

FIRST REGULAR SESSION

# HOUSE BILL NO. 74

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCGAUGH.

0598H.011

D. ADAM CRUMBLISS, Chief Clerk

## AN ACT

To amend chapter 436, RSMo, by adding thereto eleven new sections relating to the consumer legal funding model act, 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;

(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 section 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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

15 (b) Has a legal claim in Missouri;

16 (4) "Consumer legal funding", a nonrecourse transaction in which a consumer  
17 legal funding company purchases and a consumer assigns to the company a contingent  
18 right to receive an amount of the potential proceeds of a settlement, judgment, award, or  
19 verdict obtained in the consumer's legal claim;

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

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

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

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

26 b. To which a consumer legal funding company grants a security interest or  
27 transfers any rights or interest in a consumer legal funding; or

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

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

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

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

36 (9) "Legal claim", a bona fide civil claim or cause of action, any alternative dispute  
37 resolution proceeding, or any administrative proceeding before any agency or  
38 instrumentality of this state;

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

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

2 (1) The contract shall be completely filled in when presented to the consumer for  
3 signature;

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

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

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

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

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

21           **2. The consumer legal funding company shall provide the consumer's attorney with**  
22 **a written notification of the consumer legal funding provided to the consumer within three**  
23 **business days of the funding date by way of postal mail, courier service, facsimile, or other**  
24 **means of proof of delivery method.**

25           **3. A consumer legal funding contract shall be entered into only if the contract**  
26 **involves:**

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

28           **(2) An existing proceeding that will resolve the consumer's legal claim in which the**  
29 **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 of consideration**  
3 **to any attorney, law firm, medical provider, chiropractor, or physical therapist or any of**  
4 **their employees for referring a consumer to the company;**

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

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

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

14           **(5) Fail to promptly supply a copy of the executed contract to the consumer's**  
15 **attorney;**

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

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

26           **(8) Knowingly pay or offer to pay for court costs, filing fees, or attorneys' fees**  
27 **either during or after the resolution of the legal claim by using funds from the consumer**  
28 **legal funding transaction. The consumer legal funding contract shall include a provision**  
29 **advising the consumer that the funding shall not be used for such costs or fees.**

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

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

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

5           **(1) On the front page under appropriate headings, language specifying:**

6           **(a) The funded amount to be paid to the consumer by the consumer legal funding**  
7 **company;**

8           **(b) An itemization of one-time charges;**

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

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

15           **(2) Within the body of the contract, in accordance with the provisions under**  
16 **subdivision (2) of subsection 1 of section 436.554: "Consumer's Right to Cancellation: You**

17 may cancel this contract without penalty or further obligation within five business days  
18 after the funding date if you either:

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

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

26 (3) Within the body of the contract, language specifying that the consumer legal  
27 funding company shall have no role in deciding whether, when, or for how much the legal  
28 claim is settled and that the consumer or the consumer's attorney shall notify the company  
29 of whether the outcome of the legal claim will be by settlement or by adjudication prior to  
30 the resolution date. The company may seek updated information about the status of the  
31 legal claim but in no event shall the company interfere with the independent professional  
32 judgment of the attorney in the handling of the legal claim or any settlement thereof;

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

48 (5) Located immediately above the place on the contract where the consumer's  
49 signature is required, in twelve-point font: "Do not sign this contract before you read it  
50 completely or if it contains any blank spaces. You are entitled to a completely filled-in copy  
51 of the contract. Before you sign this contract, you should obtain the advice of an attorney.  
52 Depending on the circumstances, you may want to consult a tax, public or private benefits

53 planning, or financial professional. You acknowledge that your attorney in the legal claim  
54 has provided no tax, public or private benefit planning, or financial advice regarding this  
55 transaction."

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

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

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

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

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

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

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

2 436.568. No communication between the consumer's attorney in the legal claim and  
3 the consumer legal funding company as it pertains to the consumer legal funding shall

3 limit, waive, or abrogate the scope or nature of any statutory or common-law privilege,  
4 including the work-product doctrine and the attorney-client privilege.

2 436.570. 1. Unless a consumer legal funding company has first registered under  
3 sections 436.550 to 436.570, the company shall not engage in the business of consumer legal  
4 funding in this state.

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

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

14 4. Every registrant shall also, at the time of filing such application, file with the  
15 department of insurance, if the department of insurance so requires, a bond satisfactory  
16 to the department of insurance in an amount not to exceed fifty thousand dollars. In lieu  
17 of the bond at the option of the registrant, the registrant may post an irrevocable letter of  
18 credit. The terms of the bond shall run concurrent with the period of time during which  
19 the registration will be in effect. The bond shall provide that the registrant will faithfully  
20 conform to and abide by the provisions of sections 436.550 to 436.571 and to all rules  
21 lawfully made by the administrator under sections 436.550 to 436.570 and to any such  
22 person or persons any and all amounts of moneys that may become due or owing to the  
23 state or to such person or persons from the registrant under and by virtue of sections  
24 436.550 to 436.570 during the period for which the bond is given.

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

27 (1) The department of insurance notifies the applicant in writing that the  
28 application is denied; or

29 (2) The department of insurance has not issued a registration within sixty days of  
30 the date the application for the registration was filed.

31

32 A request for a hearing shall not be made more than fifteen days after the department of  
33 insurance mails a written notice to the applicant stating that the application is denied and  
34 disclosing findings in support of denial of the application.

35           **6. Notwithstanding the prior approval requirement of subsection 1 of this section,**  
36 **a consumer legal funding company that registered with the department of insurance**  
37 **between August 28, 2017, and six months thereafter may engage in consumer legal funding**  
38 **while the company’s registration is awaiting approval by department of insurance. All**  
39 **funding agreements prior to August 28, 2017, are not subject to the terms of sections**  
40 **436.550 to 436.570.**

41           **7. No consumer legal funding company shall use any form of consumer legal**  
42 **funding contract in this state unless it has been filed with the department of insurance in**  
43 **accordance with the filing procedures set forth by the department of insurance.**

44           **8. The department of insurance may, after notice and hearing under chapter 536,**  
45 **impose an administrative fine not to exceed one thousand dollars per violation against a**  
46 **consumer legal funding company that is found to have knowingly and willfully violated**  
47 **sections 436.550 to 436.570.**

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