

# MAINE STATE LEGISLATURE

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Date: 6/11/07

L.D. 1703  
(Filing No. H-511)

**INSURANCE AND FINANCIAL SERVICES**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
123RD LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1186, L.D. 1703, Bill, "An Act To Regulate Presettlement Lawsuit Funding"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 9-A MRSA art. 12 is enacted to read:

**ARTICLE 12**

**LEGAL FUNDING PRACTICES**

**§12-101. Short title**

This article may be known and cited as "the Maine Consumer Credit Code Legal Funding Practices."

**§12-102. Definitions**

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. "Consumer" means a person or entity residing or domiciled in this State with a pending civil claim or action and represented by an attorney.
2. "Legal funding" means a transaction in which a company makes a cash payment to a consumer in exchange for the right to receive an amount out of the potential proceeds of any realized settlement, judgment, award or verdict the consumer may receive in a civil claim or action. If no proceeds in the civil claim or action are received, the consumer is not required to pay the company.
3. "Litigation funding provider" means a person or entity, wherever located, that provides legal funding to a consumer.

**COMMITTEE AMENDMENT**

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1 **§12-103. Application of law**

2 1. This article does not apply to an advance made by a consumer's attorney to pay for  
3 expenses related to preparation for trial.

4 2. Legal funding that is made pursuant to this article is not a consumer credit  
5 transaction as defined in section 1-301, subsection 12.

6 3. An advance made to a consumer other than pursuant to the terms of this article is a  
7 supervised loan as defined in section 1-301, subsection 40.

8 **§12-104. Requirements for legal funding contracts**

9 The following provisions govern the legal funding contracts used by a litigation  
10 funding provider.

11 1. All contracts must be written in a clear and coherent manner using words with  
12 common, everyday meanings to enable the average consumer who makes a reasonable  
13 effort under ordinary circumstances to read and understand the terms of the legal funding  
14 contract without having to obtain the assistance of a professional. The contract must have  
15 a meaningful arrangement that is appropriately divided and captioned by its various  
16 sections.

17 This subsection applies to any agreement signed by the consumer in connection with a  
18 legal funding contract entered into in this State. This subsection does not apply to any  
19 acknowledgment or representation signed by an attorney. This subsection does not apply  
20 to legal funding contracts when an organization is the plaintiff; to language or  
21 arrangements that are specifically required by federal or state law, regulation or official  
22 agency interpretation; or to agreements, the form or any part of which is required by a  
23 governmental instrumentality as a condition of the assignability of the agreement.

24 2. All contracts must be completely filled in and must contain a disclosure form on  
25 the front page in at least 12-point bold type, in the following format:

26 **DISCLOSURE STATEMENT**

28 1. Total amount of legal funding received by consumer under this \$ \_\_\_\_\_  
29 contract:

30	<u>2. Itemized fees:</u>	\$ _____
31	<u>Application</u>	\$ _____
32	<u>Processing</u>	\$ _____
33	<u>Attorney review</u>	\$ _____
34	<u>Broker</u>	\$ _____
35	<u>Other ( _____ )</u>	\$ _____
36	<u>Total fees:</u>	\$ _____

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COMMITTEE AMENDMENT "A" to H.P. 1186, L.D. 1703

1 3. Annual percentage fee (rate of return) on advance, \_\_\_\_\_%  
2 compounded semiannually:

3 4. Total amount to be repaid by consumer  
4 if at 6 months: \$ \_\_\_\_\_  
5 if at 12 months: \$ \_\_\_\_\_  
6 if at 18 months: \$ \_\_\_\_\_  
7 if at 24 months: \$ \_\_\_\_\_  
8 if at 30 months: \$ \_\_\_\_\_  
9 if at 36 months: \$ \_\_\_\_\_  
10 if at 42 months: \$ \_\_\_\_\_

11 3. All contracts must provide that the consumer may cancel the contract within 5  
12 business days following the consumer's receipt of funds without penalty or further  
13 obligation. The contract must contain the following notice written in a clear and  
14 conspicuous manner: "MAINE CONSUMER'S RIGHT TO CANCELLATION: YOU  
15 MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR FURTHER  
16 OBLIGATION WITHIN FIVE BUSINESS DAYS FROM THE DATE YOU RECEIVE  
17 FUNDING FROM [insert name of litigation funding provider]." The contract must also  
18 specify that in order for the cancellation to be effective, the consumer must either return  
19 the full amount of disbursed funds to the company by delivering the litigation funding  
20 provider's uncashed check to the provider's offices in person within 5 business days of the  
21 disbursement of funds or mail a notice of cancellation and include in the mailing a return  
22 of the full amount of disbursed funds in the form of the provider's check, or a registered  
23 or certified check or money order, by insured, registered or certified United States mail  
24 postmarked within 5 business days of receiving funds from the litigation funding  
25 provider, at the address specified for such cancellation in the contract.

26 4. The consumer shall initial each page of the contract.

27 5. All contracts must contain a legend above the consumer's signature in at least 12-  
28 point bold type to read:

29 "NOTICE: LEGAL FUNDING PROVIDERS MUST REGISTER  
30 WITH MAINE REGULATORS. GO TO [www.maine.gov/pfr/](http://www.maine.gov/pfr/consumercredit)  
31 consumercredit AND SELECT THE "ROSTERS" LINK TO VERIFY A  
32 LITIGATION FUNDING PROVIDER'S REGISTRATION OR TO  
33 CONTACT PROVIDERS TO OBTAIN COMPARATIVE RATE  
34 QUOTES."

35 6. All contracts must contain a legend immediately above the consumer's signature in  
36 at least 12-point bold type to read:

37 "DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT  
38 COMPLETELY OR IF IT CONTAINS ANY BLANK SPACES.  
39 BEFORE YOU SIGN THIS CONTRACT YOU SHOULD OBTAIN

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1 THE ADVICE OF YOUR ATTORNEY. YOU ARE ENTITLED TO A  
2 COMPLETELY FILLED-IN COPY OF THIS CONTRACT."

3 7. All contracts for legal funding must contain the following in at least 12-point bold  
4 type to read:

5 "THE LITIGATION FUNDING PROVIDER AGREES THAT IT HAS  
6 NO RIGHT TO AND WILL NOT MAKE ANY DECISIONS WITH  
7 RESPECT TO THE CONDUCT OF THE UNDERLYING CIVIL  
8 ACTION OR CLAIM OR ANY SETTLEMENT OR RESOLUTION  
9 THEREOF AND THAT THE RIGHT TO MAKE SUCH DECISIONS  
10 REMAINS SOLELY WITH THE CONSUMER AND THE  
11 CONSUMER'S ATTORNEY."

12 8. A contract may not require mandatory arbitration to resolve disputes under the  
13 contract.

14 9. All contracts for legal funding must contain a written acknowledgment by an  
15 attorney that states that:

16 A. The attorney has reviewed the contract and all costs and fees have been disclosed,  
17 including the amount to be paid by the consumer;

18 B. The attorney is being paid per a written fee agreement;

19 C. All proceeds of the civil claim or action will be disbursed via the attorney's trust  
20 account; and

21 D. The attorney is following written instructions of the consumer with regard to the  
22 legal funding.

23 10. For English-speaking, French-speaking and Spanish-speaking consumers,  
24 contracts must be written in the same language in which the oral negotiations are  
25 conducted between the company and the consumer. For consumers whose primary  
26 language is neither English, French nor Spanish, the principal terms of the contract must  
27 be translated by a certified translator in the consumer's native language and the translator  
28 must sign a notarized affirmation confirming that the principal terms have been presented  
29 to the consumer in the consumer's native language and acknowledged by the consumer in  
30 writing. Principal terms must include all of the items required to be disclosed by this  
31 section.

32 11. To the extent the contract provides for attorney's fees and costs in addition to the  
33 amount due and owing under the contract, the contract must provide that in case of a  
34 breach of the contract by either party attorney's fees and costs may be recoverable by the  
35 prevailing party and must be reasonable. Any contractual cap on such attorney's fees and  
36 costs must apply equally to both parties.

37 **§12-105. Fee requirements**

38 1. A litigation funding provider may not assess fees for any period exceeding 42  
39 months from the date of the contract with the civil litigant.

40 2. Fees assessed by a litigation funding provider may compound semiannually but  
41 may not compound based on any lesser time period.

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1       3. In calculating the annual percentage fee or rate of return, a litigation funding  
2 provider must include all charges payable directly or indirectly by the consumer, and  
3 must compute the rate based only on amounts actually received and retained by a  
4 consumer.

5       **§12-106. Registration of litigation funding provider; fees**

6       1. Unless a litigation funding provider has first registered pursuant to this article, the  
7 litigation funding provider may not engage in the business of legal funding.

8       2. Registration must be filed in the manner prescribed by the administrator and must  
9 contain the information the administrator requires to make an evaluation of the character,  
10 fitness and financial responsibility of the applicant. The initial application must be  
11 accompanied by a \$500 fee. A renewal registration must include a \$200 fee. A  
12 registration must be renewed every 2 years and expires on September 30th.

13       3. Registration may not be issued unless the administrator, upon investigation, finds  
14 that the character and fitness of the applicant, and of the members thereof if the applicant  
15 is a copartnership or association, and of the officers and directors thereof if the applicant  
16 is a corporation, are such as to warrant belief that the business will be operated honestly  
17 and fairly within the purposes of this article.

18       4. For purposes of this section, an applicant demonstrates financial responsibility if:

19       A. The applicant has available for the operation of the registered business net assets  
20 of at least \$25,000; and

21       B. Following the issuance of a registration under this section, the registrant maintains  
22 net assets of at least \$25,000 that are either used or readily available for use in the  
23 conduct of the business of each office of the registrant in which a legal funding is  
24 made.

25       5. Every applicant shall also, at the time of filing such an application, file with the  
26 administrator, if the administrator so requires, a bond satisfactory to the administrator in  
27 an amount not to exceed \$50,000. In lieu of the bond at the option of the registrant, the  
28 registrant may post an irrevocable letter of credit. The terms of the bond must run  
29 concurrent with the period of time during which the registration will be in effect. The  
30 bond must run to the State for the use of the State and of any person who may have a  
31 cause of action against the registrant under this article. The bond must be conditional that  
32 the registrant will faithfully conform to this article and to all rules made by the  
33 administrator under this article and will pay to the State and to any person all money that  
34 may become due or owing to the State or to such a person from the registrant under and  
35 by virtue of this article during the period for which the bond is given.

36       6. A separate registration is required for each place of business. A registration fee of  
37 \$200 may be imposed for any registration issued for a place of business other than that of  
38 the first registered location of the registrant.

39       7. A registrant may conduct the business of legal funding only at or from any place  
40 of business for which the registrant holds a license, including the names of other "doing  
41 business as" entities listed on the registration, and not under any other name than that on  
42 the registration.

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1 8. Upon written request, the applicant is entitled to a hearing on the question of the  
2 applicant's qualifications for a registration if:

3 A. The administrator has notified the applicant in writing that the application has  
4 been denied; or

5 B. The administrator has not issued a registration within 60 days after the application  
6 for the registration was filed.

7 A request for a hearing may not be made more than 15 days after the administrator has  
8 mailed a written notice to the applicant that the application has been denied and stating in  
9 substance the administrator's findings supporting denial of the application.

10 **§12-107. Powers and functions of the administrator**

11 1. The powers and functions of the administrator are as set forth in Article 6, except  
12 that references to "consumer credit transactions" in Article 6 are considered to be  
13 references to advances made pursuant to legal funding.

14 2. The administrator shall maintain a list of all registered companies and make that  
15 list available to consumers, attorneys and others on a publicly accessible website.

16 3. The administrator shall require a litigation funding provider registered pursuant to  
17 section 12-106 to annually submit certain data, in a form and manner acceptable to the  
18 administrator, regarding the number of legal fundings, the amount of legal fundings, the  
19 number of legal fundings required to be repaid by the consumer and the amount charged  
20 to the consumer, including but not limited to the annual percentage fee charged to the  
21 consumer and the itemized fees charged to the consumer.

22 4. Beginning March 1, 2009 and annually thereafter, the administrator shall prepare  
23 and submit a report on the status of legal funding activities in the State. The report must  
24 include aggregate information reported by litigation funding providers pursuant to  
25 subsection 3. The report must be submitted to the joint standing committee of the  
26 Legislature having jurisdiction over insurance and financial services matters.

27 **Sec. 2. Report to Legislature.** As part of the first annual report required  
28 pursuant to the Maine Revised Statutes, Title 9-A, section 12-107, subsection 4, the  
29 Director of the Office of Consumer Credit Regulation within the Department of  
30 Professional and Financial Regulation shall review and evaluate the annual percentage  
31 fee imposed by litigation funding providers on consumers who entered into contracts for  
32 legal funding and assess whether a cap on the maximum annual percentage fee is  
33 necessary. The report must be submitted to the joint standing committee of the  
34 Legislature having jurisdiction over insurance and financial services matters by March 1,  
35 2009. The joint standing committee may submit legislation to implement a cap on the  
36 annual percentage fee on legal funding contracts to the First Regular Session of the 124th  
37 Legislature.

38 **Sec. 3. Effective date.** This Act takes effect January 1, 2008.'

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**SUMMARY**

This amendment replaces the bill. The amendment creates a separate article in the Maine Consumer Credit Code to differentiate the activities of legal funding companies from lenders or creditors. The amendment does the following.

1. It establishes a registration requirement for legal funding companies.
2. It incorporates disclosure and operational provisions that legal funding companies are currently complying with in other states.
3. It limits to 42 months the period for which fees may be charged to a consumer and requires that fees be assessed only on amounts actually retained by the consumer.
4. It permits semiannual compounding of interest and prohibits the compounding of interest for any lesser period of time.
5. It prohibits the use of mandatory arbitration clauses in contracts.
6. It establishes enforcement provisions based on those now applied to consumer creditors and lenders.
7. It requires an annual report to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters on the status of legal funding in this State. As part of the first annual report submitted by March 1, 2009, the Director of the Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation is required to review and evaluate the annual percentage fees charged to consumers and assess whether a cap on the maximum annual percentage fee is necessary. The amendment authorizes the joint standing committee to submit legislation to implement a cap to the 124th Legislature.

**FISCAL NOTE REQUIRED**  
**(See attached)**



# 123rd MAINE LEGISLATURE

LD 1703

LR 2459(02)

## An Act To Regulate Presettlement Lawsuit Funding

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Insurance and Financial Services

Fiscal Note Required: Yes

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### Fiscal Note

Minor cost increase - Other Special Revenue Funds

Minor revenue increase - Other Special Revenue Funds

#### Fiscal Detail and Notes

The additional costs and additional revenue resulting from this bill are expected to be minor and the costs can be absorbed within existing resources of the Office of Consumer Credit Regulation in the Department of Professional and Financial Regulation.