

By: Miller of Comal, Workman

H.B. No. 1595

Substitute the following for H.B. No. 1595:

By: King of Hemphill

C.S.H.B. No. 1595

A BILL TO BE ENTITLED

AN ACT

relating to litigation financing transactions; authorizing the
imposition of a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

1 (B) any amounts denominated as interest.

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

4 (A) resides in this state; or

5 (B) has the legal claim in this state.

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

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

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

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

16 (6) "Immediate family member" means:

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

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

21 (7) "Legal claim" includes:

22 (A) a civil action;

23 (B) an alternative dispute resolution
24 proceeding; or

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

27 (8) "Litigation financing agreement" means an

1 agreement under which:

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

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

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

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

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

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

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

26 (1) an immediate family member of the consumer;

27 (2) an accountant who provides accounting services to

1 the consumer; or

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

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

10 Sec. 354.004. DISCOVERY OF AGREEMENT. A party to the legal
11 dispute to which a litigation financing agreement relates is
12 entitled to obtain, under the rules applicable to discovery in the
13 forum where the legal claim is being resolved, contested, or
14 litigated, discovery of:

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

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

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

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

1 SUBCHAPTER B. AGREEMENT REQUIREMENTS

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

4 (1) be in writing;

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

6 and

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

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

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

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

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

22 (1) returns to the litigation financing company the
23 full amount of the disbursed funds by personally delivering the
24 company's uncashed check to the company's office; or

25 (2) mails by insured, certified, or registered United
26 States mail to the address specified in the agreement a notice of
27 cancellation and the full amount of disbursed funds in the form of

1 the company's uncashed check or a registered or certified check or
2 money order.

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

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

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

13 (2) an itemization of one-time charges;

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

16 (4) a payment schedule that:

17 (A) includes the funded amount and charges; and

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

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

26 "i. return to the litigation financing company the full
27 amount of the disbursed funds by delivering the company's uncashed

1 check to the company's office in person; or
2 "ii. mail, by insured, certified, or registered United
3 States mail, to the company at the address specified in the
4 agreement, a notice of cancellation and include in the mailing a
5 return of the full amount of disbursed funds in the form of the
6 company's uncashed check or a registered or certified check or
7 money order."

8 (d) The agreement must disclose that:

9 (1) the litigation financing company may not
10 participate in deciding whether, when, or the amount for which a
11 legal claim is settled;

12 (2) the company may not interfere with the independent
13 professional judgment of the attorney handling the legal claim or
14 any settlement of the legal claim; and

15 (3) the consumer must notify the company of the
16 settlement or adjudication of the legal claim before the resolution
17 date.

18 (e) The agreement must contain in all capital letters the
19 following statement within a box: "THE FUNDED AMOUNT AND AGREED-TO
20 CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM,
21 AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE
22 PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF
23 THE LITIGATION FINANCING COMPANY) ANYTHING IF THERE ARE NO PROCEEDS
24 FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF
25 THIS AGREEMENT OR YOU HAVE COMMITTED FRAUD AGAINST THE LITIGATION
26 FINANCING COMPANY."

27 (f) Immediately above the line for the consumer's

1 signature, the agreement must contain the following disclosure in
2 12-point type: "Do not sign this agreement before you read it
3 completely or if it contains any blank spaces. You are entitled to a
4 completed copy of the agreement. Before you sign this agreement,
5 you should obtain the advice of an attorney. Depending on the
6 circumstances, you may want to consult a tax, public or private
7 benefits planning, or financial professional."

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

14 SUBCHAPTER C. LICENSING

15 Sec. 354.101. LICENSE REQUIRED; APPLICATION. (a) A
16 litigation financing company must obtain a license from the office
17 before engaging in an activity in this state that must be performed
18 under a litigation financing agreement that complies with this
19 chapter.

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

22 The application must:

23 (1) contain all information the office requires to
24 evaluate the character and fitness of the applicant, and if the
25 applicant is an entity, the character and fitness of each officer
26 and director of the applicant company; and

27 (2) be accompanied by a reasonable fee in an amount

1 determined by the commissioner.

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

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

8 (1) faithfully conform to and abide by:

9 (A) the requirements of this chapter; and

10 (B) the rules adopted by the finance commission
11 to administer this chapter; and

12 (2) provide any amount that may become due or owing to
13 the state from the license holder under this chapter.

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

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

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

27 (1) the commissioner has notified the applicant in

1 writing of the denial of the application; or

2 (2) the commissioner has not issued a license before
3 the 61st day after the date the applicant filed the application.

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

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

11 SUBCHAPTER D. PROHIBITIONS

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

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

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

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

25 (4) refer, to further an initial legal funding, a
26 customer or potential customer to a specific attorney, law firm,
27 medical provider, chiropractor, or physical therapist or an

1 employee of a person described by this subdivision, except that the
2 company may refer a customer or potential customer who needs legal
3 representation to a local or state bar association referral
4 service;

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

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

13 (A) a lesser amount is otherwise agreed to in
14 writing by the litigation financing companies; or

15 (B) multiple companies have agreed to
16 concurrently provide funding to a consumer, if the consumer
17 consents to the arrangement in writing;

18 (7) make a decision relating to the conduct,
19 settlement, or resolution of the underlying legal claim, the power
20 of which must remain solely with the consumer and the attorney
21 handling the legal claim; or

22 (8) knowingly pay or offer to pay, using funds from the
23 litigation financing transaction, court costs, filing fees, or
24 attorneys' fees during or after the resolution of the legal claim.

25 SUBCHAPTER E. ENFORCEMENT

26 Sec. 354.201. VIOLATION OF CHAPTER. (a) If a court finds
27 that a litigation financing company has intentionally violated this

1 chapter with respect to a litigation financing transaction, the
2 company is entitled to recover the funded amount provided to the
3 consumer and may not receive any additional charges.

4 (b) In addition to any other applicable investigative and
5 enforcement provisions, Subchapters E, F, and G, Chapter 14, apply
6 to a violation of this chapter, including the power of the
7 commissioner to assess an administrative penalty under Chapter 14
8 against a person who knowingly and wilfully violates or causes a
9 violation of this chapter or a rule adopted under this chapter.

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

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

20 SECTION 4. (a) Except as otherwise provided by this
21 section, this Act takes effect September 1, 2013.

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