

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

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Penmor Lithographers
Lewiston, Maine
2007

CHAPTER 394
H.P. 1186 - L.D. 1703

An Act To Regulate
Presettlement Lawsuit Funding

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

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 Prac-
tices."

§12-102. Definitions

As used in this article, unless the context other-
wise 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 ex-
change for the right to receive an amount out of the
potential proceeds of any realized settlement, judg-
ment, 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.

§12-103. Application of law

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

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

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

§12-104. Requirements for legal funding contracts

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

1. All contracts must be written in a clear and co-
herent manner using words with common, everyday
meanings to enable the average consumer who makes
a reasonable effort under ordinary circumstances to
read and understand the terms of the legal funding

contract without having to obtain the assistance of a
professional. The contract must have a meaningful
arrangement that is appropriately divided and cap-
tioned by its various sections.

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

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

DISCLOSURE STATEMENT

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

2. Itemized fees: \$ _____
Application \$ _____
Processing \$ _____
Attorney review \$ _____
Broker \$ _____
Other () \$ _____
Total fees: \$ _____

3. Annual percentage fee (rate of return) on advance, compounded semiannually: _____%

4. Total amount to be repaid by consumer
if at 6 months: \$ _____
if at 12 months: \$ _____
if at 18 months: \$ _____
if at 24 months: \$ _____
if at 30 months: \$ _____
if at 36 months: \$ _____
if at 42 months: \$ _____

3. All contracts must provide that the consumer
may cancel the contract within 5 business days fol-
lowing the consumer's receipt of funds without penalty
or further obligation. The contract must contain the
following notice written in a clear and conspicuous
manner: "MAINE CONSUMER'S RIGHT TO CAN-

CELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM [insert name of litigation funding provider]." The contract must also specify that in order for the cancellation to be effective, the consumer must either return the full amount of disbursed funds to the company by delivering the litigation funding provider's uncashed check to the provider's offices in person within 5 business days of the disbursement of funds or mail a notice of cancellation and include in the mailing a return of the full amount of disbursed funds in the form of the provider's check, or a registered or certified check or money order, by insured, registered or certified United States mail postmarked within 5 business days of receiving funds from the litigation funding provider, at the address specified for such cancellation in the contract.

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

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

"NOTICE: LEGAL FUNDING PROVIDERS MUST REGISTER WITH MAINE REGULATORS. GO TO www.maine.gov/pfr/consumercredit AND SELECT THE "ROSTERS" LINK TO VERIFY A LITIGATION FUNDING PROVIDER'S REGISTRATION OR TO CONTACT PROVIDERS TO OBTAIN COMPARATIVE RATE QUOTES."

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

"DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACES. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD OBTAIN THE ADVICE OF YOUR ATTORNEY. YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS CONTRACT."

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

"THE LITIGATION FUNDING PROVIDER AGREES THAT IT HAS NO RIGHT TO AND WILL NOT MAKE ANY DECISIONS WITH RESPECT TO THE CONDUCT OF THE UNDERLYING CIVIL ACTION OR CLAIM OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE SUCH DECISIONS

REMAINS SOLELY WITH THE CONSUMER AND THE CONSUMER'S ATTORNEY."

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

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

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

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

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

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

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

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

§12-105. Fee requirements

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

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

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

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

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

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

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

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

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

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

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

6. A separate registration is required for each place of business. A registration fee of \$200 may be imposed for any registration issued for a place of busi-

ness other than that of the first registered location of the registrant.

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

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

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

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

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

§12-107. Powers and functions of the administrator

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

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

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

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

Sec. 2. Report to Legislature. As part of the first annual report required pursuant to the Maine Revised Statutes, Title 9-A, section 12-107, subsection 4,

the Director of the Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation shall review and evaluate the annual percentage fee imposed by litigation funding providers on consumers who entered into contracts for legal funding and assess whether a cap on the maximum annual percentage fee is necessary. The report must be submitted to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters by March 1, 2009. The joint standing committee may submit legislation to implement a cap on the annual percentage fee on legal funding contracts to the First Regular Session of the 124th Legislature.

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

Effective January 1, 2008.

CHAPTER 395

H.P. 1319 - L.D. 1885

An Act To Repeal Inactive Boards and Commissions

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

Sec. 1. 3 MRSA §959, sub-§1, ¶L, as amended by PL 2003, c. 600, §1, is further amended to read:

L. The joint standing committee of the Legislature having jurisdiction over natural resource matters shall use the following list as a guideline for scheduling reviews:

- (1) Department of Environmental Protection in 2007;
- (2) Board of Environmental Protection in 2007;
- ~~(3) Advisory Commission on Radioactive Waste and Decommissioning in 2005;~~
- (4) Saco River Corridor Commission in 2005; and
- (5) Board of Underground Oil Tank Installers in 2011.

Sec. 2. 5 MRSA §1826-B, sub-§3 is enacted to read:

3. Director. "Director" means the Director of the Bureau of General Services within the Department of Administrative and Financial Services.

Sec. 3. 5 MRSA §1826-C, as amended by PL 2003, c. 515, §§5 to 8 and c. 689, Pt. B, §6, is further amended to read:

§1826-C. Work center purchases

~~**1. Committee established.** There is established the Work Center Purchases Committee, consisting of the Director of the Bureau of General Services within the Department of Administrative and Financial Services or the director's designee, the Director of the Bureau of Rehabilitation Services within the Department of Labor, a representative of the Department of Health and Human Services, a representative of work centers, a representative of the business community and persons with disabilities. The total number of members with disabilities on the committee must be a minimum of 5.~~

~~**2. Appointments; terms; compensation.** The members of the Work Center Purchases Committee shall be appointed by and shall serve at the pleasure of the Governor. All members of the committee shall serve without compensation, except for reimbursement of necessary expenses incurred in the performance of their duties. The 3 agencies of the State Government that are represented on the committee shall absorb any necessary expenses.~~

3. Powers and duties. The powers and duties of the Work Center Purchases Committee shall include the following:

- A. Develop and use a work center purchases schedule, pursuant to subsection 4;
- B. Develop and carry out procedures for standard competitive bidding for the products and services on the work center purchases schedule pursuant to subsection 5;
- C. Develop procedures to be used in the award and extension of contracts, pursuant to subsection 6;
- D. Incorporate the Department of Administrative and Financial Services, Bureau of General Services rules of appeal of contract awards to resolve disputes related to Work Center Purchases Committee decisions;
- E. Develop and, when necessary, implement procedures to ensure that any member of the committee who has an actual or potential conflict of interest with respect to any contract under consideration by the committee is prohibited from taking any action on that contract in his capacity as a committee member in accordance with the same provisions and standards that apply to executive employees as described in Title 5, section 18; and
- F. Issue rules, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, to carry out the purpose and intent of this subchapter.