

1 HB156
2 123727-2
3 By Representative Robinson (O)
4 RFD: Judiciary
5 First Read: 03-MAR-11

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8 SYNOPSIS: This bill would create the Alabama Consumer
9 Legal Funding Act. The bill would regulate
10 contracts whereby a consumer legal funding company
11 purchases and a consumer assigns the contingent
12 right to receive an amount of the potential
13 proceeds of a settlement, judgment, award, or
14 verdict.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT
19

20 To create the Alabama Consumer Legal Funding Act; to
21 regulate contracts whereby a consumer legal funding company
22 purchases and a consumer assigns the contingent right to
23 receive an amount of the potential proceeds of a settlement,
24 judgment, award, or verdict.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. As used in this act, the following terms
27 shall have the following meanings:

1 (1) CONSUMER. A natural person residing or domiciled
2 in Alabama who elects to enter into a transaction pursuant to
3 this act, whether it be in person, over the Internet, by
4 facsimile, or any other electronic means, and who has a
5 pending legal claim and is represented by an attorney at the
6 time he or she enters into a contract for consumer legal
7 funding.

8 (2) CONSUMER LEGAL FUNDING. A transaction in which a
9 consumer legal funding company purchases and a consumer
10 assigns to the consumer legal funding company the contingent
11 right to receive a portion of the potential proceeds of a
12 settlement, judgment, award, or verdict obtained in the
13 consumer's legal claim.

14 (3) CONSUMER LEGAL FUNDING COMPANY. A person or
15 entity that enters into a consumer legal funding transaction
16 with a consumer. The term does not include:

17 a. A bank, lender, financing entity, or any other
18 special purpose entity affiliated with a consumer legal
19 funding company.

20 b. The purchaser or transformer of an interest in a
21 consumer legal funding contract from a consumer legal funding
22 company.

23 c. A bank, lender, financing entity, or any other
24 special purpose entity to which a consumer legal funding
25 company grants a security interest or transfers any right in a
26 consumer legal funding contract.

1 d. An attorney or accountant who provides services
2 to a consumer.

3 (4) FUNDING DATE. The date on which the purchase
4 price is paid to the consumer by the consumer legal funding
5 company.

6 (5) LEGAL CLAIM. A civil or statutory claim or
7 action.

8 (6) PURCHASE PRICE. The dollar amount of funds
9 provided to the consumer by the consumer legal funding company
10 subsequent to the execution of the contract as consideration
11 for the assignment of a contingent right to receive a portion
12 of the proceeds of the legal claim.

13 (7) RESOLUTION DATE. The date the purchase price
14 plus the agreed upon fees from the legal claim are received by
15 the consumer legal funding company.

16 Section 2. (a) All contracts for consumer legal
17 funding shall be in writing and comply with the following
18 requirements:

19 (1) The contract shall contain on the front page,
20 appropriately headed and in at least 12-point bold face type,
21 the following disclosures:

22 a. The total purchase price paid to the consumer.

23 b. An itemization of one-time fees.

24 c. The total dollar amount of the proceeds being
25 assigned by the consumer to the consumer legal funding
26 company, set forth in six-month intervals for 36 months,
27 beginning the next business day after the funding date.

1 d. A calculation of the semi-annual fee for each
2 six-month interval expressed as a percentage.

3 (2) The contract shall provide that the consumer may
4 cancel the contract within five business days following the
5 funding date, without penalty or further obligation. The
6 contract shall contain the following notice written in at
7 least 12-point, bold face type:

8 "Consumer's right to cancellation: You may cancel
9 this contract without penalty or further obligation within
10 five business days after the funding date."

11 (3) The contract shall also specify that in order
12 for the cancellation to be effective, the consumer must either
13 return to the consumer legal funding company the total amount
14 of the purchase price by delivering:

15 a. The consumer legal funding company's uncashed
16 check to the consumer legal funding company's offices in
17 person within five business days after the funding date or
18 mail a notice of cancellation and include in the mailing a
19 return of the total amount of purchase price in the form of
20 the consumer legal funding company's uncashed check; or

21 b. A registered, certified, or cashier's check or
22 money order, by insured, registered, or certified United
23 States mail, postmarked within five business days after the
24 funding date, at the address specified in the contract for
25 cancellation.

26 (4) The contract shall contain all of the following
27 statements in at least 12-point bold face type:

1 a. [Insert name of the consumer legal funding
2 company] agrees that it shall have no right to and will not
3 make any decisions with respect to the conduct of the legal
4 claim or any settlement or resolution thereof and that the
5 right to make those decisions remains solely with you and your
6 attorney in the legal claim.

7 b. [Insert name of the consumer legal funding
8 company] agrees that it shall only accept an assignment of a
9 contingent right to receive a portion of the potential
10 proceeds rather than an assignment of your legal claim. The
11 contracted return of the purchase price, plus any agreed upon
12 fees assigned to [insert name of the consumer legal funding
13 company], shall not be determined as a percentage of your
14 recovery from the legal claim but shall be set as a
15 contractually determined amount based upon intervals of time
16 from the funding date through the resolution date.

17 c. [Insert name of the consumer legal funding
18 company] agrees that it shall have no right to pursue the
19 legal claim on your behalf.

20 (5) All contracts with the consumer must contain the
21 following statement in plain language in a box with 15-point
22 bold face type in all capitalized letters stating the
23 following:

24 "[INSERT NAME OF THE CONSUMER LEGAL FUNDING COMPANY]
25 SHALL ONLY BE PAID FROM THE PROCEEDS OF YOUR LEGAL CLAIM. YOU
26 WILL NOT OWE [INSERT NAME OF THE CONSUMER LEGAL FUNDING
27 COMPANY] ANYTHING IF THERE IS NO RECOVERY OF PROCEEDS FROM

1 YOUR LEGAL CLAIM, UNLESS YOU COMMIT FRAUD AGAINST [INSERT NAME
2 OF THE CONSUMER LEGAL FUNDING COMPANY]. IF THERE ARE
3 INSUFFICIENT PROCEEDS TO RETURN THE PURCHASE PRICE PLUS THE
4 AGREED UPON FEES TO [INSERT NAME OF THE CONSUMER LEGAL FUNDING
5 COMPANY] IN FULL, [INSERT NAME OF THE CONSUMER LEGAL FUNDING
6 COMPANY] SHALL ONLY BE PAID TO THE EXTENT THAT THERE ARE
7 AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU COMMIT
8 FRAUD AGAINST [INSERT NAME OF THE CONSUMER LEGAL FUNDING
9 COMPANY]. IF YOU COMMIT FRAUD AGAINST [INSERT NAME OF CONSUMER
10 LEGAL FUNDING COMPANY], [INSERT NAME OF CONSUMER LEGAL FUNDING
11 COMPANY] WILL THEN BE ENTITLED TO COLLECT FROM YOU THE FULL
12 PURCHASE PRICE AND THE AGREED UPON FEES, PLUS ATTORNEY'S FEES
13 AND COSTS OF COLLECTION."

14 (6) The contract shall contain the following
15 statement in at least 12-point bold face type located
16 immediately above the space where the consumer's signature is
17 required:

18 "THIS IS AN IMPORTANT LEGAL CONTRACT. DO NOT SIGN
19 THIS CONTRACT BEFORE YOU HAVE READ IT COMPLETELY OR IF IT
20 CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY
21 FILLED-IN COPY OF THIS CONTRACT. BEFORE YOU SIGN THIS
22 AGREEMENT YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY.
23 DEPENDING ON THE CIRCUMSTANCES, YOU MAY WANT TO CONSULT A TAX,
24 PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL PROFESSIONAL.
25 YOU UNDERSTAND AND AGREE THAT THE FUNDS YOU RECEIVE FROM
26 [INSERT NAME OF CONSUMER LEGAL FUNDING COMPANY] SHALL NOT BE

1 USED TO PAY FOR OR BE APPLIED TO THE PAYMENT OF ATTORNEY'S
2 FEES OR LITIGATION COSTS RELATED TO YOUR LEGAL CLAIM."

3 (7) The executed contract for consumer legal funding
4 shall contain a written acknowledgement by the consumer that
5 he or she has reviewed the contract in its entirety. The
6 consumer legal funding company shall provide the consumer's
7 attorney with a written notification of the consumer legal
8 funding provided to the consumer within three business days of
9 the funding date by way of postal mail, courier service,
10 facsimile, or other means of proof of delivery method unless
11 there is a written acknowledgement by the attorney
12 representing the consumer in the legal claim as to the terms
13 of the contract.

14 (b) The contracted return of the purchase price,
15 plus any agreed upon fees assigned to the consumer legal
16 funding company shall not be determined as a percentage of the
17 recovery from the legal claim, but shall be set as a
18 contractually determined amount based upon intervals of time
19 from the funding date through the resolution date.

20 (c) The return of the purchase price to the consumer
21 legal funding company, plus any agreed upon fees, shall be
22 rendered only out of the proceeds, if any, of the realized
23 settlement, judgment, award, or verdict the consumer may
24 receive from the legal claim.

25 (d) A consumer may not assign any portion of the
26 potential proceeds which, pursuant to the contingent fee
27 agreement between the consumer and the consumer's attorney,

1 will be remitted to the consumer's attorney as attorney's fees
2 or reimbursements for costs incurred by the consumer's
3 attorney in connection with the legal claim.

4 Section 3. Each consumer legal funding company shall
5 adhere to the following:

6 (1) The consumer legal funding company shall not pay
7 or offer to pay any compensation to any attorney, medical
8 provider, chiropractor, physical therapist, or any of their
9 employees for referring a consumer to the consumer legal
10 funding company. The consumer legal funding company shall not
11 accept any compensation from any attorney, medical provider,
12 chiropractor, physical therapist, or any of their employees
13 other than the purchase price and any agreed upon fees
14 pursuant to the signed contract between the consumer and the
15 consumer legal funding company.

16 (2) The consumer legal funding company shall not
17 advertise false or intentionally misleading information
18 regarding its product or services.

19 (3) The consumer legal funding company shall not
20 knowingly provide funding to a consumer who has previously
21 sold and assigned an amount of the potential proceeds of his
22 or her legal claim to another consumer legal funding company
23 without first purchasing that consumer legal funding company's
24 entire accrued balance unless otherwise agreed to in writing
25 by the consumer and all consumer legal funding companies which
26 provided consumer legal funding to the consumer.

1 (4) The consumer legal funding company shall not
2 offer single premium credit life, disability, or unemployment
3 insurance that will be financed through a consumer legal
4 funding transaction.

5 (5) For non-English speaking consumers, upon the
6 written request of the consumer or the consumer's attorney,
7 the principal terms of the contract shall be translated in
8 writing into the same language in which the oral negotiations
9 were conducted between the consumer legal funding company and
10 the consumer. The consumer must sign the translated document
11 containing the principal terms and initial each page and the
12 translator or attorney must sign an affirmation confirming
13 that the principal terms have been presented to the consumer
14 in the same language in which the oral negotiations were
15 conducted between the consumer legal funding company and the
16 consumer and acknowledged by the consumer.

17 (6) The consumer legal funding company shall not
18 knowingly enter into a consumer legal funding contract with a
19 consumer where the consumer's legal claim is a pending class
20 action lawsuit. Should any legal claim in which a plaintiff
21 has received consumer legal funding become a class action
22 matter, no further funding shall be permitted.

23 (7) An attorney or law firm shall not have a
24 financial interest in the consumer legal funding company
25 providing consumer legal funding to a consumer represented by
26 that attorney or law firm.

1 (8) If a dispute arises between the consumer and the
2 consumer legal funding company concerning the contract for
3 legal funding, the responsibilities of the attorney
4 representing the consumer in the civil action or claim shall
5 be no greater than the attorney's responsibilities under the
6 Alabama Rules of Professional Conduct.

7 (9) No part of the consumer legal funding may be
8 used to pay for litigation costs or attorney's fees either
9 during or after the resolution of the legal claim.

10 Section 4. (a) A consumer legal funding transaction
11 conforming to the provisions of this act shall not be deemed
12 to be a loan or investment contract or subject to the
13 restrictions or provisions governing loans or investment
14 contracts as set forth in Title 5 or Title 7, Code of Alabama
15 1975, or any other provision of Alabama law.

16 (b) The contingent right to receive an amount of the
17 potential proceeds of a legal claim is assignable and the
18 assignment is valid for the purposes of obtaining funding from
19 a consumer legal funding company.

20 (c) No communication between a consumer's attorney
21 and a consumer legal funding company pertaining to a
22 consumer's consumer legal funding transaction shall limit,
23 waive, or abrogate any statutory or common law privilege,
24 including the attorney-client privilege or the work-product
25 doctrine.

26 Section 5. To the extent this act conflicts with any
27 other state law, this act is superior and supersedes that law

1 for the purposes of regulating consumer legal funding in
2 Alabama.

3 Section 6. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.