

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

‘**Sec. 1. 9-A MRSA art. 12** is enacted to read:

## **ARTICLE 12**

### **Legal Funding Practices**

#### **§ 12-101. Short title**

This article may be known and cited as "the Maine Consumer Credit Code Legal Funding Practices."

#### **§ 12-102. Definitions**

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. "Consumer" means a person or entity residing or domiciled in this State with a pending civil claim or action and represented by an attorney.

2. "Legal funding" means a transaction in which a company makes a cash payment to a consumer in exchange for the right to receive an amount out of the potential proceeds of any realized settlement, judgment, award or verdict the consumer may receive in a civil claim or action. If no proceeds in the civil claim or action are received, the consumer is not required to pay the company.

3. "Litigation funding provider" means a person or entity, wherever located, that provides legal funding to a consumer.

#### **§ 12-103. Application of law**

1. This article does not apply to an advance made by a consumer's attorney to pay for expenses related to preparation for trial.

2. Legal funding that is made pursuant to this article is not a consumer credit transaction as defined in section 1-301, subsection 12.

3. An advance made to a consumer other than pursuant to the terms of this article is a supervised loan as defined in section 1-301, subsection 40.

#### **§ 12-104. Requirements for legal funding contracts**

The following provisions govern the legal funding contracts used by a litigation funding provider.

1. All contracts must be written in a clear and coherent manner using words with common, everyday meanings to enable the average consumer who makes a reasonable effort under ordinary circumstances to read and understand the terms of the legal funding contract without having to obtain the assistance of a professional. The contract must have a meaningful arrangement that is appropriately divided and captioned by its various sections.

This subsection applies to any agreement signed by the consumer in connection with a legal funding contract entered into in this State. This subsection does not apply to any acknowledgment or representation signed by an attorney. This subsection does not apply to legal funding contracts when an organization is the plaintiff; to language or arrangements that are specifically required by federal or state law, regulation or official agency interpretation; or to agreements, the form or any part of which is required by a governmental instrumentality as a condition of the assignability of the agreement.

2. All contracts must be completely filled in and must contain a disclosure form on the front page in at least 12-point bold type, in the following format:

**DISCLOSURE STATEMENT**

|   |              |
|---|--------------|
| <u>1. Total amount of legal funding received by consumer under this contract:</u>         | \$ _____     |
| <br><u>2. Itemized fees:</u>  | <br>\$ _____ |
| <u>Application</u>  | \$ _____     |
| <u>Processing</u>   | \$ _____     |
| <u>Attorney review</u>  | \$ _____     |
| <u>Broker</u>   | \$ _____     |
| <u>Other ( )</u>  | \$ _____     |
| <u>Total fees:</u>  | \$ _____     |
| <br><u>3. Annual percentage fee (rate of return) on advance, compounded semiannually:</u> | <br>_____ %  |

|   |          |
|---|----------|
| <u>4. Total amount to be repaid by consumer</u> |          |
| if at 6 months:                                 | \$ _____ |
| if at 12 months:                                | \$ _____ |
| if at 18 months:                                | \$ _____ |
| if at 24 months:                                | \$ _____ |



"THE LITIGATION FUNDING PROVIDER AGREES THAT IT HAS NO RIGHT TO AND WILL NOT MAKE ANY DECISIONS WITH RESPECT TO THE CONDUCT OF THE UNDERLYING CIVIL ACTION OR CLAIM OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE SUCH DECISIONS REMAINS SOLELY WITH THE CONSUMER AND THE CONSUMER'S ATTORNEY."

**8.** A contract may not require mandatory arbitration to resolve disputes under the contract.

**9.** All contracts for legal funding must contain a written acknowledgment by an attorney that states that:

**A.** The attorney has reviewed the contract and all costs and fees have been disclosed, including the amount to be paid by the consumer;

**B.** The attorney is being paid per a written fee agreement;

**C.** All proceeds of the civil claim or action will be disbursed via the attorney's trust account; and

**D.** The attorney is following written instructions of the consumer with regard to the legal funding.

**10.** For English-speaking, French-speaking and Spanish-speaking consumers, contracts must be written in the same language in which the oral negotiations are conducted between the company and the consumer. For consumers whose primary language is neither English, French nor Spanish, the principal terms of the contract must be translated by a certified translator in the consumer's native language and the translator must sign a notarized affirmation confirming that the principal terms have been presented to the consumer in the consumer's native language and acknowledged by the consumer in writing. Principal terms must include all of the items required to be disclosed by this section.

**11.** To the extent the contract provides for attorney's fees and costs in addition to the amount due and owing under the contract, the contract must provide that in case of a breach of the contract by either party attorney's fees and costs may be recoverable by the prevailing party and must be reasonable. Any contractual cap on such attorney's fees and costs must apply equally to both parties.

## **§ 12-105. Fee requirements**

**1.** A litigation funding provider may not assess fees for any period exceeding 42 months from the date of the contract with the civil litigant.

**2.** Fees assessed by a litigation funding provider may compound semiannually but may not compound based on any lesser time period.

3. In calculating the annual percentage fee or rate of return, a litigation funding provider must include all charges payable directly or indirectly by the consumer, and must compute the rate based only on amounts actually received and retained by a consumer.

### **§ 12-106. Registration of litigation funding provider; fees**

1. Unless a litigation funding provider has first registered pursuant to this article, the litigation funding provider may not engage in the business of legal funding.

2. Registration must be filed in the manner prescribed by the administrator and must contain the information the administrator requires to make an evaluation of the character, fitness and financial responsibility of the applicant. The initial application must be accompanied by a \$500 fee. A renewal registration must include a \$200 fee. A registration must be renewed every 2 years and expires on September 30th.

3. Registration may not be issued unless the administrator, upon investigation, finds that the character and fitness of the applicant, and of the members thereof if the applicant is a copartnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

4. For purposes of this section, an applicant demonstrates financial responsibility if:

A. The applicant has available for the operation of the registered business net assets of at least \$25,000; and

B. Following the issuance of a registration under this section, the registrant maintains net assets of at least \$25,000 that are either used or readily available for use in the conduct of the business of each office of the registrant in which a legal funding is made.

5. Every applicant shall also, at the time of filing such an application, file with the administrator, if the administrator so requires, a bond satisfactory to the administrator in an amount not to exceed \$50,000. In lieu of the bond at the option of the registrant, the registrant may post an irrevocable letter of credit. The terms of the bond must run concurrent with the period of time during which the registration will be in effect. The bond must run to the State for the use of the State and of any person who may have a cause of action against the registrant under this article. The bond must be conditional that the registrant will faithfully conform to this article and to all rules made by the administrator under this article and will pay to the State and to any person all money that may become due or owing to the State or to such a person from the registrant under and by virtue of this article during the period for which the bond is given.

6. A separate registration is required for each place of business. A registration fee of \$200 may be imposed for any registration issued for a place of business other than that of the first registered location of the registrant.

7. A registrant may conduct the business of legal funding only at or from any place of business for which the registrant holds a license, including the names of other "doing business as" entities listed on the registration, and not under any other name than that on the registration.

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

- A. The administrator has notified the applicant in writing that the application has been denied; or
- B. The administrator has not issued a registration within 60 days after the application for the registration was filed.

A request for a hearing may not be made more than 15 days after the administrator has mailed a written notice to the applicant that the application has been denied and stating in substance the administrator's findings supporting denial of the application.

### **§ 12-107. Powers and functions of the administrator**

1. The powers and functions of the administrator are as set forth in Article 6, except that references to "consumer credit transactions" in Article 6 are considered to be references to advances made pursuant to legal funding.

2. The administrator shall maintain a list of all registered companies and make that list available to consumers, attorneys and others on a publicly accessible website.

3. The administrator shall require a litigation funding provider registered pursuant to section 12-106 to annually submit certain data, in a form and manner acceptable to the administrator, regarding the number of legal fundings, the amount of legal fundings, the number of legal fundings required to be repaid by the consumer and the amount charged to the consumer, including but not limited to the annual percentage fee charged to the consumer and the itemized fees charged to the consumer.

4. Beginning March 1, 2009 and annually thereafter, the administrator shall prepare and submit a report on the status of legal funding activities in the State. The report must include aggregate information reported by litigation funding providers pursuant to subsection 3. The report must be submitted to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters.

**Sec. 2. Report to Legislature.** As part of the first annual report required pursuant to the Maine Revised Statutes, Title 9-A, section 12-107, subsection 4, the Director of the Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation shall review and evaluate the annual percentage fee imposed by litigation funding providers on consumers who entered into contracts for legal funding and assess whether a cap on the maximum annual percentage fee is necessary. The report must be submitted to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters by March 1, 2009. The joint standing committee may submit legislation to implement a cap on the annual percentage fee on legal funding contracts to the First Regular Session of the 124th Legislature.

**Sec. 3. Effective date.** This Act takes effect January 1, 2008.'

## **SUMMARY**

This amendment replaces the bill. The amendment creates a separate article in the Maine Consumer Credit Code to differentiate the activities of legal funding companies from lenders or creditors. The amendment does the following.

1. It establishes a registration requirement for legal funding companies.
2. It incorporates disclosure and operational provisions that legal funding companies are currently complying with in other states.
3. It limits to 42 months the period for which fees may be charged to a consumer and requires that fees be assessed only on amounts actually retained by the consumer.
4. It permits semiannual compounding of interest and prohibits the compounding of interest for any lesser period of time.
5. It prohibits the use of mandatory arbitration clauses in contracts.
6. It establishes enforcement provisions based on those now applied to consumer creditors and lenders.
7. It requires an annual report to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters on the status of legal funding in this State. As part of the first annual report submitted by March 1, 2009, the Director of the Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation is required to review and evaluate the annual percentage fees charged to consumers and assess whether a cap on the maximum annual percentage fee is necessary. The amendment authorizes the joint standing committee to submit legislation to implement a cap to the 124th Legislature.

**FISCAL NOTE REQUIRED**  
(See attached)