

# AN ACT

To enact sections 1357.01, 1357.011, 1357.02, 1357.03, 1357.04, 1357.05, 1357.06, 1357.07, 1357.08, 1357.09, and 1357.10 and to repeal section 1349.55 of the Revised Code to revise and supplement state regulations concerning non-recourse litigation funding agreements.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 1357.01, 1357.011, 1357.02, 1357.03, 1357.04, 1357.05, 1357.06, 1357.07, 1357.08, 1357.09, and 1357.10 of the Revised Code be enacted to read as follows:

Sec. 1357.01. As used in this chapter:

(A)(1) "Advertise" means directly or indirectly publishing, disseminating, circulating, or placing before the public any written, oral, electronic, or printed communication for the purpose of inducing a consumer to enter into a consumer legal funding agreement.

(2) For the purposes of division (A)(1) of this section, "written, oral, electronic, or printed communication" includes communication by means of recorded telephone messages and transmission or broadcast on radio, television, the internet, or other similar media of audio recordings, film strips, motion pictures, or videos.

(B)(1) "Charges" means the amount of money to be paid to the consumer legal funding company by or on behalf of a consumer in excess of the funded amount.

(2) "Charges" include interest and all administrative, origination, underwriting, and other fees, no matter how denominated.

(C)(1) "Commercial litigation financier" means a person engaged in the business of entering into commercial litigation financing agreements with claimants or with lawyers or law firms asserting legal claims on behalf of claimants.

(2) "Commercial litigation financier" does not include a nonprofit organization determined by the internal revenue service to be tax exempt pursuant to section 501(c) of the "Internal Revenue Code of 1986," 26 U.S.C. 1, or a person that funds such a nonprofit organization, if the nonprofit organization represents the claimant on a pro bono basis. Seeking or accepting a settlement or judgment that includes costs or attorney's fees does not, in itself, make a nonprofit organization or an attorney contracted by a nonprofit organization a "commercial litigation financier."

(D)(1) "Commercial litigation financing agreement" means, with respect to any civil action or group of civil actions, a written agreement that meets all of the following:

(a) A third party agrees to provide funds to a named party or a law firm that represents a named party in the civil action or group of civil actions.

(b) The agreement creates a direct or collateralized interest in the proceeds of a civil action or group of civil actions, by settlement, verdict, judgment, or otherwise.

(c) The interest created by the agreement is based, in whole or part, on a funding obligation incurred in connection with the action or group of actions, the appearing counsel, any contractual co-counsel, or the law firm of the counsel or co-counsel, executed with any of the following:

(i) Any attorney representing a party;

(ii) Any co-counsel in the civil action or group of actions with a contingent fee interest in representing a named party;

(iii) Any third-party who has a collateral-based interest in the contingency fees of the counsel or co-counsel, or the law firm of the counsel or co-counsel, related in whole or part to the fees derived from representing that party.

(2) "Commercial litigation financing agreement" includes a contract, such as an option, forward contract, futures contract, short position, swap, or similar agreement, that is substantially similar to an agreement described in division (D)(1) of this section.

(3) "Commercial litigation financing agreement" does not include any of the following:

(a) A consumer legal funding agreement;

(b) An agreement by an attorney or law firm to provide legal services on a contingency fee basis to the claimant or to advance the claimant's legal costs in accordance with the rules of professional conduct adopted by the supreme court;

(c) A health insurer, medical provider, or assignee that has paid, is obligated to pay, or is owed sums for a claimant's health care under the terms of a health insurance plan or agreement;

(d) A financial institution providing loans to the claimant or the claimant's attorney or law firm, the repayment of which is not contingent upon the outcome of the legal claim or on the outcome of any matter within a portfolio that includes the legal claim and involves the same attorney or law firm or affiliated attorney or law firm;

(e) A person with a preexisting contractual obligation to indemnify or defend a party to a legal claim.

(E) "Consumer" means a natural person who has a pending legal claim and who resides or is domiciled in Ohio.

(F)(1) "Consumer legal funding agreement" means a nonrecourse agreement in which a consumer legal funding company purchases, and a consumer assigns to the company, a contingent right to receive an amount of the potential proceeds of any settlement, judgment, award, or verdict obtained in the consumer's legal claim.

(2) "Consumer legal funding agreement" does not include any agreement involving a cash payment by the consumer legal funding company of four hundred thousand dollars or more.

(G)(1) "Consumer legal funding company" means a person or entity that enters into a consumer legal funding agreement with a consumer.

(2) "Consumer legal funding company" does not include any of the following:

(a) A family member of the consumer;

(b) A bank, lender, financing entity, or other special purpose entity that provides financing to a consumer legal funding company and to which a consumer legal funding company grants a security interest or transfers any rights or interest in a consumer legal funding agreement;

(c) An attorney or accountant who provides services to a consumer.

(H) "Funded amount" means the amount of money provided to, or on behalf of, the consumer in a consumer legal funding agreement. "Funded amount" excludes charges.

(I) "Funding date" means the date on which the funded amount is transferred to the consumer by the consumer legal funding company by personal delivery; via wire, automated clearing house, or other electronic means; or by certified or registered mail.

(J) "Family member" means a spouse; sibling; child, including adopted children and stepchildren; parent; grandparent; aunt; uncle; cousin; or grandchild.

(K) "Legal claim" means a civil claim or cause of action.

(L) "Resolution date" means the date the funded amount, plus the agreed upon charges, are delivered to the consumer legal funding company by the consumer, the consumer's attorney, or otherwise.

Sec. 1357.011. The general assembly, in enacting sections 1357.01 to 1357.10 of the Revised Code pursuant to this act, hereby declares its intent to adopt regulations concerning a narrow range of consumer legal funding agreements and commercial litigation financing agreements as contemplated in the holding of the Ohio Supreme Court in *Rancman v. Interim Settlement Funding Corp.*, 99 Ohio St.3d 121 (2003). The general assembly intends to preserve and reinforce the general public policy expressed in that holding against champerty and maintenance.

Sec. 1357.02. (A) Beginning ninety days after the effective date of this section, all consumer legal funding companies shall register with the attorney general prior to commencing any business activity in this state.

(B) The attorney general shall establish a process that allows consumer legal funding companies to register under this section. Such registration shall include, at a minimum, all of the following:

(1) The consumer legal funding company's name and domiciliary address;

(2) The names of the company's chief executive officer and chair of the board of directors, as applicable;

(3) A statement as to whether or not the company is part of a larger group of companies;

(4) An acknowledgment certified by an officer or duly appointed employee of the company that the consumer legal funding company's financiers have read this chapter.

Sec. 1357.03. (A) A consumer legal funding company shall not enter into, or seek to enter into, a consumer legal funding agreement unless all of the following apply:

(1) The agreement is completely filled-in when presented to the consumer for signature.

(2) The agreement includes space on each page for the consumer's initials.

(3) The front page of the agreement includes all of the following disclosures under appropriate headings:

(a) The funded amount to be paid to the consumer under the agreement;

(b) An itemized list of all one-time and recurring charges under the agreement, subject to section 1357.04 of the Revised Code, and an explanation for how those charges accrue;

(c) The maximum amount that may be assigned by the consumer to the company under the agreement, including the funded amount and all charges, but excluding penalties that may apply in the case of a material breach, fraud, or misrepresentation by or on behalf of the consumer;

(d) If the consumer seeks to enter into more than one consumer legal funding agreement with the same company, the cumulative amount that may be assigned to the company under all such agreements, including the funded amount and all charges, but excluding penalties that may apply in the case of a material breach, fraud, or misrepresentation by or on behalf of the consumer.

(4) The agreement allows the consumer to cancel the agreement, without penalty or further obligation, by returning the full amount of disbursed funds to the company within ten business days after the funding date. The consumer may do either of the following to effectuate the cancellation:

(a) Deliver the company's uncashed check to the company's offices in person, within ten business days after the disbursement of funds;

(b) Mail a notice of cancellation and include in that mailing a return of the full amount of disbursed funds in the form of the company's uncashed check, or a registered or certified check or money order, by insured, registered, or certified United States mail, postmarked within ten business days after receiving funds from the company, at the address specified in the agreement for cancellation.

(5) The body of the agreement includes all of the following statements:

(a) "CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS AGREEMENT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN TEN BUSINESS DAYS AFTER THE FUNDING DATE IF YOU RETURN THE FULL AMOUNT OF THE DISBURSED FUNDS TO [insert name of company]."

(b) "THE COMPANY HAS NO ROLE IN DECIDING WHETHER, WHEN, AND HOW MUCH THE LEGAL CLAIM IS SETTLED FOR, HOWEVER, YOU OR YOUR ATTORNEY MUST NOTIFY THE COMPANY OF THE OUTCOME OF THE LEGAL CLAIM BY SETTLEMENT OR ADJUDICATION ON OR BEFORE THE RESOLUTION DATE. THE COMPANY MAY SEEK UPDATED INFORMATION ABOUT THE STATUS OF THE LEGAL CLAIM BUT IN NO EVENT SHALL THE COMPANY ATTEMPT TO INTERFERE WITH, CONTROL, OR INFLUENCE THE INDEPENDENT PROFESSIONAL JUDGMENT OF YOUR ATTORNEY IN THE HANDLING OF THE LEGAL CLAIM OR ANY SETTLEMENT THEREOF."

(c) "THE FUNDED AMOUNT AND AGREED UPON CHARGES SHALL BE PAID 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 company] 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 [insert name of company]."

(d) Immediately above the place on the agreement where the consumer's signature is required: "DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT COMPLETELY. DO NOT SIGN THIS AGREEMENT IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS AGREEMENT BEFORE YOU SIGN IT. 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 BENEFIT PLANNING, OR FINANCIAL PROFESSIONAL. YOU ACKNOWLEDGE THAT YOUR ATTORNEY IN THE LEGAL CLAIM HAS PROVIDED NO TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL ADVICE REGARDING THIS TRANSACTION. YOU FURTHER ACKNOWLEDGE THAT YOUR ATTORNEY HAS EXPLAINED THE TERMS AND CONDITIONS OF THIS AGREEMENT."

(6) The agreement contains a written acknowledgement by the attorney retained by the consumer in the legal claim that attests to all of the following:

(a) The attorney has reviewed the agreement and all disclosures required by this section with the consumer.

(b) The attorney is being paid on a contingency basis pursuant to a written fee agreement.

(c) All proceeds of the legal claim will be disbursed via the trust account of the attorney or a settlement fund established to receive the proceeds of the legal claim on behalf of the consumer.

(d) The attorney agrees to disburse funds from the legal claim and take any other steps necessary to ensure that the terms of the consumer legal funding agreement are fulfilled.

(e) The attorney has not received a referral fee or other consideration from the consumer legal funding company in connection with the consumer legal funding, nor will the attorney receive such a fee or other consideration in the future.

(f) The attorney agrees to follow all applicable rules of professional conduct adopted by the supreme court in all aspects of the transaction.

(B)(1) A violation of this section or section 1357.04 of the Revised Code by a consumer legal funding company constitutes an unfair or deceptive act or practice in violation of section 1345.02 of the Revised Code.

(2) A consumer injured by such a violation has a cause of action and is entitled to the same relief available to a consumer under section 1345.09 of the Revised Code.

(3) All powers and remedies available to the attorney general to enforce sections 1345.01 to 1345.13 of the Revised Code are available to the attorney general to enforce this section.

(C) In addition to remedies set forth in division (B) of this section, any willful violation of

this section, including omission of the attorney acknowledgement required by division (A)(6) of this section, renders the consumer legal funding agreement unenforceable by the company, the consumer, or any successor in interest to the agreement. A consumer terminating the attorney who made the acknowledgment required by division (A)(6) of this section or retaining a new attorney with respect to the legal claim does not, in itself, render the agreement unenforceable under this division.

Sec. 1357.04. A consumer legal funding company shall not do any of the following:

(A) Pay or offer to pay a commission, referral fee, or other form of consideration to any attorney, law firm, health care provider, chiropractor, or physical therapist, or to any employee or agent of the foregoing, for referring a consumer to the company;

(B) Accept any commission, referral fee, rebate, or other form of consideration from an attorney, law firm, health care provider, chiropractor, or physical therapist, or from any employee or agent of the foregoing;

(C) Purposefully advertise false or misleading information regarding the company's products or services;

(D) Refer a consumer or potential consumer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist, or to any employee or agent of the foregoing, except that, if a consumer does not have legal representation, the company may refer the consumer to a state or local lawyer referral service operated by a bar association or nonprofit organization, or a legal aid society, as defined in section 120.51 of the Revised Code;

(E) Fail to promptly supply copies of all complete consumer legal funding agreements to the consumer and the attorney representing the consumer in the legal claim;

(F) Knowingly enter into a consumer legal funding agreement with a consumer for a legal claim respecting which the consumer previously sold or assigned all or part of the consumer's right to the proceeds, unless the company or the consumer extinguishes the prior agreement by either repaying the entire disbursed amount plus any contracted fees, or paying a lesser amount expressly agreed to, in writing, by the consumer and all other parties to the prior agreement. More than one company may agree, contemporaneously, to enter into a consumer legal funding agreement with the same consumer for the same claim so long as the companies, the consumer, and the consumer's attorney consent to the agreements in writing.

(G) Make or influence any decision with respect to the conduct of the consumer's legal claim or the settlement or resolution of that legal claim, including appointing or changing counsel, choice or use of expert witnesses, litigation strategy, and settlement or other resolution of the claim;

(H) Attempt to obtain a waiver of any remedy, including compensatory, statutory, or punitive damages, to which the consumer might otherwise be entitled;

(I) Knowingly pay or offer to pay for court costs, filing fees, or attorney's fees before, during, or after the resolution of the legal claim;

(J)(1) Charge or collect from a consumer either of the following in connection with a

consumer legal funding agreement:

(a) A prepayment penalty or fee;

(b) A one-time service fee that exceeds seven per cent of the initial funded amount.

(2) Charges in excess of the amount specified in division (A)(3)(c) of section 1357.03 of the Revised Code and fees prohibited by division (J)(1) of this section are unenforceable.

(K) Enter into a consumer legal funding agreement if an attorney or a law firm retained by the consumer for the legal claim on which the agreement is based has a financial or ownership interest in the company.

(L) Collude with or knowingly assist a lawyer or law firm that is enticing or intends to entice a consumer to bring a claim that the company knows or has reason to know is fabricated or otherwise not brought in good faith. Any consumer legal funding agreement resulting from a violation of this division is void ab initio.

(M) Knowingly offer or collude to provide funding as an inducement to a consumer who is presently represented by counsel to terminate that engagement and engage another lawyer or law firm to represent the consumer in the same matter. Any consumer legal funding agreement resulting from a violation of this division is void ab initio.

Sec. 1357.05. (A) An attorney retained by a consumer in a legal claim shall not disclose confidential or privileged information to a consumer legal funding company without first obtaining written consent from the consumer and without first ensuring that the disclosure is not prohibited by court rules, a court order, or the rules of professional conduct adopted by the supreme court.

(B) No law firm or attorney that has a financial interest in a consumer legal funding company and no attorney whose family member has a financial interest in a consumer legal funding company shall do any of the following:

(1) Represent a consumer in any legal claim respecting which the consumer has entered into a consumer legal funding agreement with the company;

(2) Provide consumer legal funding directly to a consumer the attorney or law firm represents;

(3) Refer a consumer to the consumer's retained attorney in any legal claim respecting which the consumer has entered into a consumer legal funding agreement with the company.

(C)(1) The attorney or attorneys representing a party that has entered into a consumer legal funding agreement shall, at the time the associated claim is resolved, disclose the existence and contents of the agreement to the attorney general, in a form and manner prescribed by the attorney general, within fourteen days after any of the following:

(a) The related legal claim being settled, but only if the legal claim is filed in a court of competent jurisdiction prior to settlement;

(b) A final appealable order is entered by the court;

(c) An adjudication or order is entered indicating that the legal claim has reached the final stage at the trial court.

(2) Any party to a civil proceeding may seek a court order declaring that the trial has completed for purposes of division (C)(1) of this section. The court may take any necessary action to enforce the requirements of that division.

(D) Upon receiving a disclosure under division (C) of this section, the attorney general shall promptly publish the contents of the consumer legal funding agreements included in the disclosure to the attorney general's publicly accessible web site. Prior to making the documents available, either on the attorney general's web site or in response to a public records request made under section 149.43 of the Revised Code, the attorney general shall redact all legally required confidential information from the disclosure, including any information that could provide the identification of the consumer.

(E) Any provision of a consumer legal funding agreement entered into, amended, or renewed on or after the effective date of this section that prohibits or limits discovery of the agreement or the parties to the agreement is void and unenforceable.

Sec. 1357.06. A consumer legal funding agreement places a lien on the proceeds of the consumer's legal claim that supersedes all subsequently perfected liens on such proceeds other than liens directly related to the legal claim and expressly authorized by state or federal law, such as a lien for attorneys fees, a lien by the department of medicaid under section 5160.37 of the Revised Code, a medicare lien under 42 U.S.C. 1395y, or a workers' compensation lien under section 4123.931 of the Revised Code.

Sec. 1357.07. (A) No consumer legal funding company shall knowingly enter into a consumer legal financing agreement with a person or entity that is not domiciled in the United States or respecting a legal claim that is financed, directly or indirectly, by a person or entity not domiciled in the United States.

(B) No commercial litigation financier shall knowingly enter into a commercial litigation financing agreement with a person or entity that is not domiciled in the United States or respecting a legal claim that is financed, directly or indirectly, by a person or entity not domiciled in the United States.

(C) No consumer or entity shall enter into a consumer legal financing agreement or a commercial litigation financing agreement with a person or entity that is not domiciled in the United States.

(D) The general assembly declares its intent in enacting this section is to achieve the legitimate state interest of protecting due process rights for all litigants in the courts of this state by addressing the grave risk posed by foreign actors that seek to interfere with those courts.

Sec. 1357.08. (A) Beginning ninety days after the effective date of this section, all commercial litigation financiers shall register with the attorney general prior to commencing any business activity in this state.

(B) The attorney general shall establish a process that allows commercial litigation financiers to register under this section. Such registration shall include, at a minimum, all of the

following:

(1) The commercial litigation financier's company name and domiciliary address;

(2) The names of the financier's chief executive officer and chair of the board of directors, as applicable;

(3) A statement as to whether or not the financier is part of a larger group of companies;

(4) An acknowledgment certified by an officer or duly appointed employee of the company that the commercial litigation financier's financiers have read this chapter.

Sec. 1357.09. (A) No claimant, attorney or law firm representing a claimant, or affiliated attorney or law firm shall disclose or share any documents or information with a commercial litigation financier that are subject to a protective or sealing order from a court.

(B) A commercial litigation financier shall not make any decision, have any influence, or direct any decisions with respect to the course of a legal claim, including decisions in appointing or changing counsel, choice or use of expert witnesses, litigation strategy, and settlement or other resolution.

(C)(1) The attorney or attorneys representing a party that has entered into a commercial litigation financing agreement shall, at the time the associated claim is resolved, disclose the existence and contents of the agreement to the attorney general, in a form and manner prescribed by the attorney general, within fourteen days after any of the following:

(a) The related legal claim being settled, but only if the legal claim is filed in a court of competent jurisdiction prior to settlement;

(b) A final appealable order is entered by the court;

(c) An adjudication or order is entered indicating that the legal claim has reached the final stage at the trial court.

(2) Any party to a civil proceeding may seek a court order declaring that the trial has completed for purposes of division (C)(1) of this section. The court may take any necessary action to enforce the requirements of that division.

(D) Upon receiving a disclosure under division (C) of this section, the attorney general shall promptly publish the contents of the consumer litigation financing agreements included in the disclosure to the attorney general's publicly accessible web site. Prior to making the documents available, either on the web site or in response to a public records request made under section 149.43 of the Revised Code, the attorney general shall redact all legally required confidential information from the disclosure, including any information that could provide the identification of the plaintiff.

(E) Any provision of a commercial litigation financing agreement entered into, amended, or renewed on or after the effective date of this section that prohibits or limits discovery of the agreement or the parties to the agreement is void and unenforceable.

Sec. 1357.10. The attorney general may file a complaint seeking any equitable remedy, including barring a commercial litigation financier or consumer legal funding company from doing business in this state in the capacity as a commercial litigation financier or a consumer legal funding

company, if the commercial litigation financier or consumer legal funding company is found by a court of competent jurisdiction to have violated this chapter.

SECTION 2. That section 1349.55 of the Revised Code is hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Sub. H. B. No. 105

136th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_