

BILL ANALYSIS

C.S.H.B. 1595
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert that the interest rates associated with litigation financing transactions, sometimes also known as consumer lawsuit lending transactions, can be considered excessive in many contexts. These parties contend that litigation financing companies try to avoid consumer loan laws and related regulations and use cases as investment opportunities, which prolongs litigation and leverages the taxpayer-funded judicial system for financial gain. C.S.H.B. 1595 seeks to protect consumers and the Texas legal system from unregulated litigation financing companies.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTIONS 1 and 2 of this bill.

ANALYSIS

C.S.H.B. 1595 amends the Finance Code to prohibit a person from entering into a litigation financing transaction with a consumer except under a litigation financing agreement that complies with the bill's provisions. The bill defines, among other terms, "litigation financing transaction" to mean a non-recourse transaction in which a litigation financing company purchases, and a consumer assigns to the company, a contingent right to receive an amount of the potential proceeds of a settlement, judgment, award, or verdict obtained in the consumer's legal claim. The bill defines "litigation financing agreement" to mean an agreement under which money is provided to or on behalf of a consumer by a litigation financing company for a purpose other than prosecuting the consumer's legal claim and the repayment of the money is in accordance with a litigation financing transaction, the terms of which are included as part of the litigation financing agreement. The bill exempts a person from its provisions, except as specifically provided by the bill, if the person enters into a litigation financing agreement with a consumer and is an immediate family member of the consumer, an accountant who provides accounting services to the consumer, or an attorney who, at the time money is provided to or on behalf of the consumer under a litigation financing agreement, has an attorney-client relationship with the consumer concerning the consumer's legal claim.

C.S.H.B. 1595 entitles a party to the legal dispute to which a litigation financing agreement relates to obtain, under the rules applicable to discovery in the forum where the legal claim is being resolved, contested, or litigated, discovery of the existence of the agreement between the consumer and the litigation financing company, that company's name and principal place of business, and the names of all company employees who reside or work in the county in which the forum where the legal claim is being resolved, contested, or litigated is located.

C.S.H.B. 1595 establishes that an attorney representing a consumer in a legal claim is not under a duty to assign any portion of payments from a settlement, judgment, award, or verdict to the litigation financing company unless that attorney has agreed to do so in writing.

C.S.H.B. 1595 requires a litigation financing agreement to be in writing, to contain the initials of the consumer on each page, and to be otherwise complete when presented to the consumer for signature. The bill authorizes such an agreement to be entered into only if the agreement relates to an existing legal claim that has been made by or on behalf of the consumer against another person, including the other person's insurer or the consumer's own insurer, or to an existing proceeding in which the consumer's legal claim is intended to be resolved and with regard to which the consumer is represented by an attorney.

C.S.H.B. 1595 requires a litigation financing agreement to provide a right of rescission under which the consumer may cancel the agreement without penalty or further obligation if, not later than the fifth business day after the funding date, the consumer returns to the litigation financing company the full amount of the disbursed funds by personally delivering the company's uncashed check to the company's office or mails by insured, certified, or registered United States mail to the address specified in the agreement a notice of cancellation and the full amount of disbursed funds in the form of the company's uncashed check or a registered or certified check or money order.

C.S.H.B. 1595 requires a litigation financing agreement to provide the terms required by the bill's provisions, which are material terms and which must be disclosed as provided by the bill's provisions. The bill requires the disclosures to be clear and conspicuous and to be in at least 12-point bold type, except as otherwise provided by the bill. The bill requires the front page of the agreement to disclose, under appropriate headings, the funded amount to be paid to the consumer by the litigation financing company, an itemization of one-time charges, the total amount to be assigned by the consumer to the company, including the funded amount and all charges, and a payment schedule that includes the funded amount and charges and that lists all dates and the amount due at the end of each 180-day period from the funding date until the due date of the maximum amount due to the company by the consumer to satisfy the amount owed under the agreement.

C.S.H.B. 1595 requires the litigation financing agreement to include a specified statement regarding a consumer's right to cancellation. The bill requires an agreement to disclose that the litigation financing company may not participate in deciding whether, when, or the amount for which a legal claim is settled; that the company may not interfere with the independent professional judgment of the attorney handling the legal claim or any settlement of the legal claim; and that the consumer must notify the company of the settlement or adjudication of the legal claim before the resolution date. The bill requires an agreement to contain a specified statement establishing that the funded amount and agreed-to charges are to be paid only from the proceeds from the consumer's legal claim and only to the extent such proceeds are available, and a specified statement suggesting the consumer take certain actions before signing the agreement. The bill requires a litigation financing company to require the amount due under an agreement to be paid to the company in a predetermined amount based on periodic intervals from the funding date through the resolution date, and not an amount determined as a percentage of the recovery from the legal claim.

C.S.H.B. 1595, effective January 1, 2014, requires a litigation financing company to obtain a license from the Office of Consumer Credit Commissioner before engaging in an activity in Texas that must be performed under a litigation financing agreement that complies with the bill's provisions. The bill requires a litigation financing company to file a license application in the form and manner prescribed by the consumer credit commissioner. The bill requires the application to contain all information the office requires to evaluate the character and fitness of the applicant and, if the applicant is an entity, of each company officer and director and to be accompanied by a reasonable fee in an amount determined by the commissioner.

C.S.H.B. 1595 authorizes the commissioner to require an applicant to file with the application or a license holder to file a bond in an amount of up to \$50,000 with terms running concurrent with the licensing period. The bill requires the bond to provide that the license holder will, during the

licensing period, faithfully conform to and abide by the bill's requirements and the rules adopted by the Finance Commission of Texas to administer the bill's provisions and provide any amount that may become due or owing to the state from the license holder under those provisions. The bill authorizes an applicant or license holder, at the applicant's or license holder's option, to post an irrevocable letter of credit in lieu of the bond.

C.S.H.B. 1595 prohibits the commissioner from issuing such a license unless the commissioner, following an investigation, determines that the character and fitness of the applicant or of the applicant company's officers and directors warrant belief that the business will be operated honestly and fairly in accordance with the bill's provisions. The bill requires the commissioner, on written request, to set a hearing before the State Office of Administrative Hearings to determine an applicant's qualifications for licensure if the commissioner has notified the applicant in writing of the denial of the application or if the commissioner has not issued a license before the 61st day after the date the applicant filed the application. The bill prohibits an applicant from requesting a hearing after the 16th day after the date the commissioner sends written notice to the applicant that the application has been denied and stating the reasons for the denial. The bill requires a litigation financing company to renew its license on September 1 every two years by paying a renewal fee as determined by the commissioner.

C.S.H.B. 1595 prohibits a litigation financing company from the following:

- paying or offering to pay a commission, referral fee, or other form of consideration to an attorney, law firm, medical provider, chiropractor, or physical therapist or an employee of such a person or entity for referring a consumer to the company;
- accepting any commission, referral fee, rebate, or other form of consideration from an attorney, law firm, medical provider, chiropractor, or physical therapist or an employee of such a person or entity;
- intentionally advertising materially false or misleading information about the company's products or services;
- referring, to further an initial legal funding, a customer or potential customer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist or an employee of such a person or entity, except that the company may refer a customer or potential customer who needs legal representation to a local or state bar association referral service;
- failing to promptly supply a copy of the executed agreement to the consumer's attorney;
- knowingly providing funding to a consumer who has previously assigned or sold a portion of the consumer's right to proceeds from the consumer's legal claim without first paying to or purchasing from a previously unsatisfied litigation financing company that company's entire funded amount and charges due under that company's applicable agreement, unless a lesser amount is otherwise agreed to in writing by the litigation financing companies or multiple companies have agreed to concurrently provide funding to a consumer, if the consumer consents to the arrangement in writing;
- making a decision relating to the conduct, settlement, or resolution of the underlying legal claim, the power of which must remain solely with the consumer and the attorney handling the legal claim; or
- knowingly paying or offering to pay, using funds from the litigation financing transaction, court costs, filing fees, or attorney's fees during or after the resolution of the legal claim.

C.S.H.B. 1595 establishes that, if a court finds that a litigation financing company has intentionally violated the bill's provisions with respect to a litigation financing transaction, the company is entitled to recover the funded amount provided to the consumer and is prohibited from receiving any additional charges. The bill establishes that certain statutory provisions

relating to investigation and enforcement, administrative penalties, restitution orders, assurance of voluntary compliance, and judicial review apply to a violation of the bill's provisions, including the power of the commissioner to assess an administrative penalty against a person who knowingly and wilfully violates or causes a violation of the bill's provisions or a rule adopted under the bill's provisions.

C.S.H.B. 1595 requires the Finance Commission of Texas to adopt the rules and procedures necessary to implement the bill's provisions as soon as practicable after the bill's effective date, but not later than January 1, 2014.

C.S.H.B. 1595 establishes that the bill's provisions relating to licensing of a litigation financing company take effect January 1, 2014.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1595 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.022 to read as follows:

Sec. 30.022. DISCLOSURE OF CONSUMER LAWSUIT LENDING TRANSACTION. (a) In this section, "consumer lawsuit lender" and "consumer lawsuit lending transaction" have the meanings assigned by Section 301.003, Finance Code.

(b) In any civil action with respect to which money has been or will be provided to or on behalf of a plaintiff by a consumer lawsuit lender in a consumer lawsuit lending transaction:

(1) the plaintiff must produce to the opposing party, without awaiting a discovery request, all documents that the plaintiff or the plaintiff's representative provided to the consumer lawsuit lender; and

(2) the plaintiff must file with the court and serve on the opposing party a copy of any agreement between the plaintiff and a consumer lawsuit lender.

(c) If the consumer lawsuit lending agreement is executed before the plaintiff's original petition is served, the agreement shall be:

(1) filed with the court:

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

(A) promptly on execution of the agreement; or
(B) together with the filing of the plaintiff's original petition, if the plaintiff's original petition has not been filed with the court at the time of the agreement's execution; and
(2) served with the plaintiff's original petition as provided by the Texas Rules of Civil Procedure.
(d) If the consumer lawsuit lending agreement is executed after the plaintiff's original petition is served, the agreement shall be filed with the court and served on the opposing party as provided by the Texas Rules of Civil Procedure not later than the 10th day after the date the agreement is executed.

SECTION 2. Subchapter D, Chapter 154, Civil Practice and Remedies Code, is amended by adding Section 154.074 to read as follows:

No equivalent provision.

Sec. 154.074. DISCLOSURE OF CONSUMER LAWSUIT LENDING TRANSACTION. (a) In this section, "consumer lawsuit lender" and "consumer lawsuit lending transaction" have the meanings assigned by Section 301.003, Finance Code.

(b) In any dispute with respect to which money has been or will be provided to or on behalf of a complaining party by a consumer lawsuit lender in a consumer lawsuit lending transaction, the complaining party must produce to the opposing party, without awaiting a request in the nature of a discovery request, all documents that the complaining party or the complaining party's representative provided to the consumer lawsuit lender.

SECTION 3. Chapter 301, Finance Code, is amended by adding Section 301.003 to read as follows:

No equivalent provision.

Sec. 301.003. CONSUMER LAWSUIT LENDING TRANSACTION. (a) In this subtitle, the following definitions apply in the context of a consumer lawsuit lending transaction:

(1) "Consumer" means an individual who is or may become a complaining party in a dispute and to whom or on behalf of

whom money is provided in a consumer lawsuit lending transaction.

(2) "Consumer lawsuit lender" means a person who provides money to or on behalf of a consumer in a consumer lawsuit lending transaction. The term does not include an attorney who, at the time money is provided to or on behalf of a consumer in a consumer lawsuit lending transaction, has an attorney-client relationship with the consumer concerning the consumer's dispute.

(3) "Consumer lawsuit lending transaction" means a transaction in which:

(A) money is provided to or on behalf of a consumer by a consumer lawsuit lender for a purpose other than prosecuting the consumer's dispute; and

(B) the repayment of the money is conditioned on and to be received from the consumer's proceeds of the dispute, whether the proceeds are by judgment, settlement, or otherwise.

(4) "Creditor" includes a consumer lawsuit lender.

(5) "Dispute" includes:

(A) a civil action;

(B) an alternative dispute resolution proceeding; or

(C) an administrative proceeding before an agency of this state.

(6) "Interest" includes the amounts payable in a consumer lawsuit lending transaction to the consumer lawsuit lender to the extent that those amounts in the aggregate exceed the amounts provided by the consumer lawsuit lender to or on behalf of the consumer in the transaction.

(7) "Loan" includes the provision of money to or on behalf of the consumer in a consumer lawsuit lending transaction, without regard to whether there is a circumstance under which the consumer does not have an obligation to repay to the consumer lawsuit lender the principal amount provided.

(8) "Obligor" includes the consumer in a consumer lawsuit lending transaction.

(b) A consumer lawsuit lending transaction and the parties to the transaction are subject to this subtitle, including Section 303.201, in the same manner as a loan for personal, family, or household use and the parties to such a loan.

SECTION 4. Subchapter A, Chapter 342, Finance Code, is amended by adding Section 342.0015 to read as follows:

Sec. 342.0015. DEFINITION OF CONSUMER LAWSUIT LENDING TRANSACTION AND RELATED TERMS. In this chapter, in the context of a consumer lawsuit lending transaction, "consumer," "consumer lawsuit lender," "consumer lawsuit lending transaction," "creditor," "dispute," "interest," "loan," and "obligor" have the meanings assigned by Section 301.003.

No equivalent provision.

SECTION 5. Section 342.005, Finance Code, is amended to read as follows:

Sec. 342.005. APPLICABILITY OF CHAPTER. (a) Except as provided by Sections 302.001(d) and 342.004(c), a loan is subject to this chapter if the loan:

- (1) provides for interest in excess of 10 percent a year;
- (2) is extended primarily for personal, family, or household use;
- (3) is made by a person engaged in the business of making, arranging, or negotiating those types of loans; and
- (4) either:
 - (A) is not secured by a lien on real property; or
 - (B) is described by Section 342.001(4), 342.301, or 342.456 and is predominantly payable in monthly installments.

(b) The amounts provided by the consumer lawsuit lender to or on behalf of the consumer in a consumer lawsuit lending transaction are considered to be amounts extended primarily for personal, family, or household use. A consumer lawsuit lending transaction is subject to this chapter if the amounts payable under the transaction to the consumer lawsuit lender in the aggregate exceed the amounts provided by the consumer lawsuit lender to or on behalf of the consumer by an amount that, when aggregated and amortized using the actuarial method during the term of the loan, provides for interest in excess of 10 percent a year.

No equivalent provision.

SECTION 6. Section 342.051(a), Finance

No equivalent provision, but see SECTION 1,

Code, is amended to read as follows:

(a) A person must hold a license issued under this chapter to:

(1) engage in the business of making, transacting, or negotiating loans subject to this chapter; ~~[or]~~

(2) contract for, charge, or receive, directly or indirectly, in connection with a loan subject to this chapter, a charge, including interest, compensation, consideration, or another expense, authorized under this chapter that in the aggregate exceeds the charges authorized under other law; or

(3) engage in a consumer lawsuit lending transaction subject to this chapter or Subtitle A.

SECTION 7. (a) Except as otherwise provided by this section, the changes in law made by this Act apply to and in connection with a consumer lawsuit lending transaction entered into on or after the effective date of this Act. A consumer lawsuit lending transaction entered into before the effective date of this Act is governed by the law in effect when the transaction was entered into, and the former law is continued in effect for that purpose.

(b) Section 30.022, Civil Practice and Remedies Code, as added by this Act, applies only to an action commenced on or after the effective date of this Act.

(c) Section 154.074, Civil Practice and Remedies Code, as added by this Act, applies only to a dispute resolution proceeding commenced on or after the effective date of this Act.

(d) The licensing requirement of Section 342.051(a), Finance Code, as amended by this Act, applies only in relation to a consumer lawsuit lending transaction entered into on or after January 1, 2014. A consumer lawsuit lending transaction entered into before January 1, 2014, is governed by the law in effect when the transaction was entered into, and the former law is continued in effect for that purpose.

No equivalent provision.

Section 354.101, Finance Code, below.

No equivalent provision.

SECTION 1. Subtitle B, Title 4, Finance Code, is amended by adding Chapter 354 to

No equivalent provision.

read as follows:

CHAPTER 354. LITIGATION FINANCING AGREEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 354.001. DEFINITIONS. In this chapter:

(1) "Advertise" means to publish or disseminate a written, electronic, or printed communication, or to publish, disseminate, circulate, or place directly or indirectly before the public a communication by means of a recorded telephone message or a communication transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, for the purpose of inducing a person to enter into a litigation financing agreement.

(2) "Charge" or "charges" means the amount paid to a litigation financing company by or on behalf of the consumer, in addition to the funded amount provided by or on behalf of the company to a consumer. The term includes:

(A) an administrative fee, origination fee, underwriting fee, and other fees, regardless of how the fee is denominated; and

(B) any amounts denominated as interest.

(3) "Consumer" means an individual who has a pending legal claim and who:

(A) resides in this state; or

(B) has the legal claim in this state.

(4) "Funded amount" means the amount provided to or on behalf of the consumer under a litigation financing agreement. The term does not include a charge.

(5) "Funding date" means the date on which the litigation financing company:

(A) transfers the funded amount to the consumer by personal delivery or by wire, ACH debit, or other electronic means; or

(B) mails the funded amount to the consumer by insured, certified, or registered United States mail.

(6) "Immediate family member" means:

(A) a parent, sibling, spouse, grandparent, or grandchild of an individual; or

(B) a child related by blood, adoption, or marriage to an individual.

(7) "Legal claim" includes:

(A) a civil action;

(B) an alternative dispute resolution proceeding; or

(C) an administrative proceeding before an

agency of this state.

(8) "Litigation financing agreement" means an agreement under which:

(A) money is provided to or on behalf of a consumer by a litigation financing company for a purpose other than prosecuting the consumer's legal claim; and

(B) the repayment of the money is in accordance with a litigation financing transaction the terms of which are included as part of the litigation financing agreement.

(9) "Litigation financing company" or "company" means a person that enters into a litigation financing agreement with a consumer.

(10) "Litigation financing transaction" means a non-recourse transaction in which a litigation financing company purchases, and a consumer assigns to the company, a contingent right to receive an amount of the potential proceeds of a settlement, judgment, award, or verdict obtained in the consumer's legal claim.

(11) "Office" means the Office of Consumer Credit Commissioner.

(12) "Resolution date" means the date on which the sum of the amount funded to the consumer and the agreed-to charges is delivered to the litigation financing company.

No equivalent provision.

Sec. 354.002. NONAPPLICABILITY OF CHAPTER. Except as specifically provided by this chapter, this chapter does not apply to the following persons who enter into a litigation financing agreement with a consumer:

(1) an immediate family member of the consumer;

(2) an accountant who provides accounting services to the consumer; or

(3) an attorney who, at the time money is provided to or on behalf of a consumer under a litigation financing agreement, has an attorney-client relationship with the consumer concerning the consumer's legal claim.

No equivalent provision.

Sec. 354.003. AGREEMENT REQUIRED. A person may not enter into a litigation financing transaction with a consumer except under a litigation financing agreement that complies with this chapter.

No equivalent provision.

Sec. 354.004. DISCOVERY OF AGREEMENT. A party to the legal dispute to which a litigation financing agreement

relates is entitled to obtain, under the rules applicable to discovery in the forum where the legal claim is being resolved, contested, or litigated, discovery of:

(1) the existence of the agreement between the consumer and the litigation financing company;

(2) the name and principal place of business of the litigation financing company; and

(3) the names of all employees of the litigation financing company who reside or work in the county in which the forum where the legal claim is being resolved, contested, or litigated is located.

No equivalent provision.

Sec. 354.005. DUTY OF ATTORNEY. An attorney representing a consumer in a legal claim is not under a duty to assign any portion of payments from a settlement, judgment, award, or verdict to the litigation financing company unless the attorney has agreed to do so in writing.

No equivalent provision.

SUBCHAPTER B. AGREEMENT REQUIREMENTS

No equivalent provision.

Sec. 354.051. FORM OF AGREEMENT; REQUIREMENT OF EXISTING LEGAL CLAIM. (a) A litigation financing agreement must:

(1) be in writing;

(2) contain the initials of the consumer on each page; and

(3) be otherwise complete when presented to the consumer for signature.

(b) A litigation financing agreement may be entered into only if the agreement relates to:

(1) an existing legal claim that has been made by or on behalf of the consumer against another person, including the other person's insurer or the consumer's own insurer; or

(2) an existing proceeding in which the consumer's legal claim is intended to be resolved and with regard to which the consumer is represented by an attorney.

No equivalent provision.

Sec. 354.052. RIGHT OF RESCISSION. A litigation financing agreement must provide a right of rescission under which the consumer may cancel the agreement without penalty or further obligation if, not later than the fifth business day after the funding date, the consumer:

(1) returns to the litigation financing company the full amount of the disbursed

funds by personally delivering the company's uncashed check to the company's office; or (2) mails by insured, certified, or registered United States mail to the address specified in the agreement a notice of cancellation and the full amount of disbursed funds in the form of the company's uncashed check or a registered or certified check or money order.

No equivalent provision.

Sec. 354.053. REQUIRED TERMS; DISCLOSURES. (a) A litigation financing agreement must provide the terms required by this section, which are material terms and must be disclosed as provided by this section. The disclosures must be clear and conspicuous and, unless otherwise provided by this section, must be in at least 12-point bold type.

(b) On the front page of the agreement under appropriate headings, the agreement must disclose:

(1) the funded amount to be paid to the consumer by the litigation financing company;

(2) an itemization of one-time charges;

(3) the total amount to be assigned by the consumer to the company, including the funded amount and all charges; and

(4) a payment schedule that:

(A) includes the funded amount and charges; and

(B) lists all dates and the amount due at the end of each 180-day period from the funding date until the due date of the maximum amount due to the company by the consumer to satisfy the amount owed under the agreement.

(c) The agreement must contain the following statement within a box: "CONSUMER'S RIGHT TO CANCELLATION: You may cancel this agreement without penalty or further obligation within five business days after the funding date if you either:

"i. return to the litigation financing company the full amount of the disbursed funds by delivering the company's uncashed check to the company's office in person; or

"ii. mail, by insured, certified, or registered United States mail, to the company at the address specified in the agreement, a notice of cancellation and include in the mailing a return of the full amount of disbursed funds in the form of the company's uncashed check or a registered or certified check or money order."

- (d) The agreement must disclose that:
- (1) the litigation financing company may not participate in deciding whether, when, or the amount for which a legal claim is settled;
 - (2) the company may not interfere with the independent professional judgment of the attorney handling the legal claim or any settlement of the legal claim; and
 - (3) the consumer must notify the company of the settlement or adjudication of the legal claim before the resolution date.
- (e) The agreement must contain in all capital letters the following statement within a box: "THE FUNDED AMOUNT AND AGREED-TO CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM, AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE LITIGATION FINANCING COMPANY) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF THIS AGREEMENT OR YOU HAVE COMMITTED FRAUD AGAINST THE LITIGATION FINANCING COMPANY."
- (f) Immediately above the line for the consumer's signature, the agreement must contain the following disclosure in 12-point type: "Do not sign this agreement before you read it completely or if it contains any blank spaces. You are entitled to a completed copy of the agreement. Before you sign this agreement, you should obtain the advice of an attorney. Depending on the circumstances, you may want to consult a tax, public or private benefits planning, or financial professional."

No equivalent provision.

Sec. 354.054. AGREEMENT AMOUNT. A litigation financing company shall require the amount due under the agreement to be paid to the company in a predetermined amount based on periodic intervals from the funding date through the resolution date, and not an amount determined as a percentage of the recovery from the legal claim.

No equivalent provision, but see SECTION 6 above.

SUBCHAPTER C. LICENSING
Sec. 354.101. LICENSE REQUIRED; APPLICATION. (a) A litigation financing company must obtain a license from the office

before engaging in an activity in this state that must be performed under a litigation financing agreement that complies with this chapter.

(b) A litigation financing company must file a license application in the form and manner prescribed by the commissioner. The application must:

- (1) contain all information the office requires to evaluate the character and fitness of the applicant, and if the applicant is an entity, the character and fitness of each officer and director of the applicant company; and
- (2) be accompanied by a reasonable fee in an amount determined by the commissioner.

No equivalent provision.

Sec. 354.102. BOND; LETTER OF CREDIT. (a) The commissioner may require an applicant to file with the application or a license holder to file a bond in an amount not to exceed \$50,000.

(b) The bond terms must run concurrent with the licensing period. The bond must provide that the license holder will, during the licensing period:

- (1) faithfully conform to and abide by:
 - (A) the requirements of this chapter; and
 - (B) the rules adopted by the finance commission to administer this chapter; and
- (2) provide any amount that may become due or owing to the state from the license holder under this chapter.

(c) In lieu of the bond, the applicant or license holder, at the applicant's or license holder's option, may post an irrevocable letter of credit.

No equivalent provision.

Sec. 354.103. ISSUANCE OF LICENSE. The commissioner may not issue a license under this chapter unless the commissioner, following an investigation, determines that the character and fitness of the applicant or of the applicant company's officers and directors warrant belief that the business will be operated honestly and fairly in accordance with this chapter.

No equivalent provision.

Sec. 354.104. HEARING. (a) On written request, the commissioner shall set a hearing before the State Office of Administrative Hearings to determine an applicant's qualifications for licensure if:

- (1) the commissioner has notified the applicant in writing of the denial of the application; or
- (2) the commissioner has not issued a license

before the 61st day after the date the applicant filed the application.

(b) An applicant may not request a hearing under this section after the 16th day after the date the commissioner sends written notice to the applicant that the application has been denied and stating the reasons for the denial.

No equivalent provision.

Sec. 354.105. RENEWAL OF LICENSE. A litigation financing company must renew its license on September 1 every two years by paying a renewal fee as determined by the commissioner.

No equivalent provision.

SUBCHAPTER D. PROHIBITIONS

Sec. 354.151. PROHIBITED ACTIVITIES OR CONDUCT. A litigation financing company may not:

(1) pay or offer to pay a commission, referral fee, or other form of consideration to an attorney, law firm, medical provider, chiropractor, or physical therapist or an employee of a person described by this subdivision for referring a consumer to the company;

(2) accept any commission, referral fee, rebate, or other form of consideration from an attorney, law firm, medical provider, chiropractor, or physical therapist or an employee of a person described by this subdivision;

(3) intentionally advertise materially false or misleading information about the company's products or services;

(4) refer, to further an initial legal funding, a customer or potential customer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist or an employee of a person described by this subdivision, except that the company may refer a customer or potential customer who needs legal representation to a local or state bar association referral service;

(5) fail to promptly supply a copy of the executed agreement to the consumer's attorney;

(6) knowingly provide funding to a consumer who has previously assigned or sold a portion of the consumer's right to proceeds from the consumer's legal claim without first paying to or purchasing from a previously unsatisfied litigation financing company that company's entire funded amount and charges due under that company's applicable agreement, unless:

(A) a lesser amount is otherwise agreed to in

writing by the litigation financing companies;
or
(B) multiple companies have agreed to
concurrently provide funding to a consumer,
if the consumer consents to the arrangement
in writing;
(7) make a decision relating to the conduct,
settlement, or resolution of the underlying
legal claim, the power of which must remain
solely with the consumer and the attorney
handling the legal claim; or
(8) knowingly pay or offer to pay, using
funds from the litigation financing transaction,
court costs, filing fees, or attorneys' fees
during or after the resolution of the legal
claim.

No equivalent provision.

SUBCHAPTER E. ENFORCEMENT
Sec. 354.201. VIOLATION OF CHAPTER.
(a) If a court finds that a litigation financing
company has intentionally violated this
chapter with respect to a litigation financing
transaction, the company is entitled to recover
the funded amount provided to the consumer
and may not receive any additional charges.
(b) In addition to any other applicable
investigative and enforcement provisions,
Subchapters E, F, and G, Chapter 14, apply to
a violation of this chapter, including the
power of the commissioner to assess an
administrative penalty under Chapter 14
against a person who knowingly and wilfully
violates or causes a violation of this chapter or
a rule adopted under this chapter.

No equivalent provision.

SECTION 2. As soon as practicable after the effective date of this Act, but not later than January 1, 2014, the Finance Commission of Texas shall adopt the rules and procedures necessary to implement Chapter 354, Finance Code, as added by this Act.

No equivalent provision.

SECTION 3. The changes in law made by this Act apply only to a litigation financing agreement entered into on or after the effective date of this Act. A litigation financing agreement entered into before the effective date of this Act is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

SECTION 8. This Act takes effect

SECTION 4. (a) Except as otherwise

September 1, 2013.

provided by this section, this Act takes effect September 1, 2013.

(b) Subchapter C, Chapter 354, Finance Code, as added by this Act, takes effect January 1, 2014.