

Second Regular Session of the 123rd General Assembly (2024)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2023 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1160

AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 24-12-3-1, AS AMENDED BY P.L.85-2017, SECTION 97, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 1. A CPAP provider may not do any of the following:

- (1) Pay or offer to pay a commission, referral fee, or other form of consideration to any attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees for referring a consumer claimant to the provider.
- (2) Accept a commission, referral fee, rebate, or other form of consideration from an attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees.
- (3) Intentionally advertise materially false or misleading information regarding the CPAP provider's products or services.
- (4) Refer, in furtherance of an initial CPAP transaction, a consumer claimant or potential consumer claimant to a specific attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees. However, if a consumer claimant needs legal representation, the CPAP provider may refer the person to a local or state bar association referral service.
- (5) Knowingly provide funding to a consumer claimant who has previously assigned or sold a part of the consumer claimant's right to proceeds from the consumer claimant's civil proceeding

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without first making payment to or purchasing a prior unsatisfied CPAP provider's entire funded amount and contracted charges, unless a lesser amount is otherwise agreed to in writing by the prior CPAP provider. However, multiple CPAP providers may agree to provide a CPAP transaction to a consumer claimant simultaneously if the consumer claimant and the consumer claimant's attorney consent to the arrangement in writing.

(6) ~~Receive any right to~~ Make any decision, **have any influence, or direct the consumer claimant or the consumer claimant's attorney** with respect to the conduct of the underlying civil proceeding or any settlement or resolution of the civil proceeding, or make any decision with respect to the conduct of the underlying civil proceeding or any settlement or resolution of the civil proceeding. The right to make these decisions remains solely with the consumer claimant and the attorney in the civil proceeding.

(7) Knowingly pay or offer to pay for court costs, filing fees, or attorney's fees either during or after the resolution of the civil proceeding, using funds from the CPAP transaction.

SECTION 2. IC 24-12-11 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]:

Chapter 11. Commercial Litigation Financing

Sec. 1. The following definitions apply throughout this chapter:

(1) **"Commercial litigation financier"** means a person that enters into, or offers to enter into, a commercial litigation financing agreement with a plaintiff in a civil proceeding. The term does not include a nonprofit organization.

(2) **"Commercial litigation financing agreement"** means a nonrecourse agreement that a commercial litigation financier enters into, or offers to enter into, to provide funding to support a plaintiff or the plaintiff's attorney in prosecuting the civil proceeding, if the repayment of the funded amount is:

(A) required only if the plaintiff prevails in the civil proceeding; and

(B) sourced entirely from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

The term does not include a civil proceeding advance payment transaction, an agreement between an attorney and a client for the attorney to provide legal services on a contingency fee basis or to advance the client's legal costs, a health insurance



plan or agreement, a repayment agreement of a financial institution if repayment is not contingent upon the outcome of the civil proceeding, a funding agreement to a nonprofit organization that represents a client on a pro bono basis, or an agreement of an assigned claim to prosecute an environmental contamination matter.

(3) "Foreign country of concern" includes the following:

(A) A foreign government listed in 15 CFR 7.4.

(B) A country designated as a threat to critical infrastructure by the governor under IC 1-1-16-8.

(4) "Foreign entity of concern" means a partnership, association, corporation, organization, or other combination of persons:

(A) organized or incorporated in a foreign country of concern;

(B) owned or controlled by the government, a political subdivision, or a political party of a foreign country of concern;

(C) that has a principal place of business in a foreign country of concern; or

(D) that is owned, organized, or controlled by or affiliated with a foreign organization that has been:

(i) placed on the federal Office of Foreign Assets Control specially designated nationals and blocked persons list ("SDN List"); or

(ii) designated by the United States Secretary of State as a foreign terrorist organization.

(5) "Foreign person" means:

(A) an individual who is not a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

(B) an unincorporated association, of which a majority of members are not citizens of the United States or aliens lawfully admitted for permanent residence in the United States;

(C) a corporation that is not incorporated in the United States;

(D) the government, a political subdivision, or a political party of a country other than the United States;

(E) an entity that is organized under the laws of a country other than the United States;

(F) an entity that has a principal place of business in a



country other than the United States and that has shares or other ownership interest held by the government or a government official of a country other than that of the United States; and

(G) an employee, official, or member of any entity described in clauses (B) through (F).

Sec. 2. A commercial litigation financier may not provide funding to a commercial litigation financing agreement that is directly or indirectly financed by a foreign entity of concern.

Sec. 3. A party may not disclose or share any documents or information subject to a court order to seal or protect that is received in the course of the civil proceeding with a commercial litigation financier.

Sec. 4. A commercial litigation financier may not make any decision, have any influence, or direct the plaintiff or the plaintiff's attorney with respect to the conduct of the underlying civil proceeding or any settlement or resolution of the civil proceeding, or make any decision with respect to the conduct of the underlying civil proceeding or any settlement or resolution of the civil proceeding. The right to make these decisions remains solely with the plaintiff and the plaintiff's attorney in the civil proceeding.

Sec. 5. (a) In a civil proceeding in which a plaintiff enters into a commercial litigation financing agreement, the contents of the commercial litigation financing agreement are subject to discovery under the Indiana Rules of Trial Procedure by:

- (1) a party other than the plaintiff; or
- (2) an insurer that has a duty to defend another party in the civil proceeding.

(b) In a civil proceeding in which a plaintiff enters into a commercial litigation financing agreement that is directly or indirectly financed by a foreign person, the plaintiff or the plaintiff's attorney shall provide to:

- (1) each of the other parties in the civil proceeding; and
- (2) each insurer that has a duty to defend another party in the civil proceeding;

written notice that the plaintiff has entered into a commercial litigation financing agreement.

(c) A plaintiff or the plaintiff's attorney shall provide the written notice required by subsection (b) within a reasonable time after the date on which the commercial litigation financing agreement was executed.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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