MAINE STATE LEGISLATURE

The following document is provided by the LAW AND LEGISLATIVE DIGITAL LIBRARY at the Maine State Law and Legislative Reference Library http://legislature.maine.gov/lawlib



Reproduced from electronic originals (may include minor formatting differences from printed original)



130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document

No. 1956

H.P. 1455

House of Representatives, February 3, 2022

An Act To Update the Consumer Credit Laws Related to Legal Funding Practices

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on February 1, 2022. Referred to the Committee on Health Coverage, Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

ROBERT B. HUNT

R(+ B. Hunt

Clerk

Presented by Representative MORRIS of Turner. Cosponsored by Senator BALDACCI of Penobscot and

Senator: KEIM of Oxford.

Be it enacted by the People of the State of Maine as follows: Sec. 1. 9-A MRSA §12-102, sub-§2, as enacted by PL 2007, c. 394, §1 and affected by §3, is amended to read: 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

- 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. a nonrecourse transaction in which a litigation funding provider provides funds to a consumer in exchange for:
- A. An assignment of the consumer's contingent right to receive an amount of the potential proceeds a consumer may receive in a civil claim or action; or
- B. An agreement to pay the litigation funding provider interest or other fees for the legal funding provided.
- "Legal funding" does not include legal services provided to a consumer on a contingency fee basis or advanced legal costs when such services or costs are provided by an attorney representing the consumer in accordance with the Maine Rules of Professional Conduct.
- **Sec. 2. 9-A MRSA §12-102, sub-§3,** as enacted by PL 2007, c. 394, §1 and affected by §3, is amended to read:
- **3.** "Litigation funding provider" means a person or entity, wherever located, <u>engaged</u> in the business of <u>legal funding or</u> that provides legal funding to a consumer.

Sec. 3. 9-A MRSA §12-103, sub-§4 is enacted to read:

- 4. This article does not apply to legal funding provided to a commercial entity in support of commercial litigation, except for matters arising from a personal injury claim or an aggregation of personal injury claims, whether by subrogation, assignment or any other basis.
 - **Sec. 4. 9-A MRSA §12-103, sub-§5** is enacted to read:
- **5.** This article applies to a class action.

- **Sec. 5. 9-A MRSA §12-104, sub-§9, ¶C,** as enacted by PL 2007, c. 394, §1 and affected by §3, is amended to read:
 - C. All proceeds of the civil claim or action will be disbursed via the attorney's trust account; and
 - **Sec. 6. 9-A MRSA §12-104, sub-§9, ¶D,** as enacted by PL 2007, c. 394, §1 and affected by §3, is amended to read:
 - D. The attorney is following written instructions of the consumer with regard to the legal funding:
- 36 Sec. 7. 9-A MRSA §12-104, sub-§9, ¶E is enacted to read:
- E. The attorney has not received or been paid a referral fee or any other consideration from the litigation funding provider; and
- **Sec. 8. 9-A MRSA §12-104, sub-§9,** ¶**F** is enacted to read:

6 7 8 9 10	"IF THERE IS NO RECOVERY OF ANY MONEY FROM YOUR LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO SATISFY THE PORTION ASSIGNED TO [INSERT NAME OF THE LITIGATION FUNDING PROVIDER] IN FULL, YOU WILL NOT OWE ANYTHING IN EXCESS OF YOUR RECOVERY."
11	Sec. 10. 9-A MRSA §12-104-A is enacted to read:
12	§12-104-A. Prohibited conduct of litigation funding provider
13	1. Prohibited conduct. A litigation funding provider may not:
14 15 16	A. Pay or offer to pay a commission, referral fee or other consideration to a person, including an attorney, law firm or health care practitioner, for referring a consumer to the litigation funding provider;
17 18	B. Accept a commission, referral fee, rebate or other consideration from a person, including an attorney, law firm or health care practitioner;
19 20	C. Advertise false or misleading information about the legal funding services of the litigation funding provider;
21 22 23 24	D. Refer a consumer to a specific attorney, law firm or health care practitioner, except that, if a consumer lacks legal representation, the litigation funding provider may refer the consumer to an attorney referral service operated by a county or state bar association;
25 26	E. Fail to promptly supply a copy of any complete legal funding contract to the consumer;
27 28 29	F. Attempt to obtain a waiver of any remedy, including, but not limited to, compensatory, statutory or punitive damages, that a consumer might otherwise have in the subject civil claim or action;
30 31	G. Attempt to effect arbitration or a waiver of a consumer's right to a jury trial in the subject civil claim or action;
32 33	H. Offer or provide legal advice to a consumer regarding the legal funding contract or the subject civil claim or action;
34	I. Assign a legal funding contract in whole or in part, including securitization;
35 36 37	J. Report to a consumer credit reporting agency if insufficient funds remain from the net proceeds of the subject civil claim or action to repay the litigation funding provider; or
38 39	K. Direct or make any decisions with respect to the course of the subject civil claim or action or any settlement of the civil claim or action.

F. The attorney has not provided or paid a referral fee or any other consideration to the

12. All contracts for legal funding must contain the following in at least 12-point bold

Sec. 9. 9-A MRSA §12-104, sub-§12 is enacted to read:

1

2

4 5 litigation funding provider.

type to read:

2. Consideration to legal representative or health care practitioner prohibited. A litigation funding provider, or its employees or affiliates, may not provide any financial interest in a legal funding contract or pay a referral fee or any other consideration to a legal representative retained by a consumer or a health care practitioner of a consumer or any of their employees.

Sec. 11. 9-A MRSA §12-105-A is enacted to read:

§12-105-A. Legal funding contracts; disclosure and discovery

- 1. Disclosure. Except as otherwise ordered by a court, a consumer or the consumer's attorney shall, without awaiting a discovery request, provide to all parties to the litigation, including the consumer's insurer prior to the litigation, any legal funding contract under which a litigation funding provider has a contingent right to receive compensation sourced from potential proceeds of the civil claim or action by settlement, judgment or otherwise.
- 2. Discovery. The existence of a legal funding contract and all participants in the contract are permissible subjects of discovery in all personal injury litigation or matters arising out of a personal injury.
- 3. Class action. In a class action, an attorney for a proposed class shall disclose to the court and any putative class member whether the class attorney has a legal or financial relationship with a litigation funding provider.
- 4. Party to legal funding agreement. If the consumer's attorney is a party to a legal funding contract related to the consumer's legal proceeding, the attorney shall disclose in writing to the consumer the contract between the attorney and the litigation funding provider. A copy of the contract must be accompanied by the written disclosure required by this subsection, and the consumer shall sign both an acknowledgment that the contract has been read and the required disclosure has been received.
 - Sec. 12. 9-A MRSA §12-108 is enacted to read:

§12-108. Violation; enforcement

If a consumer, litigation funding provider or successor in interest to a legal funding contract violates any provision of this article, the legal funding contract may not be enforced by any party.

30 SUMMARY

This bill updates the current law related to legal funding practices. The bill makes changes to the definitions to reflect changes in the industry, adds to the disclosures that must be made to consumers before entering into a legal funding contract and adds provisions related to prohibited conduct of a litigation funding provider. The bill provides that a legal funding contract must be disclosed to all parties to litigation by the consumer or the consumer's attorney, including to the consumer's insurer. The bill also provides that any violation of legal funding practices provisions makes the legal funding contract unenforceable.