

HB 105 -- Redline

As Passed by the House to Enrolled -- Revise non-recourse litigation funding agreement regulations

Deletions ~~struck~~ · Insertions underlined

~~As (136th Passed General Assembly) by (Substitute House Bill Number 105) ANACT 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 House Revised 136th Code General to Assembly revise Regular and Session supplement Sub-~~state regulations concerning non-recourse litigation funding agreements.

~~H-~~Be it enacted by the General Assembly of the State of Ohio:

~~B-~~SECTION 1.

~~No-~~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:

~~105 Sec. -2025-2026 Representatives Craig, Thomas, J.~~

~~Cosponsors:~~

~~Representatives Lampton, Daniels, Thomas, D., Hall, D., Deeter, King, Lorenz, Barhorst, Brennan, Ghanbari, John, McClain, Odioso, Peterson, Ray, Roemer, Sigrist, Williams, Willis To enact sections 1357.01, 1357.011, 1357.02, 1 1357.03, 1357.04, 1357.05, 1357.06, 1357.07, 2 1357.08, 1357.09, and 1357.10 and to repeal 3 section 1349.55 of the Revised Code to revise 4 and supplement state regulations concerning non- 5 recourse litigation funding agreements.~~

~~6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:~~

~~Section 1-~~

~~That sections 1357.01, 1357.011, 1357.02, 7 1357.03, 1357.04, 1357.05, 1357.06, 1357.07, 1357.08, 1357.09, 8 and 1357.10 of the Revised Code be enacted to read as follows:~~

~~9 Sec-~~

~~10-(A)(1) "Advertise" means directly or indirectly 11-publishing, disseminating, circulating, or placing before the 12-public any written, oral, electronic, or printed communication 13-for the purpose of inducing a consumer to enter into a consumer-14 legal funding agreement.~~

~~15-(2) For the purposes of division (A)(1) of this section, 16-"written, oral, electronic, or printed communication" includes 17communication Sub-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.~~

~~Sub.~~

~~105 Page 136th 26.A. As Passed by the House communication by means of recorded telephone messages and 18 transmission or broadcast on radio, television, the internet, or 19 other similar media of audio recordings, film strips, motion 20 pictures, or videos.~~

~~21(b) (1) The "Charges" agreement means creates the a amount direct of or money collateralized to interest be in paid to 22 the consumer proceeds legal of funding a company civil by action or on group behalf of a civil consumer actions, 23 by in settlement, excess verdict, of judgment, the or funded otherwise. amount.~~

~~24(c) (2) The "Charges" interest include created interest by and the all agreement administrative, is 25 based, origination, in underwriting, whole and or other part, fees, on no a matter funding how obligation 26 incurred~~

~~denominated 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:~~

~~27(i) (C)(1) Any "Commercial attorney litigation representing financier" means a person party; 28 engaged in the business of entering into commercial litigation 29 financing agreements with claimants or with lawyers or law firms 30 asserting legal claims on behalf of claimants.~~

~~31(ii) (2) Any "Commercial co-counsel litigation in financier" does not include a 32 nonprofit organization determined by the internal civil revenue action 33 or service group to of be actions tax with exempt a pursuant contingent to fee section interest 501(c) in of representing the a 34 named "Internal party; Revenue Code of 1986," 26 U.S.C.~~

~~1-(iii) or Any third-party who has a person collateral-based that interest 35 in funds the such contingency a fees nonprofit of organization, the if counsel or co-counsel, or the nonprofit law 36 firm organization of represents the counsel or co-counsel, related in whole or part to the claimant fees or derived a from pro representing bono that basis party.~~

~~37(2) Seeking "Commercial or litigation accepting financing a agreement" settlement or judgment that includes 38 costs or attorney's fees does not, in itself, make a nonprofit contract. 39 such organization as or an attorney option, contracted forward by contract, a futures nonprofit contract, 40 short organization position, a swap, "commercial or litigation similar financier," agreement, 41 that (D)(1) is "Commercial substantially litigation similar financing agreement" means, 42 with respect to any an civil action or group of civil actions, a 43 written agreement that described meets in all division (D)(1) of the this following section.~~

~~44(3) (a) "Commercial litigation third financing party agreement" agrees does to not provide include funds any to of a named party 45 or a law firm that represents a named party in the civil following: action 46 Sub. (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:~~

~~Sub.~~

~~105 Page 136th 36 A. As Passed by the House or group of civil actions.~~

~~47(a) (b) A The family agreement member creates of a direct or collateralized 48 interest in the proceeds consumer; of a civil action or group of civil 49 actions, by settlement, verdict, judgment, or otherwise.~~

~~50(b) (c) A The bank, interest lender, created financing by entity, the or agreement other is special based, purpose in entity 51 that whole provides or financing part, to on a funding consumer obligation legal incurred funding in company connection and 52 to with which the a action consumer or legal group funding of company actions, grants the a appearing security counsel, interest any 53 contractual co-counsel, or the transfers law any firm rights of the counsel or co-interest 54 in counsel, a executed consumer with legal any funding of agreement; the following:~~

~~55(c) (i) An Any attorney representing or accountant who provides services to a party; consumer.~~

~~56(H) (ii) "Funded Any amount" co-counsel means in the civil amount action of or money group provided of to, 57 or actions on with behalf a of, contingent the fee consumer interest in representing a named consumer 58 legal party; funding agreement.~~

~~59 (iii) Any third-party who has a collateral-based interest 60 in the contingency fees of the counsel or co-counsel, or the law 61 firm of the counsel or co-counsel, related in whole or part to 62 the fees~~

~~derived from representing that party.~~

~~63 (2) "Commercial litigation financing agreement" includes a 64 contract, such as an option, forward contract, futures contract, 65 short position, swap, or similar agreement, that is 66 substantially similar to an agreement described in division (D) 67 (1) of this section.~~

~~68 (3) "Commercial litigation financing agreement" does not 69 include any of the following:~~

~~70 (a) A consumer legal funding agreement;~~

~~71 (b) An agreement by an attorney or law firm to provide 72 legal services on a contingency fee basis to the claimant or to 73 advance the claimant's legal costs in accordance with the rules 74 Sub.~~

~~H.~~

~~B.~~

~~No.~~

~~105 Page 4 As Passed by the House of professional conduct adopted by the supreme court;~~

~~75 (c) A health insurer, medical provider, or assignee that 76 has paid, is obligated to pay, or is owed sums for a claimant's 77 health care under the terms of a health insurance plan or 78 agreement;~~

~~79 (d) A financial institution providing loans to the 80 claimant or the claimant's attorney or law firm, the repayment 81 of which is not contingent upon the outcome of the legal claim 82 or on the outcome of any matter within a portfolio that includes 83 the legal claim and involves the same attorney or law firm or 84 affiliated attorney or law firm;~~

~~85 (e) A person with a preexisting contractual obligation to 86 indemnify or defend a party to a legal claim.~~

~~87 (E) "Consumer" means a natural person who has a pending 88 legal claim and who resides or is domiciled in Ohio.~~

~~89 (F)(1) "Consumer legal funding agreement" means a 90 nonrecourse agreement in which a consumer legal funding company 91 purchases, and a consumer assigns to the company, a contingent 92 right to receive an amount of the potential proceeds of any 93 settlement, judgment, award, or verdict obtained in the 94 consumer's legal claim.~~

~~95 (2) "Consumer legal funding agreement" does not include 96 any agreement involving a cash payment by the consumer legal 97 funding company of four hundred thousand dollars or more.~~

~~98 (G)(1) "Consumer legal funding company" means a person or 99 entity that enters into a consumer legal funding agreement with 100 a consumer.~~

~~101 (2) "Consumer legal funding company" does not include any 102 Sub.~~

~~H.~~

~~B.~~

~~No.~~

~~105 Page 5 As Passed by the House of the following:~~

~~103 (a) A family member of the consumer;~~

~~104 (b) A bank, lender, financing entity, or other special 105 purpose entity that provides financing to a consumer legal 106 funding company and to which a consumer legal funding company 107 grants a security interest or transfers any rights or interest 108 in a consumer legal funding agreement;~~

~~109 (c) An attorney or accountant who provides services to a 110 consumer.~~

~~111 (H) "Funded amount" means the amount of money provided to, 112 or on behalf of, the consumer in a consumer legal funding 113 agreement.~~

~~114 (I) "Funding date" means the date on which the funded 115 amount is transferred to the consumer by the consumer legal 116 funding company by personal delivery;~~

~~via wire, automated 117 clearing house, or other electronic means;~~

~~or by certified or 118 registered mail.~~

~~119 (J) "Family member" means a spouse;~~

~~child, 120 including adopted children and stepchildren;~~

~~121 grandparent;~~

~~122 (K) "Legal claim" means a civil claim or cause of action.~~

~~123 (L) "Resolution date" means the date the funded amount, 124 plus the agreed upon charges, are delivered to the consumer 125 legal funding company by the consumer, the consumer's attorney, 126 or otherwise.~~

~~127 Sec.~~

The general assembly, in enacting sections ~~128~~ 1357.01 to 1357.10 of the Revised Code pursuant to this act, ~~129~~ hereby declares its intent to adopt regulations concerning a ~~130 narrow Sub. range of consumer legal funding agreements and commercial litigation financing agreements as contemplated in the holding of the Ohio Supreme Court in Rancman v.~~

~~H. Interim Settlement Funding Corp., 99 Ohio St.3d 121 (2003).~~

~~B. The general assembly intends to preserve and reinforce the general public policy expressed in that holding against champerty and maintenance.~~

~~No. Sec.~~

~~105 Page 6 As Passed by the House narrow range of consumer legal funding agreements and commercial 131 litigation financing agreements as contemplated in the holding 132 of the Ohio Supreme Court in Rancman v.~~

~~Interim Settlement 133 Funding Corp., 99 Ohio St.3d 121 (2003).~~

~~The general assembly 134 intends to preserve and reinforce the general public policy 135 expressed in that holding against champerty and maintenance.~~

~~136 Sec.~~

(A) Beginning ninety days after the ~~137~~ effective date of this section, all consumer legal funding ~~138~~ companies shall register with the attorney general prior to ~~139~~ commencing any business activity in this state.

~~140~~ (B) The attorney general shall establish a process that ~~141~~ allows consumer legal funding companies to register under this ~~142~~ section.

Such registration shall include, at a minimum, all of ~~143~~ the following:

~~144~~ (1) The consumer legal funding company's name and ~~145~~ domiciliary address;

~~146~~ (2) The names of the company's chief executive officer and ~~147~~ chair of the board of directors, as applicable;

~~148~~ (3) A statement as to whether or not the company is part ~~149~~ of a larger group of companies;

~~150~~ (4) An acknowledgment certified by an officer or duly ~~151~~ appointed employee of the company that the consumer legal ~~152~~ funding company's financiers have read this chapter.

~~153 Sec.~~

(A) A consumer legal funding company shall ~~154~~ not enter into, or seek to enter into, a consumer legal funding ~~155~~ agreement unless all of the following apply:

~~156~~ (1) The agreement is completely filled-in when presented ~~157~~ to the consumer for signature.

~~158 (2) Sub. The agreement includes space on each page for the consumer's initials.~~

~~Sub.~~

~~105 Page 136th 76.A. As Passed by the House (2) The agreement includes space on each page for the 150 consumer's initials.~~

~~160~~ (3) The front page of the agreement includes all of the ~~161~~ following disclosures under appropriate headings:

~~162~~ (a) The funded amount to be paid to the consumer under the ~~163~~ agreement;

~~164~~ (b) An itemized list of all one-time and recurring charges ~~165~~ under the agreement, subject to section 1357.04 of the Revised ~~166~~ Code, and an explanation for how those charges accrue;

~~167~~ (c) The maximum amount that may be assigned by the ~~168~~ consumer to the company under the agreement, including the ~~169~~ funded amount and all charges, but excluding penalties that may ~~170~~ apply in the case of a material breach, fraud, or ~~171~~ misrepresentation by or on behalf of the consumer;

~~172~~ (d) If the consumer seeks to enter into more than one ~~173~~ consumer legal funding agreement with the same company, the ~~174~~ cumulative amount that may be assigned to the company under all ~~175~~ such agreements, including the funded amount and all charges, ~~176~~ but excluding penalties that may apply in the case of a material ~~177~~ breach, fraud, or misrepresentation by or on behalf of the ~~178~~ consumer.

~~179~~ (4) The agreement allows the consumer to cancel the ~~180~~ agreement, without penalty or further obligation, by returning ~~181~~ the full amount of disbursed funds to the company within ten ~~182~~ business days after the funding date.

The consumer may do either ~~183~~ of the following to effectuate the cancellation:

~~184~~ (a) Deliver the company's uncashed check to the company's ~~185~~ offices in person, within ten business days after the ~~186~~ disbursement of funds;

~~187 (b) Sub. 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 Sub.

105 Page 136th 8G.A. As Passed by the House (b) Mail a notice of cancellation and include in that 188 mailing a return of the full amount of disbursed funds in the 189 form of the company's uncashed check, or a registered or 190 certified check or money order, by insured, registered, or 191 certified United States mail, postmarked within ten business 192 days after receiving funds from the company, at the address 193 specified in the agreement for cancellation.

194 EXTENT (5) THAT THERE body ARE of AVAILABLE the PROCEEDS agreement FROM includes YOUR all LEGAL of CLAIM. the 195 following statements:

196 YOU (a) WILL "CONSUMER'S NOT RIGHT TO [insert CANCELLATION: 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:

YOU "DO MAY NOT CANCEL SIGN THIS 197 AGREEMENT WITHOUT BEFORE PENALTY OR FURTHER OBLIGATION WITHIN TEN 198 BUSINESS DAYS AFTER THE FUNDING DATE IF YOU RETURN READ THE IT FULL COMPLETELY. 199 AMOUNT OF THE DISBURSED FUNDS TO [insert name of company]." 200 (b) "THE COMPANY HAS NO ROLE IN DECIDING WHETHER, WHEN, 201 AND HOW MUCH THE LEGAL CLAIM IS SETTLED FOR.

HOWEVER, DO YOU NOT OR SIGN 202 THIS YOUR AGREEMENT ATTORNEY IF MUST IT NOTIFY CONTAINS THE ANY COMPANY BLANK OF SPACES. THE OUTCOME OF THE 203 LEGAL CLAIM BY SETTLEMENT OR ADJUDICATION ON OR BEFORE THE 204 RESOLUTION DATE.

THE YOU COMPANY ARE MAY ENTITLED SEEK UPDATED INFORMATION ABOUT 205 THE STATUS OF THE LEGAL CLAIM BUT IN NO EVENT SHALL THE COMPANY 206 ATTEMPT TO INTERFERE WITH, COMPLETELY CONTROL, FILLED-IN OR COPY INFLUENCE THE INDEPENDENT 207 PROFESSIONAL JUDGMENT OF YOUR THIS ATTORNEY AGREEMENT IN BEFORE THE YOU HANDLING SIGN OF IT. THE 208 LEGAL CLAIM OR ANY SETTLEMENT THEREOF." 209 (c) "THE FUNDED AMOUNT AND AGREED UPON CHARGES SHALL BE 210 PAID FROM THE PROCEEDS OF YOUR LEGAL CLAIM, AND SHALL BE PAID 211 ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR 212 LEGAL CLAIM.

YOU BEFORE WILL NOT OWE [insert name of company] ANYTHING 213 IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE SIGN 214 VIOLATED ANY MATERIAL TERM OF THIS AGREEMENT AGREEMENT, OR YOU HAVE SHOULD 215 OBTAIN COMMITTED THE FRAUD ADVISE AGAINST OF [insert AN name ATTORNEY. of company]." 216 Sub. 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 ADVISE 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 Sub.

105 Page 136th 9G.A. As Passed by the House (d) Immediately above the place on the agreement where the 217 consumer's signature is required:

~~"DO THIS NOT SECTION, SIGN INCLUDING THIS OMISSION AGREEMENT OF 218 THE BEFORE ATTORNEY YOU ACKNOWLEDGEMENT REQUIRED IT BY COMPLETELY. 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. DO A NOT CONSUMER SIGN TERMINATING THIS THE AGREEMENT ATTORNEY IF WHO IT MADE 219 THE CONTAINS ACKNOWLEDGMENT ANY REQUIRED BLANK BY SPACES. 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.~~

~~YOU SEC. ARE ENTITLED TO A COMPLETELY 220 FILLED-IN COPY OF THIS AGREEMENT BEFORE YOU SIGN IT.~~

~~BEFORE YOU 221 SIGN THIS AGREEMENT, YOU SHOULD OBTAIN THE ADVICE OF AN 222 ATTORNEY.~~

~~DEPENDING ON THE CIRCUMSTANCES, YOU MAY WANT TO 223 CONSULT A TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL 224 PROFESSIONAL.~~

~~YOU ACKNOWLEDGE THAT YOUR ATTORNEY IN THE LEGAL 225 CLAIM HAS PROVIDED NO TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, 226 OR FINANCIAL ADVICE REGARDING THIS TRANSACTION.~~

~~YOU FURTHER 227 ACKNOWLEDGE THAT YOUR ATTORNEY HAS EXPLAINED THE TERMS AND 228 CONDITIONS OF THIS AGREEMENT." 229 (6) The agreement contains a written acknowledgement by 230 the attorney retained by the consumer in the legal claim that 231 attests to all of the following:~~

~~232 (a) The attorney has reviewed the agreement and all 233 disclosures required by this section with the consumer.~~

~~234 (b) The attorney is being paid on a contingency basis 235 pursuant to a written fee agreement.~~

~~236 (c) All proceeds of the legal claim will be disbursed via 237 the trust account of the attorney or a settlement fund 238 established to receive the proceeds of the legal claim on behalf 239 of the consumer.~~

~~240 (d) The attorney agrees to disburse funds from the legal 241 claim and take any other steps necessary to ensure that the 242 terms of the consumer legal funding agreement are fulfilled.~~

~~243 (e) The attorney has not received a referral fee or other 244 consideration from the consumer legal funding company in 245 Sub.~~

~~H.~~

~~B.~~

~~No.~~

~~105 Page 10 As Passed by the House connection with the consumer legal funding, nor will the 246 attorney receive such a fee or other consideration in the 247 future.~~

~~248 (f) The attorney agrees to follow all applicable rules of 249 professional conduct adopted by the supreme court in all aspects 250 of the transaction.~~

~~251 (B)(1) A violation of this section or section 1357.04 of 252 the Revised Code by a consumer legal funding company constitutes 253 an unfair or deceptive act or practice in violation of section 254 1345.02 of the Revised Code.~~

~~255 (2) A consumer injured by such a violation has a cause of 256 action and is entitled to the same relief available to a 257 consumer under section 1345.09 of the Revised Code.~~

~~258 (3) All powers and remedies available to the attorney 259 general to enforce sections 1345.01 to 1345.13 of the Revised 260 Code are available to the attorney general to enforce this 261 section.~~

~~262 (C) In addition to remedies set forth in division (B) of 263 this section, any willful violation of this section, including 264 omission of the attorney acknowledgement required by division 265 (A)(6) of this section, renders the consumer legal funding 266 agreement unenforceable by the company, the consumer, or any 267 successor in interest to the agreement.~~

~~A consumer terminating 268 the attorney who made the acknowledgment required by division 269 (A)(6) of this section or retaining a new attorney with respect 270 to the legal claim does not, in itself, render the agreement 271 unenforceable under this division.~~

~~272 Sec.~~

A consumer legal funding company shall not 273 do any of the following:

274(A) Sub. 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 Sub.

105 Page 136th 11G.A. As Passed by the House (A) Pay or offer to pay a commission, referral fee, or 275 other form of consideration to any attorney, law firm, health 276 care provider, chiropractor, or physical therapist, or to any 277 employee or agent of the foregoing, for referring a consumer to 278 the company;

279 consumer (B) legal Accept funding any agreement: commission, referral fee, rebate, or other 280 form of consideration from an attorney, law firm, health care 281 provider, chiropractor, or physical therapist, or from any 282 employee or agent of the foregoing;

283(a) (C) A Purposefully prepayment advertise penalty false or misleading fee; information 284 regarding the company's products or services;

285(b) (D) A Refer one-time a consumer or potential consumer to a specific 286 attorney, law firm, medical provider, chiropractor, or physical 287 therapist, or to any employee or agent of the foregoing, except 288 that, if a consumer does not have legal representation, the 289 company may refer the consumer to a state or local lawyer 290 referral service operated fee by that a exceeds bar seven association per or cent nonprofit 291 organization, or a legal aid society, as defined in section 292 120.51 of the Revised initial Code; funded amount.

293(2) (E) Charges Fail in to excess promptly of supply the copies amount of specified all in completed division 294(A)(3)(c) consumer of legal section funding 1357.03 agreements of to the consumer Revised Code and the fees 295 prohibited attorney by representing division the (J)(1) consumer of in this the section legal are claim; unenforceable.

296(K) (F) Enter Knowingly enter into a consumer legal funding 297 agreement with if a consumer attorney for or a legal law claim firm respecting retained which by the 298 consumer previously for sold or assigned all or part of the 299 legal consumer's claim right on to which the proceeds, unless the company or the 300 consumer extinguishes the prior agreement by is either based repaying has the 301 financial entire disbursed amount plus any contracted fees, or paying ownership a interest 302 lesser amount expressly agreed to, in writing, by the consumer company. 303 Sub.

H. (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.

B. Any consumer legal funding agreement resulting from a violation of this division is void ab initio.

No. (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.

105 Any Page consumer 12 legal As funding Passed agreement by resulting the from House a and violation all of other this parties division to is the void prior ab agreement. initio.

More Sec. than one 304 company may agree, contemporaneously, to enter into a consumer 305 legal funding agreement with the same consumer for the same 306 claim so long as the companies, the consumer, and the consumer's 307 attorney consent to the agreements in writing.

308 (G) Make or influence any decision with respect to the 309 conduct of the consumer's legal claim or the settlement or 310 resolution of that legal claim, including appointing or changing 311 counsel, choice or use of expert witnesses, litigation strategy, 312 and settlement or other resolution of the claim;

313 (H) Attempt to obtain a waiver of any remedy, including 314 compensatory, statutory, or punitive damages, to which the 315 consumer might otherwise be entitled;

316 (I) Knowingly pay or offer to pay for court costs, filing 317 fees, or attorney's fees before,

~~during, or after the resolution 318 of the legal claim;~~

~~319 (J)(1) Charge or collect from a consumer either of the 320 following in connection with a consumer legal funding agreement:~~

~~321 (a) A prepayment penalty or fee;~~

~~322 (b) A one-time service fee that exceeds seven per cent of 323 the initial funded amount.~~

~~324 (2) Charges in excess of the amount specified in division 325 (A)(3)(c) of section 1357.03 of the Revised Code and fees 326 prohibited by division (J)(1) of this section are unenforceable.~~

~~327 (K) Enter into a consumer legal funding agreement if an 328 attorney or a law firm retained by the consumer for the legal 329 claim on which the agreement is based has a financial or 330 ownership interest in the company.~~

~~331 Sub.~~

~~H.~~

~~B.~~

~~No.~~

~~105 Page 13 As Passed by the House (L) Collude with or knowingly assist a lawyer or law firm 332 that is enticing or intends to entice a consumer to bring a 333 claim that the company knows or has reason to know is fabricated 334 or otherwise not brought in good faith.~~

~~Any consumer legal 335 funding agreement resulting from a violation of this division is 336 void ab initio.~~

~~337 (M) Knowingly offer or collude to provide funding as an 338 inducement to a consumer who is presently represented by counsel 339 to terminate that engagement and engage another lawyer or law 340 firm to represent the consumer in the same matter.~~

~~Any consumer 341 legal funding agreement resulting from a violation of this 342 division is void ab initio.~~

~~343 Sec.~~

(A) An attorney retained by a consumer in a 344 legal claim shall not disclose confidential or privileged 345 information to a consumer legal funding company without first 346 obtaining written consent from the consumer and without first 347 ensuring that the disclosure is not prohibited by court rules, a 348 court order, or the rules of professional conduct adopted by the 349 supreme court.

350 (B) No law firm or attorney that has a financial interest 351 in a consumer legal funding company and no attorney whose family 352 member has a financial interest in a consumer legal funding 353 company shall do any of the following:

354 (1) Represent a consumer in any legal claim respecting 355 which the consumer has entered into a consumer legal funding 356 agreement with the company;

357 (2) Provide consumer legal funding directly to a consumer 358 the attorney or law firm represents;

359 (3) Refer a consumer to the consumer's retained attorney 360 in Sub. 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.

Sub.

105 Page 136th 14G.A. As Passed by the House in any legal claim respecting which the consumer has entered 361 into a consumer legal funding agreement with the company.

362 (2) (C)(1) Any The party attorney to or attorneys representing a party civil that proceeding 363 may has seek entered into a consumer court legal order funding declaring agreement that at the time trial 364 has the completed associated for claim purposes is resolved shall disclose the existence 365 and contents of the division agreement (C)(1) to the attorney general, in a form 366 and manner prescribed by the attorney general, within fourteen 367 days after any of the this following: section.

368 (a) The related court legal may claim take being any settled, necessary but action only to if enforce the 369 requirements legal claim is filed in a court of competent that jurisdiction division. prior 370 to settlement;

371 (D) (b) Upon Areceiving final a appealable disclosure order under is division entered (C) by of this section, the court; 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.

~~372 Prior (c) to An making adjudication the documents available, either on the attorney general's web site or order in is response entered to indicating a that public 373 records request made under section 149.43 of the legal Revised claim Code, has the reached attorney general shall redact all legally required confidential information from the final disclosure, stage including at any information that could provide the trial identification court of the consumer.~~

~~374 (E) (2) Any party provision to of a civil consumer proceeding legal may funding seek agreement a entered court into, order amended, 375 or declaring renewed that on or after the trial effective has date completed of for this purposes section of that division prohibits 376 or (C)(1) limits discovery of this the section agreement or the parties to the agreement is void and unenforceable.~~

~~The Sec. court may take any necessary action 377 to enforce the requirements of that division.~~

~~378 (D) Upon receiving a disclosure under division (C) of this 379 section, the attorney general shall promptly publish the 380 contents of the consumer legal funding agreements included in 381 the disclosure to the attorney general's publicly accessible web 382 site.~~

~~Prior to making the documents available, the attorney 383 general shall redact all legally required confidential 384 information from the disclosure, including any information that 385 could provide the identification of the consumer.~~

~~386 (E) Any provision of a consumer legal funding agreement 387 entered into, amended, or renewed on or after the effective date 388 of this section that prohibits or limits discovery of the 389 Sub.~~

~~H.~~

~~B.~~

~~No.~~

~~105 Page 15 As Passed by the House agreement or the parties to the agreement is void and 390 unenforceable.~~

~~391 Sec.~~

A consumer legal funding agreement places a ~~392~~ lien on the proceeds of the consumer's legal claim that ~~393~~ supersedes all subsequently perfected liens on such proceeds ~~394~~ other than liens directly related to the legal claim and ~~395~~ expressly authorized by state or federal law, such as a lien for ~~396~~ attorneys fees, a lien by the department of medicaid under ~~397~~ section 5160.37 of the Revised Code, a medicare lien under 42-~~398~~ U.S.C.

1395y, or a workers' compensation lien under section ~~399~~ 4123.931 of the Revised Code.

~~400 Sec.~~

(A) No consumer legal funding company shall ~~401~~ knowingly enter into a consumer legal financing agreement with a ~~402~~ person or entity that is not domiciled in the United States or ~~403~~ respecting a legal claim that is financed, directly or ~~404~~ indirectly, by a person or entity not domiciled in the United ~~405~~ States.

~~406~~ (B) No commercial litigation financier shall knowingly ~~407~~ enter into a commercial litigation financing agreement with a ~~408~~ person or entity that is not domiciled in the United States or ~~409~~ respecting a legal claim that is financed, directly or ~~410~~ indirectly, by a person or entity not domiciled in the United ~~411~~ States.

~~412~~ (C) No consumer or entity shall enter into a consumer ~~413~~ legal financing agreement or a commercial litigation financing ~~414~~ agreement with a person or entity that is not domiciled in the ~~415~~ United States.

~~416~~ (D) The general assembly declares its intent in enacting ~~417~~ this section is to achieve the legitimate state interest of ~~418~~ protecting Sub. 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 Sub.

~~105 Page 136th 16 G.A. As Passed by the House protecting due process rights for all litigants in the courts of 419 this state by addressing the grave risk posed by foreign actors 420 that seek to interfere with those courts.~~

~~421 following: Sec.~~

~~1357.08, (1) The commercial litigation financier's company name and domiciliary address;~~

~~(A) (2) Beginning The ninety names days of after the 422 financier's effective chief date executive of officer this and section, chair all of commercial litigation 423 financiers shall register with the attorney board~~

~~general of prior directors, to as 424 applicable; commencing any business activity in this state.~~

~~425 (3) (B) A The statement attorney as general to shall whether establish or not process the that financier
426 is allows part commercial of litigation a financiers larger to group register of under companies; this 427
section.~~

~~Such (4) registration An shall acknowledgment include, certified at by a an minimum, officer all or duly
appointed employee of 428 the company that the following: commercial litigation financier's financiers
have read this chapter.~~

~~429 Sec. (1) The commercial litigation financier's company name and 430 domiciliary address;~~

~~431 (2) The names of the financier's chief executive officer 432 and chair of the board of directors, as
applicable;~~

~~433 (3) A statement as to whether or not the financier is part 434 of a larger group of companies;~~

~~435 (4) An acknowledgment certified by an officer or duly 436 appointed employee of the company that the
commercial litigation 437 financier's financiers have read this chapter.~~

~~438 Sec.~~

~~(A) No claimant, attorney or law firm 439 representing a claimant, or affiliated attorney or law firm
440 shall disclose or share any documents or information with a 441 commercial litigation financier that
are subject to a protective 442 or sealing order from a court.~~

~~443 (B) A commercial litigation financier shall not make any 444 decision, have any influence, or direct
any decisions with 445 respect to the course of a legal claim, including decisions in 446 appointing
Sub. 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 Sub.~~

~~105 Page 136th 17G.A. As Passed by the House appointing or changing counsel, choice or use of expert 447
witnesses, litigation strategy, and settlement or other 448 resolution.~~

~~449 company. (C) (1) if The the attorney or attorneys representing a party that 450 has entered into a
commercial litigation financing financier agreement or at consumer 451 legal the funding time company the
associated claim is resolved found shall by disclose a the court 452 existence and contents of the competent
agreement jurisdiction to the have attorney violated general, this 453 chapter. in a form and manner
prescribed by the attorney general, within 454 fourteen days after any of the following:~~

~~455 (a) ECTION 2. The related legal claim being settled, but only if the 456 legal claim is filed in a
court of competent jurisdiction prior 457 to settlement;~~

~~458 That (b) section A 1349.55 final of appealable the order Revised Code is entered hereby by repealed. the
court;~~

~~459 Sub. (c) An adjudication or order is entered indicating that 460 the legal claim has reached the~~

~~final stage at the trial court.~~

~~461 (2) Any party to a civil proceeding may seek a court order 462 declaring that the trial has completed for purposes of division 463 (C)(1) of this section.~~

~~The court may take any necessary action 464 to enforce the requirements of that division.~~

~~465 (D) Upon receiving a disclosure under division (C) of this 466 section, the attorney general shall promptly publish the 467 contents of the commercial litigation financing agreements 468 included in the disclosure to the attorney general's publicly 469 accessible web site.~~

~~Prior to making the documents available, 470 the attorney general shall redact all legally required 471 confidential information from the disclosure, including any 472 information that could provide the identification of the 473 plaintiff.~~

~~474 (E) Any provision of a commercial litigation financing 475 Sub.~~

~~105 Page136th 18G.A. As Passed by the House agreement entered into, amended, or renewed on or after the 476 effective date of this section that prohibits or limits 477 discovery of the agreement or the parties to the agreement is 478 void and unenforceable.~~

~~479 Speaker Sec. _____ of the House of Representatives.~~

~~1357.10. President _____ of the Senate.~~

~~The Passed attorney _____, general 20 _____ may Approved file _____, a 20 _____ complaint Governor. 480 seeking any equitable remedy, including barring a commercial 481 litigation financier or consumer legal funding company from 482 doing business in Ohio, if the commercial litigation financier 483 or consumer legal funding company is found by a court of 484 competent jurisdiction to have violated this chapter.~~

~~485 Sub. Section 2.~~

~~That H. section 1349.55 of the Revised Code is 486 hereby repealed.~~

~~487 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.~~

~~Director, Legislative Service Commission.~~

~~Filed in the office of the Secretary of State at Columbus, Ohio, on the _____ day of _____, A.~~

~~D.~~

~~20 _____.~~

~~Secretary of State.~~

~~File No.~~

~~_____ Effective Date _____~~