

[First Reprint]

SENATE, No. 1475

STATE OF NEW JERSEY

221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Senator JOHN F. MCKEON

District 27 (Essex and Passaic)

SYNOPSIS

“Consumer Legal Funding Act.”

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on October 10, 2024, with amendments.



(Sponsorship Updated As Of: 4/11/2024)

1 AN ACT concerning consumer legal funding and supplementing
2 Title 56 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the “Consumer
8 Legal Funding Act.”

9

10 2. As used in this act:

11 “Advertise” means publishing or disseminating any written,
12 electronic or printed communication or any communication by
13 means of recorded telephone messages or transmitted on radio,
14 television, the Internet or similar communications media, including
15 film strips, motion pictures and videos, published, disseminated,
16 circulated or placed before the public, directly or indirectly, for the
17 purpose of inducing a consumer to enter into a consumer legal
18 funding.

19 “Charges” means the amount of money to be paid to the
20 consumer legal funding company by or on behalf of the consumer,
21 above the funded amount provided by or on behalf of the company
22 to a consumer pursuant to this act. Charges include all
23 administrative, origination, underwriting or other fees no matter
24 how denominated.

25 “Commissioner” means the Commissioner of Banking and
26 Insurance.

27 “Consumer” means a natural person who has a pending legal
28 claim and who resides in New Jersey.

29 “Consumer legal funding” or “funding” means a non-recourse
30 transaction in which a consumer legal funding company purchases
31 and a consumer transfers to the company an unvested, contingent
32 future interest in the potential net proceeds of the settlement or
33 judgment obtained from the consumer’s legal claim; if no proceeds
34 are obtained from the consumer’s legal claim, the consumer is not
35 required to repay the company the consumer legal funding amount
36 or charges.

37 “Consumer legal funding company” or “company” means a
38 person or entity that enters into a consumer legal funding with a
39 consumer. This term shall not include: an immediate family
40 member of the consumer; an attorney or accountant who provides
41 services to a consumer; or a bank, lender, financing entity, or other
42 special purpose entity:

43 (1) that provides financing to a consumer legal funding
44 company; or

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted October 10, 2024.

1 (2) to which a consumer legal funding company grants a
2 security interest or transfers any rights or interest in a consumer
3 legal funding.

4 “Funded amount” means the amount of monies provided to, or
5 on behalf of, the consumer in the consumer legal funding. “Funded
6 amount” excludes charges.

7 “Funding date” means the date on which the funded amount is
8 transferred to the consumer by the consumer legal funding company
9 by personal delivery, wire, electronic means, or insured, certified,
10 or registered United States mail.

11 “Immediate family member” means a parent; sibling; child by
12 blood, adoption, or marriage; spouse; grandparent; or grandchild.

13 “Legal claim” means a bona fide civil claim or cause of action.

14 “Resolution date” means the date the amount funded to the
15 consumer, plus the agreed upon charges, are delivered to the
16 consumer legal funding company.

17

18 3. a. A consumer legal funding contract shall meet the
19 following requirements:

20 (1) the contract shall be completely filled in when presented to
21 the consumer for signature;

22 (2) the contract shall contain, in bold and boxed type, a right of
23 rescission, allowing the consumer to cancel the contract without
24 penalty or further obligation if, within five business days after the
25 funding date, the consumer either:

26 (a) returns to the consumer legal funding company the full
27 amount of the disbursed funds by delivering the company’s
28 uncashed check to the company’s office in person; or

29 (b) mails, by insured, certified, or registered United States mail,
30 to the address specified in the contract, a notice of cancellation and
31 includes in that mailing a return of the full amount of disbursed
32 funds in the form of the company’s uncashed check or a registered
33 or certified check or money order; ¹~~and~~¹

34 (3) the contract shall contain the initials of the consumer on
35 each page¹; and

36 (4) if applicable, the terms and conditions of the contract shall be
37 written in the consumer’s native language¹.

38 b. The contract shall contain a written acknowledgment by the
39 attorney retained by the consumer in the legal claim that attests to
40 the following:

41 (1) ¹~~to the best of the attorney’s knowledge, all the costs and~~
42 ~~charges relating to the consumer legal funding have been disclosed~~
43 ~~to the consumer;~~

44 (2) ¹~~the attorney is being paid on a contingency basis pursuant~~
45 ~~to a written fee agreement;~~

46 ¹~~(3)~~ (2)¹ all proceeds of the legal claim owed to the company
47 will be disbursed via either the trust account of the attorney or a

1 settlement fund established to receive the proceeds of the legal
2 claim on behalf of the consumer;

3 ¹[(4)] (3)¹ the attorney is following the written instructions of
4 the consumer with regard to the consumer legal funding; and

5 ¹[(5)] (4)¹ the attorney has not received a referral fee or other
6 consideration from the consumer legal funding company in
7 connection with the consumer legal funding, nor will the attorney
8 receive that fee or other consideration in the future.

9 c. If the acknowledgment required in subsection b. of this
10 section is not completed by the attorney retained by the consumer in
11 the legal claim, the contract shall be void. If the acknowledgement
12 is completed, the contract shall remain valid if the consumer
13 terminates the initial attorney or retains a new attorney with respect
14 to the legal claim.

15

16 4. A consumer legal funding company shall not:

17 a. pay or offer to pay commissions, referral fees, or other forms
18 of consideration to any attorney, law firm, medical provider,
19 chiropractor, or physical therapist or any of their employees for
20 referring a consumer to the company;

21 b. accept any commissions, referral fees, rebates, or other
22 forms of consideration from an attorney, law firm, medical
23 provider, chiropractor, or physical therapist or any of their
24 employees;

25 c. intentionally advertise materially false or misleading
26 information regarding its products or services;

27 d. refer, in furtherance of an initial legal funding, a customer or
28 potential customer to a specific attorney, law firm, medical
29 provider, chiropractor, or physical therapist or any of their
30 employees; provided, however, if a customer needs legal
31 representation, the company may refer the customer to a local or
32 State bar association referral service;

33 e. fail to promptly supply a copy of the executed contract to the
34 attorney for the consumer upon request;

35 f. knowingly provide funding to a consumer who has
36 previously assigned or sold a portion of the consumer's right to
37 proceeds from his or her legal claim without first making payment
38 to or purchasing a prior unsatisfied consumer legal funding
39 company's entire funded amount and contracted charges, unless a
40 lesser amount is otherwise agreed to in writing by the consumer
41 legal funding companies, except that multiple companies may agree
42 to contemporaneously provide funding to a consumer provided that
43 the consumer and the consumer's attorney consent to the
44 arrangement in writing;

45 g. receive any right to or make any decisions with respect to
46 the conduct of the underlying legal claim or any settlement or
47 resolution thereof. The right to make those decisions shall remain
48 solely with the consumer and the attorney in the legal claim;

1 h. knowingly pay or offer to pay for court costs, filing fees or
2 attorney's fees either during or after the resolution of the legal
3 claim, using funds from the consumer legal funding transaction¹.
4 The consumer legal funding contract shall include a provision
5 informing the consumer that funding shall not be used to pay for court
6 costs, filing fees, or attorney's fees during or after the resolution of the
7 legal claim¹;

8 i. charge a fee in an amount greater than 40 percent of the
9 funded amount in any 12-month period¹. The consumer legal
10 funding contract shall include a provision informing the consumer of
11 the maximum dollar amount charged. In no event shall the consumer
12 legal funding company charge the consumer above the maximum
13 dollar amount specified under the contract¹; or

14 j. charge any additional administrative, origination,
15 underwriting or other fees, except for a one time document
16 preparation fee, which shall be no greater than \$500 per funding.

17
18 5. A consumer legal funding company shall require the
19 contracted amount to be paid to the company to be set as a
20 predetermined amount based upon intervals of time from the
21 funding date through the resolution date, and shall ensure that the
22 resolution amount shall not be determined as a percentage of the
23 recovery from the legal claim.

24
25 6. A consumer legal funding contract shall contain the
26 disclosures specified in this section, which shall constitute material
27 terms of the contract. Unless otherwise specified, the disclosures
28 shall be typed in at least 12-point bold-type font and be placed
29 clearly and conspicuously within the contract, as follows:

30 a. on the front page under appropriate headings, language
31 specifying:

32 (1) the funded amount to be paid to the consumer by the
33 consumer legal funding company;

34 (2) an itemization of one time charges;

35 (3) the total amount to be sold by the consumer to the company,
36 including the funded amount and all charges; and

37 (4) a payment schedule to include the funded amount and
38 charges, listing all dates and the amount due at the end of each six-
39 month period from the funding date, until the date the maximum
40 amount due to the company by the consumer to satisfy the amount
41 due pursuant to the contract;

42 b. pursuant to the provisions set forth in paragraph 2 of
43 subsection a. of section 3 of this act, within the body of the
44 contract:

45 "Consumer's Right to Cancellation: You may cancel this contract
46 without penalty or further obligation within five business days after
47 the funding date if you either:

- 1 (1) return to the consumer legal funding company the full
2 amount of the disbursed funds by delivering the company's
3 uncashed check to the company's office in person; or
4 (2) mail, by insured, certified, or registered United States mail,
5 to the company at the address specified in the contract, a notice of
6 cancellation and include in the mailing a return of the full amount
7 of disbursed funds in the form of the company's uncashed check or
8 a registered or certified check or money order;"
- 9 c. within the body of the contract, a notification providing that
10 the consumer legal funding company shall have no role in deciding
11 whether, when and how much the legal claim is settled for;
12 however, the consumer and consumer's attorney shall notify the
13 company of the outcome of the legal claim by settlement or
14 adjudication prior to the resolution date. The company may seek
15 updated information about the status of the legal claim but in no
16 event shall the company interfere with the independent professional
17 judgment of the attorney in the handling of the legal claim or any
18 settlement thereof;
- 19 d. within the body of the contract, in all capital letters in at
20 least 12-point bold-type font contained within a box: "THE
21 FUNDED AMOUNT AND AGREED UPON CHARGES SHALL
22 BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL
23 CLAIM, AND SHALL BE PAID ONLY TO THE EXTENT THAT
24 THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL
25 CLAIM. YOU WILL NOT OWE [INSERT NAME OF THE
26 CONSUMER LEGAL FUNDING COMPANY] ANYTHING IF
27 THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM,
28 UNLESS YOU OR YOUR ATTORNEY HAVE VIOLATED ANY
29 MATERIAL TERM OF THIS CONTRACT OR YOU HAVE
30 COMMITTED FRAUD AGAINST THE CONSUMER LEGAL
31 FUNDING COMPANY;"
- 32 e. located immediately above the place on the contract where
33 the consumer's signature is required, in 12-point font:
34 "Do not sign this contract before you read it completely or if it
35 contains any blank spaces. You are entitled to a completely filled-
36 in copy of the contract. Before you sign this contract, you should
37 obtain the advice of an attorney. Depending on the circumstances,
38 you may want to consult a tax, public or private benefits planning,
39 or financial professional. You acknowledge that your attorney in
40 the legal claim has provided no tax, public or private benefit
41 planning, or financial advice regarding this transaction."
42
- 43 7. a. Nothing in this act shall restrict the exercise of powers or
44 the performance of the duties of the Attorney General, which the
45 Attorney General is authorized to exercise or perform by law.
- 46 b. If a court of competent jurisdiction determines that a
47 consumer legal funding company has intentionally violated the
48 provisions of this act with regard to a specific consumer legal

1 funding, the consumer legal funding company shall only be entitled
2 to recover the funded amount provided to the consumer in that
3 specific consumer legal funding and shall not be entitled to any
4 additional charges.

5

6 8. a. The contingent right to receive an amount of the potential
7 proceeds of a legal claim shall be assignable by a consumer.

8 b. Nothing contained in this act shall be construed to cause any
9 consumer legal funding transaction conforming to this act to be
10 deemed a loan or to be subject to any of the provisions governing
11 loans contained in any New Jersey statute or regulation. A consumer
12 legal funding transaction that complies with this act shall not be
13 subject to any other statutory or regulatory provisions governing loans
14 or investment contracts. To the extent that this act conflicts with any
15 other law, this act supersedes the other law for the purposes of
16 regulating consumer legal funding in New Jersey.

17 c. Only attorney's liens related to the legal claim or Medicare or
18 other statutory liens related to the legal claim shall take priority over
19 any lien of the consumer legal funding company. All other liens shall
20 take priority by normal operation of law.

21 ¹d. No consumer legal funding company shall report a consumer to
22 a credit reporting agency if insufficient funds remain from the net
23 proceeds to repay the company.¹

24

25 9. An attorney or law firm retained by the consumer in the
26 legal claim shall not have a financial interest in the consumer legal
27 funding company offering consumer legal funding to that consumer.
28 Additionally, any attorney who has referred the consumer to his
29 retained attorney shall not have a financial interest in the consumer
30 legal funding company offering consumer legal funding to that
31 consumer.

32

33 10. ¹a. ¹No communication between the consumer's attorney in
34 the legal claim and the consumer legal funding company as it
35 pertains to the consumer legal funding shall limit, waive, or
36 abrogate the scope or nature of any statutory or common-law
37 privilege, including the work-product doctrine and the attorney-
38 client privilege.

39 ¹b. (1) The existence of a consumer legal funding contract is
40 presumed to be discoverable in a civil action, notwithstanding any
41 agreement or provision with respect to confidentiality. A consumer
42 may seek to rebut this presumption.

43 (2) Upon receipt of a written discovery request, a consumer's
44 attorney shall disclose to the requesting party, within 30 calendar
45 days of receipt of the written request, that a consumer has entered
46 into a consumer legal funding transaction and include the name of
47 the consumer legal funding company.

1 (3) Consumer legal funding transactions disclosed pursuant to
2 this act are presumed to be inadmissible as evidence or at trial.¹

3
4 11. a. Unless a consumer legal funding company has first
5 registered with the Department of Banking and Insurance pursuant
6 to this act, the company shall not engage in the business of
7 consumer legal funding in this State.

8 b. An applicant's registration shall be filed in the manner
9 prescribed by the commissioner and shall contain the information
10 the commissioner requires to make an evaluation of the character
11 and fitness of the applicant company. The initial application shall
12 be accompanied by a \$500 fee. A renewal registration shall include
13 a \$200 fee. A registration shall be renewed every two years and
14 expire on September 30th.

15 c. A certificate of registration shall not be issued unless the
16 commissioner, upon investigation, finds that the character and
17 fitness of the applicant company, and of the officers and directors
18 thereof, warrant belief that the business will be operated honestly
19 and fairly within the purposes of this act.

20 d. Every applicant shall, at the time of filing an application, file
21 with the commissioner, if the commissioner so requires, a bond
22 satisfactory to the commissioner in an amount not to exceed
23 \$50,000. In lieu of the bond, at the option of the applicant, the
24 applicant may post an irrevocable letter of credit. The terms of the
25 bond shall run concurrent with the period of time during which the
26 registration will be in effect. The bond shall provide that the
27 applicant will faithfully conform to and abide by the provisions of
28 this act and to all rules lawfully made by the administrator under
29 this act and to any person or persons any and all amounts of money
30 that may become due or owing to the State or to any person or
31 persons from the applicant under and by virtue of this act during the
32 period for which the bond is given.

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

35 (1) The commissioner has notified the applicant in writing that
36 the application has been denied; or

37 (2) The commissioner has not issued a registration within 60
38 days after the application for the registration was filed.

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

43 f. Notwithstanding the prior approval requirement of
44 subsection a. of this section, a consumer legal funding company that
45 registered with the commissioner between the effective date of this
46 act and six months thereafter may engage in consumer legal funding
47 while the company's registration is waiting approval by

1 commissioner. All funding agreements prior to the effective date of
2 this act shall not be subject to the terms of this act.

3 g. A consumer legal funding company shall not use any form
4 of consumer legal funding contract in this State unless it has been
5 filed with the commissioner in accordance with the filing
6 procedures set forth by the commissioner, except for a consumer
7 legal funding company operating pursuant to subsection f. of this
8 section.

9 h. A consumer legal funding company that has operated in this
10 State within the 12 months prior to the effective date of this act
11 shall be allowed to operate in the State, provided they have applied
12 for a registration under subsection a. of this section and are
13 complying with all requirements of this act while the application for
14 the company is pending.

15
16 12. This act shall take effect on the 90th day next following
17 enactment. Nothing in this act shall in any way affect or invalidate
18 any consumer legal funding effectuated prior to the effective date of
19 this act.