

FIRST REGULAR SESSION

SENATE BILL NO. 484

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOSKINS.

Read 1st time February 28, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2371S.011

AN ACT

To amend chapter 408, RSMo, by adding thereto eight new sections relating to the litigation financing consumer protection act.

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

Section A. Chapter 408, RSMo, is amended by adding thereto eight new sections, to be known as sections 408.900, 408.902, 408.904, 408.906, 408.908, 408.910, 408.912, and 408.914, to read as follows:

408.900. 1. The provisions of sections 408.900 to 408.914 shall be known and may be cited as the "Litigation Financing Consumer Protection Act".

2. As used in sections 408.900 to 408.914, the following terms 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) "Litigation financier", a person, entity, or partnership engaged in the business of litigation financing;

(3) "Litigation financing" or "litigation financing transaction", a non-recourse 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.

408.902. 1. (1) No litigation financier shall engage in a litigation financing transaction in this state unless it is registered as a litigation financier in this state.

(2) A litigation financier that is a business entity or a

5 partnership is registered in this state if:

6 (a) It is in compliance with the bond requirements of subsection
7 2 of this section;

8 (b) It has a status of active and in good standing as reflected in
9 the records of the secretary of state; and

10 (c) Its charter, articles of organization, certificate of limited
11 partnership, or other organizational document, or, if a foreign entity,
12 its Missouri application for a certificate of authority contains a
13 statement that it shall be designated as a litigation financier under
14 sections 408.900 to 408.914.

15 (3) A litigation financier that is not a business entity or a
16 partnership is registered in this state if:

17 (a) It is in compliance with the bond requirements of subsection
18 2 of this section; and

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

22 a. The applicant's full legal name;

23 b. The business name of the applicant, if any;

24 c. The physical street address and mailing address of the
25 applicant;

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

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

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

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

35 2. (1) Each litigation financier shall file and have approved by
36 the division of finance a surety bond in the amount of fifty thousand
37 dollars.

38 (2) Such bond shall be payable to this state for the use of the
39 attorney general and any person who may have a cause of action
40 against the obligor of the bond for any violation of sections 408.900 to
41 408.914. The bond shall continue in effect so long as a litigation

42 financier is designated as a litigation financier in the records of the
43 division of finance.

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

51 4. All documents filed under this section are public record, as
52 such term is defined in section 610.010.

53 5. The division of finance shall collect a fee of twenty dollars for
54 copying all filed documents under sections 408.900 to 408.914. All such
55 copies shall be certified or validated by the division of finance.

56 6. The division of finance, as appropriate, may promulgate rules
57 in implementing sections 408.900 to 408.914 including, but not limited
58 to, the adoption of fees to cover any administrative costs relating to
59 administering sections 408.900 to 408.914. Any rule or portion of a rule,
60 as that term is defined in section 536.010, that is created under the
61 authority delegated in this section shall become effective only if it
62 complies with and is subject to all of the provisions of chapter 536, and,
63 if applicable, section 536.028. This section and chapter 536 are
64 nonseverable, and if any of the powers vested with the general
65 assembly pursuant to chapter 536 to review, to delay the effective date,
66 or to disapprove and annul a rule are subsequently held
67 unconstitutional, then the grant of rulemaking authority and any rule
68 proposed or adopted after August 28, 2019, shall be invalid and void.

408.904. 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 moneys or
13 goods 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.

408.906. No litigation financier shall:

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; or**

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

408.908. 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 moneys to be provided to the consumer**
10 **by the litigation financier as part of the litigation financing**
11 **transaction;**

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

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

21 **contract; and**

22 **(d) The following:**

23 **"Consumer's Right to Cancellation: You may cancel this contract**
24 **without penalty or further obligation within five (5) business days from**
25 **the date you signed this contract or received financing from (insert**
26 **name of the litigation financier) by: returning the funds to (insert**
27 **name, office address and office hours of the litigation financier) or by**
28 **U.S. mail, (insert name and mailing address of the litigation**
29 **financier). For purposes of the return deadline by U.S. mail, the**
30 **postmark date on the returned funds or, if mailed by registered or**
31 **certified mail, the date of the return receipt requested shall be**
32 **considered the date of the return.";**

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

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

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

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

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.".**

408.910. 1. Any violation of sections 408.900 to 408.914 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 408.900 to 408.914 shall constitute a
6 violation of the Missouri merchandising practices act under chapter
7 407 and shall be enforced solely by the attorney general at his or her
8 discretion. Any violation of sections 408.900 to 408.914 shall be
9 construed to be an unfair and deceptive act or practice affecting the
10 conduct, trade, or commerce and subject to all sanctions, penalties, and
11 remedies provided in such act, including attorneys' fees and
12 costs. Nothing in sections 408.900 to 408.914 shall be construed to limit
13 the exercise of powers or the performance of the duties of the attorney
14 general, including those provided by the Missouri merchandising
15 practices act, which the attorney general is otherwise authorized or
16 required to exercise or perform by law.

 408.912. 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.

 408.914. 1. Litigation financing transactions shall not exceed a
2 term of three years and are limited to a maximum yearly fee, which
3 shall be calculated to include but is not limited to all charges and fees
4 including interest, any underwriting and organizational fees, and other
5 charges not to exceed three hundred dollars per year, up to a maximum
6 of three years, for each one thousand dollars of the unpaid principal
7 amount of the funds advanced to the consumer.

8 2. Litigation financiers shall not charge a consumer the annual
9 fee authorized by subsection 1 of this section more than one time each
10 year with regard to any single legal claim regardless of the number of
11 litigation financing transactions that the litigation financier enters into
12 with the consumer with respect to such legal claim.

13 3. Litigation financiers shall not enter into an agreement with a
14 consumer that has the effect of incorporating the consumer's
15 obligations to the litigation financier that are contained in the original
16 litigation financing transaction into a subsequent litigation financing
17 transaction.