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Summary: Transparency in Consumer Legal Funding Act

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

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**VERSIONS OF THIS BILL**

[05/06/2025](https://www.scstatehouse.gov/sess126_2025-2026/prever/4521_20250506.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ENACTING THE “SOUTH CAROLINA TRANSPARENCY IN CONSUMER LEGAL FUNDING ACT” BY ADDING CHAPTER 31 TO TITLE 37 SO AS TO PROMOTE CONSUMER PROTECTIONS RELATED TO CONSUMER LEGAL FUNDING TRANSACTIONS, TO ESTABLISH THAT CERTAIN TRANSACTIONS MUST BE SUBJECT TO STATE REGULATION AND SET FORTH REQUIREMENTS REGARDING DISCLOSURE, REGISTRATION, FUNDING, LIMITATIONS, AND VIOLATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “South Carolina Transparency in Consumer Legal Funding Act.”

SECTION 2. Title 37 of the S.C. Code is amended by adding:

CHAPTER 31

Transparency in Consumer Legal Funding

 Section 37‑31‑100. As used in this chapter:

 (1) “Advertise” means publishing or disseminating any written, oral, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted or broadcast on radio, television, the internet, or similar communications media, including audio recordings, film strips, motion pictures and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of inducing a consumer to enter into a consumer litigation funding contract.

 (2) “Charges” means the amount of money to be paid to the consumer legal funding company, by or on behalf of the consumer, above the funded amount provided by or on behalf of the consumer legal funding company to a consumer. Charges include all administrative, origination, underwriting, or other fees, including interest, no matter how denominated.

 (3) “Consumer legal funding” means a nonrecourse transaction in which a consumer legal funding company purchases and a consumer assigns to the company a contingent right to receive an amount of the potential proceeds of any recovery, including a settlement or judgment, in the consumer’s legal claim.

 (4) “Consumer legal funding company” or “company” means a person or entity that enters into a consumer legal funding contract with a consumer. This term does not include:

 (a) an immediate family member of the consumer;

 (b) a bank, lender, financing entity, or other special purpose entity:

 (i) that provides financing to a consumer legal funding company; or

 (ii) to which a consumer legal funding company grants a security interest or transfers any rights or interest in a consumer litigation funding contract; or

 (c) an attorney or accountant who provides services to a consumer.

 (5) “Consumer” means a natural person or estate for a decedent related to wrongful death with a legal claim.

 (6) “Funded amount” means the amount of monies provided to, or on behalf of, the consumer in the consumer legal funding contract excluding charges.

 (7) “Funding date” means the date on which the funded amount is transferred to the consumer by the consumer legal funding company including by personal delivery, wire, ACH or other electronic means, or mailed by insured, certified, or registered United States mail.

 (8) “Immediate family member” means a parent, sibling, child by blood, adoption, or marriage, spouse, domestic partner, cohabitant, stepchild, immediate in‑law, aunt, uncle, first cousin, grandparent, or grandchild.

 (9) “Legal claim” means a civil claim or cause of action.

 (10) “Resolution date” means the date the funded amount, plus the agreed upon charges, are delivered to the consumer legal funding company by the consumer, the consumer’s attorney, or otherwise.

 Section 37‑31‑110. (A) All consumer legal funding contracts shall meet the following requirements:

 (1) the contract shall be written in a clear manner using words with common, everyday meanings to enable a reasonable consumer to read and understand the terms of the contract without having to obtain the assistance of a professional;

 (2) the contract shall be completely filled in when presented to the consumer for signature;

 (3) the contract shall contain, in twelve‑point bold type font, a right of rescission, allowing the consumer to cancel the contract without penalty or further obligation if, within ten business days after the funding date, the consumer returns to the consumer legal funding company the full amount of the disbursed funds;

 (4) the contract shall contain the initials of the consumer on each page;

 (5) the contract shall contain a statement that there are no fees or charges to be paid by the consumer other than what is disclosed on the disclosure form;

 (6) in the event the consumer seeks more than one legal funding contract from the same company, the contract shall disclose the cumulative amount due from the consumer for all transactions from the company, including charges under all contracts, if repayment is made any time after the contracts are executed;

 (7) the contract shall contain a statement of the maximum amount the consumer may be obligated to pay under the contract other than in a case of material breach, fraud, or misrepresentation by or on behalf of the consumer;

 (8) the contract shall clearly and conspicuously detail how charges, including any applicable fees, are incurred or accrued;

 (9) for consumers whose primary language is not English, upon the written request from the consumer or consumer’s attorney, the contract shall be translated in writing into the consumer’s native language in which the oral negotiations are conducted between the consumer legal funding company and the consumer; and

 (10) the contract shall state that if there is no recovery from the consumer’s civil action, the consumer shall owe nothing to the consumer legal funding company unless the consumer committed fraud against the consumer legal funding company.

 (B) All consumer legal funding contracts shall contain the disclosures specified in this section, which constitutes material terms of the contract. Unless otherwise specified, such disclosures must be typed in at least twelve‑point font and be placed clearly and conspicuously within the contract, as follows:

 (1) on the front page under appropriate headings, language specifying:

 (a) the funded amount to be paid to the consumer by the consumer legal funding company;

 (b) an itemization of one‑time charges;

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

 (d) a payment schedule to include the funded amount and charges, listing all dates and the amount due at the end of each six‑month period from the funding date, until the date the maximum amount due to the company pursuant to the contract is paid;

 (2) within the body of the contract: “Consumer’s right to cancellation: you may cancel this contract without penalty or further obligation within ten business days after the funding date if you return to the consumer legal funding company the full amount of the disbursed funds.”;

 (3) the consumer legal funding company has no role in deciding whether, when, or how much the legal claim is settled for. However, the consumer and consumer’s attorney must notify the company of the outcome of the legal claim by settlement or adjudication prior to the resolution date. The company may seek updated information about the status of the legal claim but in no event shall the company interfere with the independent professional judgement of the attorney handling the legal claim or any settlement thereof;

 (4) within the body of the contract, in all capital letters in at least twelve‑point bold type font contained within a box: “THE FUNDED AMOUNT AND AGREED UPON 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 CONSUMER LEGAL FUNDING COMPANY) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST (INSERT NAME OF CONSUMER LEGAL FUNDING COMPANY).”;

 (5) located immediately above the place on the contract where the consumer’s signature is required, in twelve‑point bold type font: “Do not sign this contract before you read it completely. Do not sign this contract if it contains any blank spaces. You are entitled to a completely filled‑in copy of the contract before you sign this contract. You should obtain the advice of any attorney. Depending on the circumstances, you may want to consult a tax, public or private benefits planning, or financial professional. You acknowledge that your attorney in the legal claim has provided no tax, public or private benefit planning, or financial advice regarding this transaction. You further acknowledge that your attorney has explained the terms and conditions of the consumer legal funding contract.”; and

 (6) if requested, a copy of the executed contract shall promptly be delivered by the consumer to the attorney for the consumer.

 (C) All consumer legal funding contracts shall contain a written acknowledgement by the attorney retained by the consumer in the legal claim that attests to the following:

 (1) the attorney has reviewed the mandatory disclosures in this section with the consumer;

 (2) the attorney is being paid on a contingency basis pursuant to a written fee agreement;

 (3) all proceeds of the legal claim will be disbursed via either the trust account of the attorney or a settlement fund established to receive the proceeds of the legal claim on behalf of the consumer;

 (4) the attorney is obligated to disburse funds to the consumer legal funding company from the legal claim and take any other steps to ensure that the terms of the legal funding contract are fulfilled;

 (5) the attorney has not received and will not receive a referral fee or other consideration from the consumer legal funding company in connection with the consumer litigation funding; and

 (6) the attorney in the legal claim has provided no tax, public or private benefit planning, or financial advice regarding the consumer litigation funding transaction.

 (D) In the event that the acknowledgement required pursuant to subsection (C) is not provided by the attorney or firm retained by the consumer in the legal claim, the consumer litigation funding contract shall be null and void. The consumer legal funding contract shall remain valid and enforceable in the event the consumer terminates the initial attorney or retains a new attorney with respect to the legal claim.

 (E) Notwithstanding any other provision of law, no prepayment penalties or fees shall be charged or collected on consumer litigation funding. A prepayment penalty on consumer legal funding shall be unenforceable.

 (F) A consumer legal funding transaction that complies with this chapter is not a loan and is not subject to any provision of laws governing loans or investment contracts. To the extent that this chapter conflicts with any other law, this chapter supersedes that law for purposes of regulating consumer legal funding transactions in this State.

 Section 37‑31‑120.  (A) A consumer legal funding company shall be prohibited from:

 (1) paying or offering to pay commissions, referral fees, or other forms of consideration to any attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees for referring a consumer to the company;

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

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

 (4) referring, in furtherance of an initial legal funding, a customer or potential customer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees; provided, however, if a customer needs legal representation, the company may refer the customer to a local or state bar association referral service;

 (5) knowingly providing funding to a consumer who has previously assigned or sold a portion of the consumer’s right to proceeds from his legal claim without first making payment to or purchasing a prior unsatisfied consumer legal funding company’s entire funded amount and contracted charges, unless a lesser amount is otherwise agreed to in writing by the consumer legal funding companies, except that multiple companies may agree to contemporaneously provide funding to a consumer provided that the consumer and the consumer’s attorney consent to the arrangement in writing;

 (6) having any influence, receiving any right to, or making any decisions with respect to the conduct of the underlying legal claim or any settlement or resolution thereof. The right to make such decisions shall remain solely with the consumer and the consumer’s attorney in the legal claim;

 (7) attempting to obtain a waiver of any remedy or right by the consumer including, but not limited to, the right to trial by jury;

 (8) knowingly paying or offering to pay for court costs, filing fees, or attorney’s fees either during or after the resolution of the legal claim, using funds from the consumer legal funding transaction;

 (9) knowingly offering or colluding to provide funding as an inducement to a consumer who is presently represented by counsel to terminate that engagement and engage such lawyer or law firm to represent them in the same matter. Any consumer legal funding contract entered into in violation of this paragraph shall be void ab initio; and

 (10) colluding with or knowingly assisting a lawyer or law firm that is enticing or intends to entice a consumer to bring a claim that the company knows or has reason to know is fabricated or otherwise not brought in good faith. Any consumer legal funding contract entered into in violation of this paragraph shall be void ab initio.

 (B) An attorney, or the attorney’s immediate family member, retained by a consumer shall not have a financial interest in a consumer legal funding company offering consumer legal funding to that consumer; and shall not provide consumer legal funding, loans, or advances for personal needs, whether interest‑free or interest‑accruing, or cash or nonmonetary equivalent, to current or prospective consumers, or the consumer’s immediate family members.

 (C) Any attorney who has referred the consumer to his retained attorney, or immediate family member of a consumer’s retained attorney, shall not have a financial interest in the consumer legal funding company offering consumer legal funding to that consumer.

 (D) The attorney may only disclose confidential or privileged information to the consumer legal funding company with the written consent of the consumer.

 (E) Only the consumer shall be authorized to execute a consumer legal funding agreement on his own behalf, except in such cases where the consumer lacks the legal capacity to execute a contract. The consumer’s legal representative in the legal claim shall not execute a consumer legal funding contract on behalf of the consumer. A consumer legal funding contract executed by the consumer legal representative on behalf of such consumer shall be void and unenforceable as a matter of law.

 (F) The consumer legal funding company shall not accept any funds from a foreign government or foreign nongovernment person identified as a foreign adversary in 15 CFR 791.4, including any agent or entity affiliated with such foreign adversary.

 Section 37‑31‑130. The contracted amount to be paid to the consumer legal funding company shall be a predetermined amount based upon intervals of time from the funding date through the resolution date and shall not be determined as a percentage of the recovery from the legal claim.

 Section 37‑31‑140. (A) Within thirty days of receipt of a written request, a consumer or the consumer’s attorney shall disclose to any requesting party to a legal claim and each insurer that has a duty to defend whether the consumer has entered into a consumer legal funding contract.

 (B) If a consumer enters into a consumer legal funding contract after responding to a request pursuant to subsection (A), the consumer and the consumer’s lawyer have a continuing obligation to disclose and shall disclose this fact to the requesting person within thirty days after the consumer enters into the contract.

 (C) Consumer legal funding contracts and all participants or parties to the consumer litigation funding contract are permissible subjects of discovery in a legal claim.

 (D) Consumer legal funding transactions disclosed under subsections (A) and (B) and consumer legal funding contracts discovered pursuant to subsection (C) are inadmissible at trial except for purposes of impeachment.

 Section 37‑31‑150. (A) Any consumer legal funding company found in wilful violation of any provision of this chapter in a specific funding case:

 (1) waives its right to recover both the funded amount and any and all charges, as defined in Section 37‑31‑100, in that particular case; and

 (2) is liable for a civil penalty of not more than one thousand dollars for each violation, which accrues to the State and may be recovered in a civil action brought by the Attorney General.

 (B) This chapter may not be construed to restrict the exercise of powers or the performance of the duties of the State Attorney General.

 Section 37‑31‑160. (A) The contingent right to receive an amount of the potential proceeds of a legal claim is assignable by a consumer to a consumer legal funding company.

 (B) Only attorney’s liens related to the legal claim which is the subject of the consumer legal funding or Medicare or other statutory liens related to the legal claim shall take priority over any lien of the consumer legal funding company.

 Section 37‑31‑170. Communications between a consumer’s attorney and a consumer legal funding company to allow the consumer legal funding company to ascertain that status of a legal claim or a legal claim’s expected value shall not be discoverable by a person against whom the legal claim is asserted or filed.

 Section 37‑31‑180. (A) A consumer legal funding company must register with this State pursuant to this chapter before engaging in consumer legal funding in this State.

 (B) An applicant’s registration must be filed in the manner prescribed by the Secretary of State and must contain all the information required by the Secretary of State to make an evaluation of the character and fitness of the applicant company. The initial application must be accompanied by a one‑hundred‑dollar fee. A renewal registration must include a fifty‑dollar fee. A registration must be renewed every two years and expires on the thirty‑first of December.

 (C) A certificate of registration may not be issued unless the Secretary of State, upon investigation, finds that the character and fitness of the applicant company, and of the officers and directors thereof, are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this chapter.

 (D) Every registrant shall file, at the time of filing such application, with the Secretary of State, if the Secretary of State so requires, a bond satisfactory to the Secretary of State in an amount not to exceed one hundred dollars. 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 concurrently with the period of time during which the registration will be in effect. The bond must provide that the registrant will abide by the provisions of this chapter and to all rules lawfully made by the administrator under this chapter and to any such person or persons any amounts of money that may become due or owing to the State or to such person or persons from the registrant under and by virtue of this chapter during the period for which the bond is given.

 (E) Upon written request, the applicant is entitled to a hearing on the question of the applicant’s qualifications for registration if:

 (1) the Secretary of State has notified the applicant in writing that the application has been denied;

 (2) the Secretary of State has not issued a registration within sixty days after the application for the registration was filed; or

 (3) a request for a hearing may not be made more than fifteen days after the department has mailed a written notice to the applicant that the application has been denied and stating in substance the Secretary of State’s findings supporting denial of the application.

 (F) Notwithstanding the prior approval requirement of subsection (A), a consumer legal funding company that registered with the Secretary of State between the effective date of this article or when the Secretary of State has made applications available to the public, whichever is later, and one hundred eighty days thereafter may engage in consumer legal funding while the company’s registration is pending approval with the Secretary of State. All funding agreements entered into prior to the effective date of this act are not subject to the terms of this act.

 (G) No consumer legal funding company may use any form of consumer legal funding contract in this State unless it has been filed with the Secretary of State in accordance with the filing procedures set forth by the Secretary of State.

 (H) The Secretary of State is hereby authorized to adopt rules and regulations to implement the provisions of this section as needed.

 (I) A consumer legal funding company that registered with the Secretary of State between the effective date of this chapter or the date when the Secretary of State makes the applications available to the public, whichever is later, and one hundred eighty days after the later of the two dates may engage in consumer legal funding agreements while the company’s registration is pending approval with the Secretary of State.

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

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