections 436.600 to 436.645 shall be known and may be cited as the "Litigation Financing Consumer Protection Act".

436.605. As used in sections 436.600 to 436.645, the following terms shall mean:

(1) "Consumer", any natural person who resides, is present, or is domiciled in this state, or who is or may become a plaintiff or complainant in a dispute in this state;

(2) "Division of finance", the division of finance in the department of insurance, financial institutions and professional registration;

(3) "Litigation financier", a person, entity, or partnership engaged in the business of litigation financing;

(4) "Litigation financing" or "litigation financing transaction", a nonrecourse transaction in which financing is provided to a consumer in return for a consumer assigning to the litigation financier a contingent right to receive an amount of the potential proceeds of the consumer's judgment, award, settlement, or verdict obtained with respect to the consumer's legal claim.

436.610. 1. No person shall engage in a litigation financing transaction in this state unless such person is registered as a litigation

3 financier in this state.

4 2. (1) A litigation financier that is a business entity or a
5 partnership may be registered in this state as a litigation financier if
6 such financier:

7 (a) Is in compliance with the bond requirements set forth in
8 subsection 3 of this section;

9 (b) Has a status of active and is in good status as reflected in the
10 records of the secretary of state; and

11 (c) Its charter, articles of organization, certificate of limited
12 partnership, or other organizational document, or, if a foreign entity,
13 its Missouri application for a certificate of authority, contains a
14 statement that it shall be designated as a litigation financier under
15 sections 436.600 to 436.645.

16 (2) A person that is not a business entity or a partnership may
17 become registered as a litigation financier in this state if such
18 financier:

19 (a) Is in compliance with the bond requirements set forth in
20 subsection 3 of this section; and

21 (b) Files an application for registration as a litigation financier
22 on a form prescribed by the division of finance, along with a filing fee
23 of one hundred dollars, that contains the following information:

24 a. Applicant's full legal name;

25 b. Business name of applicant, if any;

26 c. Physical street address and mailing address of the applicant;

27 d. A telephone number through which the applicant can be
28 reached;

29 e. The name, physical street address, mailing address, and
30 telephone number for a Missouri registered agent appointed to accept
31 service of process on behalf of the applicant;

32 f. A statement that the applicant shall be designated as a
33 litigation financier under this section; and

34 g. Any other information the division of finance deems
35 necessary.

36 3. Each litigation financier shall file with the division of finance
37 a surety bond in the amount of fifty thousand dollars. Such bond shall
38 be payable to this state for the use of the attorney general and any
39 person who may have a cause of action against the obligor of the bond

40 for any violation of sections 436.600 to 436.645. The bond shall continue
41 in effect so long as a litigation financier is designated as a litigation
42 financier by the division of finance.

43 4. A litigation financier shall amend its registration with the
44 division of finance within thirty days whenever the information
45 contained in such record changes or becomes inaccurate or incomplete
46 in any respect. A litigation financier that is not a business entity or
47 partnership may amend its registration with the division of finance by
48 filing an amendment on a form prescribed by the division of finance,
49 along with a filing fee of twenty dollars paid to the division of finance
50 for administration of such records.

51 5. All documents filed under this section shall be considered a
52 public record for purposes of chapter 610.

436.615. A litigation financier shall fulfill each of the following
2 requirements when engaged in litigation financing:

3 (1) The terms of the litigation financing transaction shall be set
4 forth in a written contract that is completely filled in with no
5 incomplete sections when the contract is offered or presented to the
6 consumer;

7 (2) The litigation financing contract shall contain a right of
8 rescission, allowing the consumer to cancel the litigation financing
9 contract without penalty or further obligation if, within five business
10 days following the consumer's receipt of the funds or goods, or
11 execution of the litigation financing contract, whichever is later, the
12 consumer gives notice of the rescission and returns any money or goods
13 already provided to the consumer by the litigation financier;

14 (3) The litigation financing contract shall contain a written
15 acknowledgment by the consumer of whether the consumer is
16 represented by an attorney in the dispute;

17 (4) If the consumer acknowledges that the consumer is
18 represented by an attorney in the dispute, the litigation financing
19 contract shall include a written acknowledgment executed by the
20 consumer's attorney in the dispute in which the attorney acknowledges
21 all of the following:

22 (a) The attorney has had the opportunity to review the litigation
23 financing contract on behalf of the consumer;

24 (b) Whether the attorney is being paid on a contingency basis

25 under a written fee agreement;

26 (c) That all proceeds of the legal claim shall be disbursed by
27 either the trust account of the attorney representing the consumer in
28 the dispute or a settlement fund established to receive the proceeds of
29 the dispute from the defendant on behalf of the consumer;

30 (d) The attorney is representing the consumer with regard to the
31 dispute that is the subject of the litigation financing contract; and

32 (e) The attorney has neither received nor paid a referral fee or
33 any other consideration from or to the litigation financier, nor will the
34 attorney in the future; and

35 (5) In the event that proceeds are paid into a settlement fund or
36 trust, the litigation financier shall notify the administrator of the fund
37 or trust of any outstanding liens arising from the litigation financing
38 contract.

436.620. A litigation financier shall not:

2 (1) Pay or offer to pay commissions, referral fees, or other forms
3 of consideration to any attorney, law firm, medical provider,
4 chiropractor, or physical therapist or any of their employees for
5 referring a consumer to a litigation financier;

6 (2) Accept any commissions, referral fees, rebates, or other forms
7 of consideration from an attorney, law firm, medical provider,
8 chiropractor, or physical therapist or any of their employees;

9 (3) Advertise false or misleading information regarding its
10 products or services;

11 (4) Refer a consumer or potential consumer to a specific
12 attorney, law firm, medical provider, chiropractor, or physical
13 therapist or any of their employees; provided, if a consumer does not
14 have legal representation, the provider shall refer the consumer to a
15 local or state bar referral service operated by a bar association or a
16 nonprofit organization;

17 (5) Fail to promptly supply copies of any and all complete
18 litigation financing contracts to the consumer and the attorney
19 representing the consumer in the dispute;

20 (6) Attempt to obtain a waiver of any remedy, including but not
21 limited to, compensatory, statutory, or punitive damages that the
22 consumer might otherwise have;

23 (7) Attempt to effect arbitration or otherwise effect waiver of a

24 consumer's right to trial by jury;

25 (8) Offer or provide legal advice to the consumer regarding the
26 litigation financing or the underlying dispute; or

27 (9) Assign a litigation financing contract in whole or part.

436.625. 1. Litigation financing contracts shall contain the
2 disclosures specified in this section, which shall constitute material
3 terms of the litigation financing contract.

4 2. Unless otherwise specified, the disclosures shall be typed in
5 at least fourteen-point, bold font and be placed clearly and
6 conspicuously within the litigation financing contract, as follows:

7 (1) On the front page under appropriate headings in not less
8 than fourteen-point font, language specifying:

9 (a) The total amount of money to be provided to the consumer by
10 the litigation financier as part of the litigation financing transaction;

11 (b) The maximum amount the consumer can be required to
12 provide the litigation financier, including but not limited to, all fees,
13 charges, interest, or other consideration under the terms of the
14 litigation financing contract;

15 (c) The maximum annual percentage fee, which shall include, but
16 not be limited to, all fees, charges, interest, or other consideration
17 received by a litigation financier in consideration for litigation
18 financing; provided, the consumer may be charged for the litigation
19 financing transaction under the terms of the litigation financing
20 contract;

21 (d) The following:

22 **Consumer's Right to Cancellation:** You may cancel this contract
23 without penalty or further obligation within five business days from
24 the date you signed this contract or received financing from
25 (insert name of the litigation financier) by: returning the funds to
26 (insert name, office address, and office hours of the litigation
27 financier) or by U.S. mail, (insert name and mailing address
28 of the litigation financier). For purposes of the return deadline by U.S.
29 mail, the postmark date on the returned funds or, if mailed by
30 registered or certified mail, the date of the return receipt requested
31 shall be considered the date of the return;

32 (2) Within the body of the litigation financing contract, the
33 following:

34 The litigation financier agrees that it has no right to and will not
35 make any decisions about the conduct of your lawsuit or dispute and
36 that the right to make those decisions remains solely with you and your
37 attorney;

38 (3) Within the body of the litigation financing contract, in all
39 capital letters contained within a box the following:

40 IF THERE IS NO RECOVERY OF ANY MONEY FROM YOUR
41 LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO
42 SATISFY THE PORTION ASSIGNED TO (INSERT
43 NAME OF THE LITIGATION FINANCIER) IN FULL, YOU
44 WILL NOT OWE (INSERT NAME OF THE
45 LITIGATION FINANCIER) ANYTHING IN EXCESS OF
46 YOUR RECOVERY.

47 (4) Located immediately above the place on the litigation
48 financing contract where the consumer's signature is required, the
49 litigation financing contract shall include the following:

50 Do not sign this contract before you read it completely. If this
51 contract contains any incomplete sections, you are entitled to a
52 completely filled in copy of the contract prior to signing it. Before you
53 sign this contract, you should obtain the advice of an
54 attorney. Depending on the circumstances, you may want to consult a
55 tax advisor, a financial professional, or an accountant.

 436.630. 1. The contingent right to receive an amount of the
2 potential proceeds of a legal claim may be assigned by a consumer and
3 that assignment is valid for the purposes of obtaining litigation
4 financing from a litigation financier.

5 2. Any lien, subrogation interest, or right of reimbursement
6 against the consumer's legal claim shall take priority over any lien,
7 subrogation interest, or right of reimbursement of the litigation
8 financier.

 436.635. 1. All consumers entering into litigation financing
2 transactions shall pay the litigation financier a maximum rate of
3 interest not to exceed seventeen percent.

4 2. Litigation financiers shall not charge a consumer the annual
5 fee authorized by subsection 3 of this section more than one time each
6 year with regard to any single legal claim, regardless of the number of
7 litigation financing transactions that the litigation financier enters into

8 with the consumer with respect to such legal claim.

9 3. Litigation financing transactions shall not exceed a term of
10 three years and are limited to a maximum yearly fee, which shall be
11 calculated to include any underwriting and organization fees, and any
12 other charges, fees, or consideration, not to exceed three hundred sixty
13 dollars per year, up to a maximum of three years, for each one
14 thousand dollars of the unpaid principal amount of the funds advanced
15 to the consumer. The maximum yearly fee shall not include the annual
16 fee set forth under subsection 1 of this section.

17 4. Litigation financiers shall not enter into an agreement with a
18 consumer that has the effect of incorporating the consumer's
19 obligations to the litigation financier that are contained in the original
20 litigation financing transaction into a subsequent litigation financing
21 transaction.

 436.640. 1. Any violation of sections 436.600 to 436.645 shall make
2 the litigation financing contract unenforceable by the litigation
3 financier, the consumer, or any successor-in-interest to the litigation
4 financing contract.

5 2. Any violation of sections 436.600 to 436.645 shall constitute an
6 unlawful practice under chapter 407, and shall be enforced solely by
7 the attorney general at his or her discretion. Any violation of such
8 sections shall be construed to be an unfair and deceptive act or
9 practice affecting the conduct, trade, or commerce and subject to all
10 sanctions, penalties, and remedies provided in that act, including
11 attorney fees and costs. Nothing in sections 436.600 to 436.645 shall be
12 construed to limit the exercise of powers or the performance of the
13 duties of the attorney general, including those provided under chapter
14 407, which the attorney general is otherwise authorized or required to
15 exercise or perform by law.

 436.645. The division of finance may promulgate rules to
2 implement the provisions of sections 436.600 to 436.640, including but
3 not limited to, the adoption of fees to cover any administrative costs
4 relating to administering such sections. Any rule or portion of a rule,
5 as that term is defined in section 536.010 that is created under the
6 authority delegated in this section shall become effective only if it
7 complies with and is subject to all of the provisions of chapter 536, and,
8 if applicable, section 536.028. This section and chapter 536 are

9 nonseverable and if any of the powers vested with the general assembly
10 pursuant to chapter 536, to review, to delay the effective date, or to
11 disapprove and annul a rule are subsequently held unconstitutional,
12 then the grant of rulemaking authority and any rule proposed or
13 adopted after August 28, 2018, shall be invalid and void.

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Unofficial

Bill

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