

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 850

By Senator Trump

[Originating in the Committee on the Judiciary;

reported February 26, 2024]

1 A BILL to amend and reenact §46A-6N-1, §46A-6N-4, §46A-6N-6, §46A-6N-7, and §46A-6N-9 of
2 the Code of West Virginia, 1931, as amended, all relating to consumer litigation financing;
3 defining terms; adding term; removing commercial tort claims exclusion from definition of
4 litigation financing; excluding certain non-profit organizations from the definition of litigation
5 financing; prohibiting assignment of litigation financing contract in certain instances;
6 requiring disclosure of third-party litigation financing agreements to parties; clarifying who
7 is to provide disclosure of third-party litigation financing agreements; and establishing cap
8 for the annual fee a litigation financier may charge a natural person.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6N. CONSUMER LITIGATION FINANCING.

§46A-6N-1. Definitions.

1 For purposes of this article:

2 (1) "Consumer" means any ~~natural~~ person who resides, is present, or is domiciled in this
3 state who claims an entitlement to a judgment, award, settlement, or verdict with respect to a legal
4 claim but does not include an attorney representing that person;

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

7 (3) "Litigation financing" or "litigation financing transaction":

8 (A) Means a ~~nonrecourse~~ transaction in which financing is provided to a consumer in return
9 for a consumer's assigning to the litigation financier a ~~contingent~~ right to receive payment
10 contingent in any respect on the outcome of the ~~an amount of the potential proceeds of the~~
11 ~~consumer's judgment, award, settlement, or verdict obtained with respect to the consumer's legal~~
12 claim; and

13 (B) Does not include:

14 (i) Legal services provided on a contingency fee basis, or advanced legal costs, where
15 such services or costs are provided to or on behalf of a consumer by an attorney representing the

16 consumer in the dispute and in accordance with the West Virginia Rules of Professional Conduct;

17 (ii) A consumer loan, as defined by §46A-1-102 of this code;

18 ~~(iii) A commercial tort claim, as defined by §46-9-102 of this code;~~

19 ~~(iv)~~(iii) A claim under the Workers' Compensation Law, compiled in §23-1-1 *et seq.* of this
20 code; ~~or~~

21 ~~(v)~~(iv) ~~Normal or course of business~~ Lending or financing arrangements between an
22 attorney or law firm and a ~~lending institution~~ lender, provided such arrangements do not give the
23 lender any particularized interest in the outcome of any legal claim or portfolio of legal claims; or

24 (v) Nonprofit organizations, provided any financing provided to or by the nonprofit
25 organization does not afford the non-party agreeing to pay legal expenses profit from the legal
26 claim beyond repayment of the amount it has contractually agreed to provide, along with
27 reasonable interest not to exceed the Wall Street Journal prime rate at the time the agreement was
28 executed, plus three percent per year.

§46A-6N-4. Litigation financier prohibitions.

1 (a) A litigation financier shall not:

2 (1) Pay or offer to pay commissions, referral fees, or other forms of consideration to any
3 attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees for
4 referring a consumer to a litigation financier;

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

7 (3) Advertise false or misleading information regarding its products or services;

8 (4) Refer a consumer or potential consumer to a specific attorney, law firm, medical
9 provider, chiropractor, physical therapist, or any of their employees: *Provided*, That if a consumer
10 does not have legal representation, the provider may refer the consumer to a local or state bar
11 referral service operated by a bar association;

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

14 (6) Attempt to obtain in the litigation for which the litigation financing transaction exists a
15 waiver of any remedy, including, but not limited to, compensatory, statutory, or punitive damages to
16 which the consumer might otherwise be entitled;

17 (7) Attempt to effect in the litigation for which the litigation financing transaction exists
18 mandatory arbitration or otherwise effect waiver of a consumer's right to a trial by jury;

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

21 (9) Assign, which includes securitizing, a litigation financing contract between a consumer
22 who is a natural person and a litigation financier, in whole or in part, to a third party: ~~however:~~

23 Provided, That:

24 (A) §46A-6N-4(9) of this code does not prevent a litigation financier that retains
25 responsibility for collecting payment, administering, or otherwise enforcing the litigation financing
26 contract from making an assignment that is:

27 (i) To a wholly owned subsidiary of the litigation financier;

28 (ii) To an affiliate of the litigation financier that is under common control with the litigation
29 financier; or

30 (iii) A grant of a security interest that is made pursuant to §46-9-101 *et seq.* of this code or
31 is otherwise permitted by law; and

32 (B) If an assignment is authorized and made pursuant to §46A-6N-4(9) of this code, for
33 purposes of this section, "litigation financier" includes a successor-in-interest to a litigation
34 financing contract;

35 (10) Report a consumer to a credit reporting agency if insufficient funds remain from the
36 net proceeds to repay the litigation financier; or

37 (11) Receive any right to direct, ~~not~~ or make any decisions with respect to the conduct of
38 the consumer's legal claim or any settlement or resolution. The right to make such decisions shall
39 remain solely with the consumer and his or her attorney.

40 (b) An attorney or law firm retained by a consumer shall not have a financial interest in a
41 company offering litigation financing to consumers and shall not receive a referral fee or other
42 consideration from the company, its employees, or its affiliates.

43 (c) A personal injury attorney or law firm, practicing in ~~the state of~~ West Virginia, retained by
44 a consumer shall not have a financial interest in a company offering litigation financing to
45 consumers and shall not receive a referral fee or other consideration from the company, its
46 employees, or its affiliates.

§46A-6N-6. Third-party agreements.

1 (a) Except as otherwise stipulated or ordered by the court, a party or his or her counsel
2 shall, without awaiting a discovery request, provide to the other parties any agreement under
3 which any litigation financier, other than an attorney permitted to charge a contingent fee
4 representing a party, has a right to receive compensation that is contingent in any respect on and
5 sourced from any proceeds of the civil action, by settlement, judgment, or otherwise the outcome
6 of the legal claim.

7 (b) For purposes of this section only, the terms "litigation financing" and "litigation
8 financier" also include financing provided to an attorney or law firm where the right to receive
9 repayment is contingent in any respect on the outcome of the consumer's legal claim.

§46A-6N-7. Violation; enforcement.

1 (a) Any violation of this article shall make the litigation financing contract unenforceable by
2 the litigation financier, the consumer, law firm, or any successor-in-interest to the litigation
3 financing contract. The court may, in the event that judgment is awarded to the plaintiff, assess
4 costs of the action, including reasonable attorneys' fees, against the defendant.

5 (b) Nothing in this article shall be construed to limit the exercise of powers or the
6 performance of the duties of the Attorney General, including those provided by the West Virginia
7 Consumer Credit and Protection Act, which the Attorney General is otherwise authorized or
8 required to exercise or perform by law.

§46A-6N-9. Fees; terms; incorporation of obligations in agreement.

1 (a) A litigation financier may not charge ~~the~~ a consumer who is a natural person an annual
2 fee of more than 18 percent of the original amount of money provided to the consumer for the
3 litigation financing transaction.

4 (b) Litigation financiers shall not charge a consumer the annual fee authorized by
5 §46A-6N-9(a) of this code more than one time each year with regard to any single legal claim
6 regardless of the number of litigation financing transactions that the litigation financier enters into
7 with the consumer with respect to such legal claim.

8 (c) Fees assessed by a litigation financier may compound semiannually but may not
9 compound based on any lesser time period.

10 (d) In calculating the annual percentage fee or rate of return, a litigation financier must
11 include all charges payable directly or indirectly by the consumer and must compute the rate
12 based only on amounts actually received and retained by the consumer.

13 (e) A litigation financier may not assess fees for any period exceeding 42 months from the
14 date of the contract with the consumer.

15 (f) Litigation financiers shall not enter into an agreement with a consumer that has the
16 effect of incorporating the consumer's obligations to the litigation financier that are contained in the
17 original litigation financing transaction into a subsequent litigation financing transaction.

18 (g) Litigation financiers shall not knowingly provide financing to a consumer who has
19 previously assigned and/or sold a portion of the consumer's right to proceeds from his or her legal
20 claim without first making payment to and/or purchasing a prior unsatisfied litigation financier's
21 entire funded amount and contracted charges unless a lesser amount is otherwise expressly

22 agreed to in writing by the litigation financiers; except multiple litigation financiers may agree to
23 contemporaneously provide financing to a consumer, provided that the consumer and the
24 consumer's attorney consent to the agreement in writing._