

MAINE STATE LEGISLATURE

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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.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

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

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 9-A MRSA §12-102, sub-§2**, as enacted by PL 2007, c. 394, §1 and affected
3 by §3, is amended to read:

4 **2.** "Legal funding" means ~~a transaction in which a company makes a cash payment to~~
5 ~~a consumer in exchange for the right to receive an amount out of the potential proceeds of~~
6 ~~any realized settlement, judgment, award or verdict the consumer may receive in a civil~~
7 ~~claim or action. If no proceeds in the civil claim or action are received, the consumer is~~
8 ~~not required to pay the company.~~ a nonrecourse transaction in which a litigation funding
9 provider provides funds to a consumer in exchange for:

10 A. An assignment of the consumer's contingent right to receive an amount of the
11 potential proceeds a consumer may receive in a civil claim or action; or

12 B. An agreement to pay the litigation funding provider interest or other fees for the
13 legal funding provided.

14 "Legal funding" does not include legal services provided to a consumer on a contingency
15 fee basis or advanced legal costs when such services or costs are provided by an attorney
16 representing the consumer in accordance with the Maine Rules of Professional Conduct.

17 **Sec. 2. 9-A MRSA §12-102, sub-§3**, as enacted by PL 2007, c. 394, §1 and affected
18 by §3, is amended to read:

19 **3.** "Litigation funding provider" means a person or entity, wherever located, engaged
20 in the business of legal funding or that provides legal funding to a consumer.

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

22 **4.** This article does not apply to legal funding provided to a commercial entity in
23 support of commercial litigation, except for matters arising from a personal injury claim or
24 an aggregation of personal injury claims, whether by subrogation, assignment or any other
25 basis.

26 **Sec. 4. 9-A MRSA §12-103, sub-§5** is enacted to read:

27 **5.** This article applies to a class action.

28 **Sec. 5. 9-A MRSA §12-104, sub-§9, ¶C**, as enacted by PL 2007, c. 394, §1 and
29 affected by §3, is amended to read:

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

32 **Sec. 6. 9-A MRSA §12-104, sub-§9, ¶D**, as enacted by PL 2007, c. 394, §1 and
33 affected by §3, is amended to read:

34 D. The attorney is following written instructions of the consumer with regard to the
35 legal funding;

36 **Sec. 7. 9-A MRSA §12-104, sub-§9, ¶E** is enacted to read:

37 E. The attorney has not received or been paid a referral fee or any other consideration
38 from the litigation funding provider; and

39 **Sec. 8. 9-A MRSA §12-104, sub-§9, ¶F** is enacted to read:

1 F. The attorney has not provided or paid a referral fee or any other consideration to the
2 litigation funding provider.

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

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

6 "IF THERE IS NO RECOVERY OF ANY MONEY FROM YOUR
7 LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO
8 SATISFY THE PORTION ASSIGNED TO [INSERT NAME OF THE
9 LITIGATION FUNDING PROVIDER] IN FULL, YOU WILL NOT
10 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 A. Pay or offer to pay a commission, referral fee or other consideration to a person,
15 including an attorney, law firm or health care practitioner, for referring a consumer to
16 the litigation funding provider;

17 B. Accept a commission, referral fee, rebate or other consideration from a person,
18 including an attorney, law firm or health care practitioner;

19 C. Advertise false or misleading information about the legal funding services of the
20 litigation funding provider;

21 D. Refer a consumer to a specific attorney, law firm or health care practitioner, except
22 that, if a consumer lacks legal representation, the litigation funding provider may refer
23 the consumer to an attorney referral service operated by a county or state bar
24 association;

25 E. Fail to promptly supply a copy of any complete legal funding contract to the
26 consumer;

27 F. Attempt to obtain a waiver of any remedy, including, but not limited to,
28 compensatory, statutory or punitive damages, that a consumer might otherwise have in
29 the subject civil claim or action;

30 G. Attempt to effect arbitration or a waiver of a consumer's right to a jury trial in the
31 subject civil claim or action;

32 H. Offer or provide legal advice to a consumer regarding the legal funding contract or
33 the subject civil claim or action;

34 I. Assign a legal funding contract in whole or in part, including securitization;

35 J. Report to a consumer credit reporting agency if insufficient funds remain from the
36 net proceeds of the subject civil claim or action to repay the litigation funding provider;
37 or

38 K. Direct or make any decisions with respect to the course of the subject civil claim or
39 action or any settlement of the civil claim or action.

