

FIRST REGULAR SESSION

SENATE BILL NO. 162

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROMINE.

Pre-filed December 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0447S.01I

AN ACT

To amend chapter 436, RSMo, by adding thereto eleven new sections relating to consumer legal funding, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 436, RSMo, is amended by adding thereto eleven new sections, to be known as sections 436.550, 436.552, 436.554, 436.556, 436.558, 436.560, 436.562, 436.564, 436.566, 436.568, and 436.570, to read as follows:

436.550. Sections 436.550 to 436.570 shall be known and may be cited as the "Consumer Legal Funding Model Act".

436.552. As used in sections 436.550 to 436.570, the following terms mean:

(1) "Advertise", publishing or disseminating any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of inducing a consumer to enter into a consumer legal funding contract;

(2) "Charges", the amount of moneys to be paid to the consumer legal funding company by or on behalf of the consumer, above the funded amount provided by or on behalf of the company to a Missouri consumer under sections 436.550 to 436.570. Charges include all administrative, origination, underwriting, or other fees, no matter how denominated;

(3) "Consumer", a natural person who has a pending legal claim and:

(a) Resides or is domiciled in Missouri; or

19 (b) Has a legal claim in Missouri;

20 (4) "Consumer legal funding company" or "company", a person or
21 entity that enters into a consumer legal funding contract with a
22 Missouri consumer. This term shall not include:

23 (a) An immediate family member of the consumer;

24 (b) A bank, lender, financing entity, or other special purpose
25 entity:

26 a. That provides financing to a consumer legal funding company;
27 or

28 b. To which a consumer legal funding company grants a security
29 interest or transfers any rights or interest in a consumer legal funding;
30 or

31 (c) An attorney or accountant who provides services to a
32 consumer;

33 (5) "Consumer legal funding contract", a nonrecourse contractual
34 transaction in which a consumer legal funding company purchases and
35 a consumer assigns to the company a contingent right to receive an
36 amount of the potential proceeds of a settlement, judgment, award, or
37 verdict obtained in the consumer's legal claim;

38 (6) "Funded amount", the amount of moneys provided to or on
39 behalf of the consumer in the consumer legal funding contract. Funded
40 amount shall not include charges;

41 (7) "Funding date", the date on which the funded amount is
42 transferred to the consumer by the consumer legal company either by
43 personal delivery, via wire, ACH, or other electronic means, or by
44 insured, certified, or registered United States mail;

45 (8) "Immediate family member", a parent; sibling; child by blood,
46 adoption, or marriage; spouse; grandparent; or grandchild;

47 (9) "Legal claim", a bona fide civil claim or cause of action, any
48 alternative dispute resolution proceeding, or any administrative
49 proceeding before any agency or instrumentality of this state; and

50 (10) "Resolution date", the date the amount funded to the
51 consumer, plus the agreed upon charges, are delivered to the consumer
52 legal funding company.

436.554. 1. All consumer legal funding contracts shall meet the
2 following requirements:

3 (1) The contract shall be completely filled in when presented to

4 the consumer for signature;

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

9 (a) Returns the full amount of the disbursed funds to the
10 consumer legal funding company by delivering the company's uncashed
11 check to the company's office in person; or

12 (b) Mails a notice of cancellation by insured, certified, or
13 registered United States mail to the address specified in the contract
14 and includes a return of the full amount of disbursed funds in such
15 mailing in the form of the company's uncashed check or a registered or
16 certified check or money order;

17 (3) The contract shall contain the initials of the consumer on
18 each page; and

19 (4) The contract shall require the consumer to give nonrevocable
20 written direction to the consumer's attorney requiring the attorney to
21 notify the consumer legal funding company when the legal claim has
22 been resolved. Once the consumer legal funding company confirms in
23 writing the amount due under the contract, the consumer's attorney
24 shall pay, from the proceeds of the resolution of the legal claim, the
25 consumer legal funding company the amount due within ten business
26 days.

27 2. The consumer legal funding company shall provide the
28 consumer's attorney with a written notification of the consumer legal
29 funding contract provided to the consumer within three business days
30 of the funding date by way of postal mail, courier service, facsimile, or
31 other means of proof of delivery method.

32 3. A consumer legal funding contract shall be entered into only
33 if the contract involves:

34 (1) An existing legal claim made by or on behalf of the consumer;
35 or

36 (2) An existing proceeding that will resolve the consumer's legal
37 claim in which the consumer is represented by an attorney.

436.556. No consumer legal funding company shall:

2 (1) Pay or offer to pay commissions, referral fees, or other forms
3 of consideration to any attorney, law firm, medical provider,

4 chiropractor, or physical therapist or any of their employees for
5 referring a consumer to the company;

6 (2) Accept any commissions, referral fees, rebates, or other forms
7 of consideration from an attorney, law firm, medical provider,
8 chiropractor, or physical therapist or any of their employees;

9 (3) Intentionally advertise materially false or misleading
10 information regarding its products or services;

11 (4) Refer, in furtherance of an initial legal funding, a customer
12 or potential customer to a specific attorney, law firm, medical provider,
13 chiropractor, or physical therapist or any of their employees. However,
14 the company may refer the customer to a local or state bar association
15 referral service if a customer needs legal representation;

16 (5) Fail to promptly supply a copy of the executed contract to the
17 consumer's attorney;

18 (6) Knowingly provide funding to a consumer who has previously
19 assigned or sold a portion of the right to proceeds from the consumer's
20 legal claim unless the consumer legal funding company pays or
21 purchases the entire unsatisfied funded amount and contracted charges
22 from the prior consumer legal funding company or the two companies
23 agree to a lesser amount in writing. However, multiple companies may
24 agree to contemporaneously provide funding to a consumer provided
25 that the consumer and the consumer's attorney consent to the
26 arrangement in writing;

27 (7) Receive any right to or make any decisions with respect to
28 the conduct of the underlying legal claim or any settlement or
29 resolution thereof. The right to make such decisions shall remain
30 solely with the consumer and the attorney in the legal claim; or

31 (8) Knowingly pay or offer to pay for court costs, filing fees, or
32 attorney fees either during or after the resolution of the legal claim by
33 using funds from the consumer legal funding contract. The consumer
34 legal funding contract shall include a provision advising the consumer
35 that the funding shall not be used for such costs or fees.

436.558. 1. The contracted amount to be paid to the consumer
2 legal funding company shall be set as a predetermined amount based
3 upon intervals of time from the funding date to the resolution date and
4 shall not be determined as a percentage of the recovery from the legal
5 claim.

6 2. No consumer legal funding contract shall be valid if its terms
7 exceed a period of forty-eight months. No consumer legal funding
8 contract shall be automatically renewed.

 436.560. All consumer legal funding contracts shall contain the
2 disclosures specified in this section, which shall constitute material
3 terms of the contract. Unless otherwise specified, the disclosures shall
4 be typed in at least twelve-point bold-type font and be placed clearly
5 and conspicuously within the contract, as follows:

6 (1) On the front page under appropriate headings, language
7 specifying:

8 (a) The funded amount to be paid to the consumer by the
9 consumer legal funding company;

10 (b) An itemization of one time charges;

11 (c) The total amount to be assigned by the consumer to the
12 company, including the funded amount and all charges; and

13 (d) A payment schedule to include the funded amount and
14 charges, listing all dates and the amount due at the end of each one
15 hundred eighty day period from the funding date, until the date the
16 maximum amount due to the company by the consumer to satisfy the
17 amount due pursuant to the contract;

18 (2) Within the body of the contract, in accordance with the
19 provisions under subdivision (2) of subsection 1 of section 436.554:
20 "Consumer's Right to Cancellation: You may cancel this contract
21 without penalty or further obligation within five business days after
22 the funding date if you either:

23 (a) Return the full amount of the disbursed funds to the
24 consumer legal funding company by delivering the company's uncashed
25 check to the company's office in person; or

26 (b) Mail a notice of cancellation by insured, certified, or
27 registered United States mail to the company at the address specified
28 in the contract and include a return of the full amount of disbursed
29 funds in such mailing in the form of the company's uncashed check or
30 a registered or certified check or money order.";

31 (3) Within the body of the contract, language specifying that the
32 consumer legal funding company shall have no role in deciding
33 whether, when, or for how much the legal claim is settled and that the
34 consumer or the consumer's attorney shall notify the company of

35 whether the outcome of the legal claim will be by settlement or by
36 adjudication prior to the resolution date. The company may seek
37 updated information about the status of the legal claim but in no event
38 shall the company interfere with the independent professional
39 judgment of the attorney in the handling of the legal claim or any
40 settlement thereof;

41 (4) Within the body of the contract, in all capital letters and in
42 at least twelve-point bold-type font contained within a box: "THE
43 FUNDED AMOUNT AND AGREED UPON CHARGES SHALL BE PAID
44 ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM, AND SHALL
45 BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE
46 PROCEEDS FROM YOUR LEGAL CLAIM. IF THERE IS NO RECOVERY
47 OF ANY DAMAGES FROM YOUR LEGAL CLAIM OR IF THERE IS NOT
48 ENOUGH MONEY TO PAY BACK THE CONSUMER LEGAL FUNDING
49 COMPANY IN FULL, YOU WILL NOT BE OBLIGATED TO PAY THE
50 CONSUMER LEGAL FUNDING COMPANY ANYTHING IN EXCESS OF
51 YOUR RECOVERY UNLESS YOU HAVE VIOLATED THIS
52 CONTRACT. YOU WILL NOT OWE [INSERT NAME OF THE CONSUMER
53 LEGAL FUNDING COMPANY] ANYTHING IF THERE ARE NO
54 PROCEEDS FROM YOUR LEGAL CLAIM UNLESS YOU OR YOUR
55 ATTORNEY HAVE VIOLATED ANY MATERIAL TERM OF THIS
56 CONTRACT OR UNLESS YOU HAVE COMMITTED FRAUD AGAINST
57 THE CONSUMER LEGAL FUNDING COMPANY."; and

58 (5) Located immediately above the place on the contract where
59 the consumer's signature is required, in twelve-point font: "Do not sign
60 this contract before you read it completely or if it contains any blank
61 spaces. You are entitled to a completely filled-in copy of the
62 contract. Before you sign this contract, you should obtain the advice
63 of an attorney. Depending on the circumstances, you may want to
64 consult a tax, public or private benefits planning, or financial
65 professional. You acknowledge that your attorney in the legal claim
66 has provided no tax, public or private benefit planning, or financial
67 advice regarding this transaction."

436.562. 1. Nothing in sections 436.550 to 436.570 shall be
2 construed to restrict the exercise of powers or the performance of the
3 duties of the state attorney general, which he or she is authorized to
4 exercise or perform by law.

5 2. If a court of competent jurisdiction determines that a
6 consumer legal funding company has intentionally violated the
7 provisions of sections 436.550 to 436.570 in a consumer legal funding
8 contract, the consumer legal funding company shall only be entitled to
9 recover the funded amount it provided in that transaction and shall not
10 be entitled to any additional charges.

 436.564. 1. The contingent right to receive an amount of the
2 potential proceeds of a legal claim is assignable by a consumer.

3 2. Nothing contained in sections 436.550 to 436.570 shall be
4 construed to cause any consumer legal funding contract conforming to
5 sections 436.550 to 436.570 to be deemed a loan or to be subject to any
6 of the provisions governing loans. A consumer legal funding contract
7 that complies with sections 436.550 to 436.570 is not subject to any
8 other statutory or regulatory provisions governing loans or investment
9 contracts. To the extent that sections 436.550 to 436.570 conflict with
10 any other law, such sections shall supersede the other law for the
11 purposes of regulating consumer legal funding in this state.

12 3. Only attorney's liens related to the legal claim, Medicare, or
13 other statutory liens related to the legal claim shall take priority over
14 claims to proceeds from the consumer legal funding company. All other
15 liens and claims shall take priority by normal operation of law.

16 4. No consumer legal funding company, regardless of the
17 outcome of a claim to proceeds, shall attempt to negatively impact a
18 consumer's credit history, except in the cases of breach of contract and
19 fraud.

 436.566. An attorney or law firm retained by the consumer in the
2 legal claim shall not have a financial interest in the consumer legal
3 funding company offering consumer legal funding to that
4 consumer. Additionally, any attorney who has referred the consumer
5 to his or her retained attorney shall not have a financial interest in the
6 consumer legal funding company offering consumer legal funding to
7 that consumer.

 436.568. No communication between the consumer's attorney in
2 the legal claim and the consumer legal funding company as it pertains
3 to the consumer legal funding contract shall limit, waive, or abrogate
4 the scope or nature of any statutory or common-law privilege, including
5 the work-product doctrine and attorney-client privilege.

436.570. 1. Unless a consumer legal funding company has first
2 registered pursuant to this section, the company may not engage in the
3 business of consumer legal funding in this state.

4 2. An applicant's registration shall be filed in the manner
5 prescribed by the department of insurance, financial institutions and
6 professional registration and shall contain the information the
7 department requires to make an evaluation of the character and fitness
8 of the applicant company. The initial application shall be accompanied
9 by a five hundred dollar fee. A renewal registration shall include a two
10 hundred dollar fee. A registration shall be renewed every two years
11 and expires on the thirtieth of September.

12 3. A certificate of registration shall not be issued unless the
13 department of insurance, financial institutions and professional
14 registration, upon investigation, finds that the character and fitness of
15 the applicant company, and of the officers and directors thereof, are
16 such as to warrant belief that the business will operate honestly and
17 fairly within the purposes of sections 436.550 to 436.570.

18 4. Every registrant shall also, at the time of filing such
19 application, file with the department of insurance, financial
20 institutions and professional registration, if the department so
21 requires, a bond satisfactory to the department in an amount not to
22 exceed fifty thousand dollars. In lieu of the bond at the option of the
23 registrant, the registrant may post an irrevocable letter of credit. The
24 terms of the bond shall run concurrent with the period of time during
25 which the registration will be in effect. The bond shall provide that the
26 registrant will faithfully conform to and abide by the provisions of
27 sections 436.550 to 436.570, to all rules lawfully made by the
28 administrator under sections 436.550 to 436.570, and to any such person
29 or persons any and all amounts of moneys that may become due or
30 owing to the state or to such person or persons from the registrant
31 under and by virtue of sections 436.550 to 436.570 during the period for
32 which the bond is given.

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

35 (1) The department of insurance, financial institutions and
36 professional registration notifies the applicant in writing that the
37 application is denied; or

38 **(2) The department of insurance, financial institutions and**
39 **professional registration has not issued a registration within sixty days**
40 **of the date the application for the registration was filed.**

41 **A request for a hearing shall not be made more than fifteen days after**
42 **the department mails a written notice to the applicant stating that the**
43 **application is denied and disclosing findings in support of denial of the**
44 **application.**

45 **6. Notwithstanding the prior approval requirement of subsection**
46 **1 of this section, a consumer legal funding company that registered**
47 **with the department of insurance, financial institutions and**
48 **professional registration between the effective date of sections 436.550**
49 **to 436.570 and six months thereafter may engage in consumer legal**
50 **funding while the company's registration is awaiting approval by the**
51 **department. All funding contracts in effect prior to the effective date**
52 **of sections 436.550 to 436.570 are not subject to the terms of sections**
53 **436.550 to 436.570.**

54 **7. No consumer legal funding company shall use any consumer**
55 **legal funding contract form in this state unless it has been filed with**
56 **the department of insurance, financial institutions and professional**
57 **registration in accordance with the filing procedures set forth by the**
58 **department.**

59 **8. The department of insurance, financial institutions and**
60 **professional registration may, after notice and hearing under chapter**
61 **536, impose an administrative fine not to exceed one thousand dollars**
62 **per violation against a consumer legal funding company that is found**
63 **to have knowingly and willfully violated sections 436.550 to 436.570.**

64 **9. The department of insurance, financial institutions and**
65 **professional registration shall have the authority to promulgate rules**
66 **to carry out the provisions of sections 436.550 to 436.570. Any rule or**
67 **portion of a rule, as that term is defined in section 536.010 that is**
68 **created under the authority delegated in this section shall become**
69 **effective only if it complies with and is subject to all of the provisions**
70 **of chapter 536, and, if applicable, section 536.028. This section and**
71 **chapter 536 are nonseverable and if any of the powers vested with the**
72 **general assembly pursuant to chapter 536, to review, to delay the**
73 **effective date, or to disapprove and annul a rule are subsequently held**
74 **unconstitutional, then the grant of rulemaking authority and any rule**

75 **proposed or adopted after August 28, 2017, shall be invalid and void.**

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