

FIRST REGULAR SESSION

HOUSE BILL NO. 519

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCHROER.

0675H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 408, RSMo, by adding thereto eight new sections relating to the litigation financing consumer protection act.

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

Section A. Chapter 408, RSMo, is amended by adding thereto eight new sections, to be
2 known as sections 408.900, 408.902, 408.904, 408.906, 408.908, 408.910, 408.912, and 408.914,
3 to read as follows:

**408.900. 1. The provisions of sections 408.900 to 408.914 shall be known and may
2 be cited as the "Litigation Financing Consumer Protection Act".**

3 2. As used in sections 408.900 to 408.914, the following terms mean:

**4 (1) "Consumer", any natural person who resides, is present, or is domiciled in this
5 state, or who is or may become a plaintiff or complainant in a dispute in this state;**

**6 (2) "Litigation financier", a person, entity, or partnership engaged in the business
7 of litigation financing;**

**8 (3) "Litigation financing" or "litigation financing transaction", a non-recourse
9 transaction in which financing is provided to a consumer in return for a consumer
10 assigning to the litigation financier a contingent right to receive an amount of the potential
11 proceeds of the consumer's judgment, award, settlement, or verdict obtained with respect
12 to the consumer's legal claim.**

**408.902. 1. (1) No litigation financier shall engage in a litigation financing
2 transaction in this state unless it is registered as a litigation financier in this state.**

**3 (2) A litigation financier that is a business entity or a partnership is registered in
4 this state if:**

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.

5 (a) It is in compliance with the bond requirements of subsection 2 of this section;

6 (b) It has a status of active and in good standing as reflected in the records of the
7 secretary of state; and

8 (c) Its charter, articles of organization, certificate of limited partnership, or other
9 organizational document, or, if a foreign entity, its Missouri application for a certificate
10 of authority contains a statement that it shall be designated as a litigation financier under
11 sections 408.900 to 408.914.

12 (3) A litigation financier that is not a business entity or a partnership is registered
13 in this state if:

14 (a) It is in compliance with the bond requirements of subsection 2 of this section;
15 and

16 (b) It files an application for registration as a litigation financier on a form
17 prescribed by the division of finance, along with a filing fee of one hundred dollars, that
18 contains the following:

19 a. The applicant's full legal name;

20 b. The business name of the applicant, if any;

21 c. The physical street address and mailing address of the applicant;

22 d. A telephone number through which the applicant can be reached;

23 e. The name, physical street address, mailing address, and telephone number for
24 a Missouri registered agent appointed to accept service of process on behalf of the
25 applicant;

26 f. A statement that the applicant shall be designated as a litigation financier under
27 this section; and

28 g. Any other information the division of finance deems necessary.

29 2. (1) Each litigation financier shall file and have approved by the division of
30 finance a surety bond in the amount of fifty thousand dollars.

31 (2) Such bond shall be payable to this state for the use of the attorney general and
32 any person who may have a cause of action against the obligor of the bond for any violation
33 of sections 408.900 to 408.914. The bond shall continue in effect so long as a litigation
34 financier is designated as a litigation financier in the records of the division of finance.

35 3. A litigation financier shall amend its registration with the division of finance
36 within thirty days whenever the information contained in such record changes or becomes
37 inaccurate or incomplete in any respect. A litigation financier that is not a business entity
38 or partnership may amend its registration with the division of finance by filing an
39 amendment on a form prescribed by the division of finance, along with a filing fee of
40 twenty dollars.

41 **4. All documents filed under this section are public record.**

42 **5. The division of finance shall collect a fee of twenty dollars for copying all filed**
43 **documents under sections 408.900 to 408.914. All such copies shall be certified or validated**
44 **by the division of finance.**

45 **6. The division of finance, as appropriate, may promulgate rules in implementing**
46 **this chapter including, but not limited to, the adoption of fees to cover any administrative**
47 **costs relating to administering sections 408.900 to 408.914. Any rule or portion of a rule,**
48 **as that term is defined in section 536.010, that is created under the authority delegated in**
49 **this section shall become effective only if it complies with and is subject to all of the**
50 **provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536**
51 **are nonseverable, and if any of the powers vested with the general assembly pursuant to**
52 **chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are**
53 **subsequently held unconstitutional, then the grant of rulemaking authority and any rule**
54 **proposed or adopted after August 28, 2019, shall be invalid and void.**

408.904. A litigation financier shall fulfill each of the following requirements when
2 **engaged in litigation financing:**

3 **(1) The terms of the litigation financing transaction shall be set forth in a written**
4 **contract that is completely filled in with no incomplete sections when the contract is offered**
5 **or presented to the consumer;**

6 **(2) The litigation financing contract shall contain a right of rescission allowing the**
7 **consumer to cancel the litigation financing contract without penalty or further obligation**
8 **if, within five business days following the consumer's receipt of the funds or goods, or**
9 **execution of the litigation financing contract, whichever is later, the consumer gives notice**
10 **of the rescission and returns any moneys or goods already provided to the consumer by the**
11 **litigation financier;**

12 **(3) The litigation financing contract shall contain a written acknowledgment by the**
13 **consumer of whether the consumer is represented by an attorney in the dispute;**

14 **(4) If the consumer acknowledges that the consumer is represented by an attorney**
15 **in the dispute, the litigation financing contract shall include a written acknowledgment**
16 **executed by the consumer's attorney in the dispute in which the attorney acknowledges all**
17 **of the following:**

18 **(a) The attorney has had the opportunity to review the litigation financing contract**
19 **on behalf of the consumer;**

20 **(b) Whether the attorney is being paid on a contingency basis under a written fee**
21 **agreement;**

22 (c) That all proceeds of the legal claim shall be disbursed by either the trust account
23 of the attorney representing the consumer in the dispute or a settlement fund established
24 to receive the proceeds of the dispute from the defendant on behalf of the consumer;

25 (d) The attorney is representing the consumer with regard to the dispute that is the
26 subject of the litigation financing contract; and

27 (e) The attorney has neither received nor paid a referral fee or any other
28 consideration from or to the litigation financier, nor will the attorney in the future; and

29 (5) In the event that proceeds are paid into a settlement fund or trust, the litigation
30 financier shall notify the administrator of the fund or trust of any outstanding liens arising
31 from the litigation financing contract.

408.906. No litigation financier 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 a litigation financier;

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) Advertise false or misleading information regarding its products or services;

9 (4) Refer a consumer or potential consumer to a specific attorney, law firm, medical
10 provider, chiropractor, or physical therapist, or any of their employees; provided, if a
11 consumer does not have legal representation, the provider shall refer the consumer to a
12 local or state bar referral service operated by a bar association or a nonprofit organization;

13 (5) Fail to promptly supply copies of any and all complete litigation financing
14 contracts to the consumer and the attorney representing the consumer in the dispute;

15 (6) Attempt to obtain a waiver of any remedy including, but not limited to,
16 compensatory, statutory, or punitive damages, that the consumer might otherwise have;

17 (7) Attempt to effect arbitration or otherwise effect waiver of a consumer's right
18 to trial by jury;

19 (8) Offer or provide legal advice to the consumer regarding the litigation financing
20 or the underlying dispute; or

21 (9) Assign a litigation financing contract in whole or part.

**408.908. 1. Litigation financing contracts shall contain the disclosures specified in
2 this section, which shall constitute material terms of the litigation financing contract.**

3 **2. Unless otherwise specified, the disclosures shall be typed in at least
4 fourteen-point, bold font and be placed clearly and conspicuously within the litigation
5 financing contract, as follows:**

6 **(1) On the front page under appropriate headings in not less than fourteen-point**
7 **font, language specifying:**

8 **(a) The total amount of moneys to be provided to the consumer by the litigation**
9 **financier as part of the litigation financing transaction;**

10 **(b) The maximum amount the consumer can be required to provide the litigation**
11 **financier including, but not limited to, all fees, charges, interest, or other consideration**
12 **under the terms of the litigation financing contract;**

13 **(c) The maximum annual percentage fee, which shall include, but not be limited to,**
14 **all fees, charges, interest, or other consideration received by a litigation financier in**
15 **consideration for litigation financing; provided, the consumer may be charged for the**
16 **litigation financing transaction under the terms of the litigation financing contract; and**

17 **(d) The following:**

18 **"Consumer's Right to Cancellation: You may cancel this contract without penalty**
19 **or further obligation within five (5) business days from the date you signed this contract**
20 **or received financing from (insert name of the litigation financier) by: returning the funds**
21 **to (insert name, office address and office hours of the litigation financier) or by U.S. mail,**
22 **(insert name and mailing address of the litigation financier). For purposes of the return**
23 **deadline by U.S. mail, the postmark date on the returned funds or, if mailed by registered**
24 **or certified mail, the date of the return receipt requested shall be considered the date of the**
25 **return.";**

26 **(2) Within the body of the litigation financing contract, the following:**

27 **"The litigation financier agrees that it has no right to and will not make any**
28 **decisions about the conduct of your lawsuit or dispute and that the right to make those**
29 **decisions remains solely with you and your attorney.";**

30 **(3) Within the body of the litigation financing contract, in all capital letters and**
31 **contained within a box the following:**

32 **"IF THERE IS NO RECOVERY OF ANY MONEY FROM YOUR LEGAL**
33 **CLAIM OR IF THERE IS NOT ENOUGH MONEY TO SATISFY THE PORTION**
34 **ASSIGNED TO (INSERT NAME OF THE LITIGATION FINANCIER) IN FULL, YOU**
35 **WILL NOT OWE (INSERT NAME OF THE LITIGATION FINANCIER) ANYTHING**
36 **IN EXCESS OF YOUR RECOVERY.";** and

37 **(4) Located immediately above the place on the litigation financing contract where**
38 **the consumer's signature is required, the litigation financing contract shall include the**
39 **following:**

40 **"Do not sign this contract before you read it completely. If this contract contains**
41 **any incomplete sections, you are entitled to a completely filled-in copy of the contract prior**

42 to signing it. Before you sign this contract, you should obtain the advice of an attorney.
43 Depending on the circumstances you may want to consult a tax advisor, a financial
44 professional, or an accountant.".

2 **408.910. 1. Any violation of sections 408.900 to 408.914 shall make the litigation
3 financing contract unenforceable by the litigation financier, the consumer, or any
4 successor-in-interest to the litigation financing contract.**

5 **2. Any violation of sections 408.900 to 408.914 shall constitute a violation of the
6 Missouri merchandising practices act under chapter 407 and shall be enforced solely by
7 the attorney general at his or her discretion. Any violation of sections 408.900 to 408.914
8 shall be construed to be an unfair and deceptive act or practice affecting the conduct,
9 trade, or commerce and subject to all sanctions, penalties, and remedies provided in such
10 act, including attorneys' fees and costs. Nothing in sections 408.900 to 408.914 shall be
11 construed to limit the exercise of powers or the performance of the duties of the attorney
12 general, including those provided by the Missouri merchandising practices act, which the
attorney general is otherwise authorized or required to exercise or perform by law.**

2 **408.912. 1. The contingent right to receive an amount of the potential proceeds of
3 a legal claim may be assigned by a consumer and that assignment is valid for the purposes
4 of obtaining litigation financing from a litigation financier.**

5 **2. Any lien, subrogation interest, or right of reimbursement against the consumer's
6 legal claim shall take priority over any lien, subrogation interest, or right of
7 reimbursement of the litigation financier.**

2 **408.914. 1. All consumers entering into litigation financing transactions shall pay
3 the litigation financier a maximum rate of interest not to exceed seventeen percent.**

4 **2. Litigation financiers shall not charge a consumer the annual fee authorized by
5 subsection 1 of this section more than one time each year with regard to any single legal
6 claim regardless of the number of litigation financing transactions that the litigation
7 financier enters into with the consumer with respect to such legal claim.**

8 **3. Litigation financing transactions shall not exceed a term of three years and are
9 limited to a maximum yearly fee, which shall be calculated to include any underwriting
10 and organization fees, and any other charges, fees, or consideration, not to exceed three
11 hundred sixty dollars per year, up to a maximum of three years, for each one thousand
12 dollars of the unpaid principal amount of the funds advanced to the consumer. The
13 maximum yearly fee shall not include the annual fee under subsection 1 of this section.**

14 **4. Litigation financiers shall not enter into an agreement with a consumer that has
the effect of incorporating the consumer's obligations to the litigation financier that are**

15 **contained in the original litigation financing transaction into a subsequent litigation**
16 **financing transaction.**

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