

1 AN ACT relating to nonrecourse consumer legal funding.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. SUBTITLE 12 OF KRS CHAPTER 286 IS ESTABLISHED,
4 AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

5 *As used in this subtitle, unless the context requires otherwise:*

6 *(1) "Consumer" means a person residing or domiciled in Kentucky who has a*
7 *pending legal claim and is represented by an attorney at the time he or she*
8 *receives nonrecourse consumer legal funding;*

9 *(2) "Nonrecourse consumer legal funding company":*

10 *1. Means a person that is licensed under this subtitle to enter into nonrecourse*
11 *consumer legal funding transactions with consumers; and*

12 *2. Shall not include:*

13 *a. An immediate family member of a consumer;*

14 *b. An attorney or accountant who provides services or an advance to a*
15 *consumer;*

16 *c. A medical provider that provides medical services on the basis of a lien*
17 *against any potential litigation recovery;*

18 *d. A medical factoring company; or*

19 *e. A financial institution or similar entity:*

20 *i. That provides financing to a nonrecourse consumer legal*
21 *funding company; or*

22 *ii. To which a nonrecourse consumer legal funding company*
23 *grants a security interest or transfers any right or interest in a*
24 *nonrecourse consumer legal funding transaction;*

25 *(3) "Nonrecourse consumer legal funding transaction" means a transaction in*
26 *which a nonrecourse consumer legal funding company provides funding in the*
27 *amount of five hundred thousand dollars (\$500,000) or less to a consumer and*

1 the consumer assigns to the nonrecourse consumer legal funding company a
 2 contingent right to receive an amount of the potential proceeds of any settlement,
 3 judgment, award, or verdict obtained in a legal claim of the consumer; and
 4 (4) "Legal claim" means a civil claim or action.

5 ➔SECTION 2. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 6 IS CREATED TO READ AS FOLLOWS:

7 (1) (a) No person shall engage in the business of nonrecourse consumer legal
 8 funding transactions without having first obtained a license from the
 9 commissioner.

10 (b) Licenses shall be issued for a duration as prescribed by the commissioner in
 11 administrative regulation.

12 (2) (a) A license under subsection (1) of this section may be obtained by filing an
 13 application with, and in a form prescribed in administrative regulation by,
 14 the commissioner.

15 (b) An application made under this subsection shall contain information that
 16 allows the commissioner to make an evaluation of the character, fitness,
 17 and financial responsibility of the applicant, including:

18 1. A copy of the company's articles of incorporation, articles of
 19 organization, certificate of limited partnership, or other organizational
 20 documents;

21 2. Proof of a Kentucky registered agent for service of process; and

22 3. Proof of a surety bond or irrevocable letter of credit that is:

23 a. Equal to fifty thousand dollars (\$50,000); and

24 b. Issued by a financial institution authorized by law to transact
 25 business in Kentucky.

26 (c) The commissioner shall issue a license to the applicant if the commissioner
 27 determines that the applicant's business will be operated honestly and fairly

1 within the purposes of this subtitle.

2 (3) The commissioner may deny a license under this section if:

3 (a) The commissioner determines that the character, fitness, or financial
 4 responsibility of the applicant warrants belief that the business will not be
 5 operated honestly or fairly within the purposes of this subtitle; and

6 (b) Proper notice and an opportunity for a hearing has been provided in
 7 accordance with KRS Chapter 13B.

8 (4) (a) A nonrecourse consumer legal funding company may apply to renew a
 9 license issued under this section by filing an application for renewal with,
 10 and in a form prescribed in administrative regulation by, the commissioner.

11 (b) An application to renew a license shall contain current information on all
 12 matters required in the original license application under subsection (2) of
 13 this section.

14 (5) The commissioner may issue a temporary license while an application under
 15 subsection (2) or (4) of this section is pending.

16 (6) Applications filed under subsections (2) and (4) of this section shall be:

17 (a) Accompanied by a fee established by the commissioner in administrative
 18 regulation; and

19 (b) Subject to KRS 61.870 to 61.884.

20 (7) When establishing the fees required under subsection (6)(a) of this section, the
 21 commissioner may establish fees at rates sufficient to cover the costs of the
 22 administration of this subtitle.

23 ➔SECTION 3. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 24 IS CREATED TO READ AS FOLLOWS:

25 Notwithstanding any other law to the contrary, a nonrecourse consumer legal funding
 26 transaction shall not be:

27 (1) Deemed a loan under Kentucky law; or

1 (2) Subject to Section 10 of this Act.

2 →SECTION 4. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
3 IS CREATED TO READ AS FOLLOWS:

4 A nonrecourse consumer legal funding transaction contract shall comply with the
5 following:

6 (1) The contract shall:

7 (a) Be completely filled in and contain on the front page, appropriately headed,
8 and in at least twelve (12) point boldface type, the following disclosures:

- 9 1. The total dollar amount to be funded to the consumer;
10 2. An itemization of one (1) time fees; and
11 3. The total dollar amount to be repaid by the consumer, in six (6) month
12 intervals for thirty-six (36) months, including all fees;

13 (b) Provide that the consumer may cancel the contract within five (5) business
14 days following the consumer's receipt of the funds without penalty or
15 further obligation if the consumer returns the full amount of disbursed
16 funds to the nonrecourse consumer legal funding company by either:

- 17 1. Delivering the nonrecourse consumer legal funding company's
18 uncashed check to any of the company offices within five (5) business
19 days following the disbursement of funds; or
20 2. Mailing, by insured, registered, or certified United States mail, to the
21 address specified in the contract for cancellation, the nonrecourse
22 consumer legal funding company's uncashed check or a registered or
23 certified check or money order within five (5) business days of
24 receiving the funds;

25 (c) Contain the following notice in a clear and conspicuous manner:

26 "CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL
27 THIS CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION

1 **WITHIN FIVE (5) BUSINESS DAYS FROM THE DATE YOU RECEIVE**
2 **FUNDING FROM (insert name of nonrecourse consumer legal funding**
3 **company).";**

4 **(d) Contain the following statement in at least twelve (12) point boldface type:**

5 **"THE NONRECOURSE CONSUMER LEGAL FUNDING COMPANY**
6 **AGREES THAT IT SHALL HAVE NO RIGHT TO AND SHALL NOT**
7 **MAKE ANY DECISIONS WITH RESPECT TO THE CONDUCT OF THE**
8 **UNDERLYING LEGAL CLAIM OR ANY SETTLEMENT OR**
9 **RESOLUTION AND THAT THE RIGHT TO MAKE THOSE DECISIONS**
10 **REMAINS SOLELY WITH YOU AND YOUR ATTORNEY IN THE**
11 **LEGAL CLAIM.";**

12 **(e) Contain an acknowledgement by the consumer that the consumer has**
13 **reviewed the contract in its entirety;**

14 **(f) Contain the following statement in at least twelve (12) point boldface type**
15 **located immediately above the place on the contract where the consumer's**
16 **signature is required:**

17 **"DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT**
18 **COMPLETELY OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE**
19 **ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS**
20 **CONTRACT. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD**
21 **OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE**
22 **CIRCUMSTANCES, YOU MAY WANT TO CONSULT A TAX, PUBLIC**
23 **OR PRIVATE BENEFIT PLANNING, OR FINANCIAL**
24 **PROFESSIONAL. YOU ACKNOWLEDGE THAT YOUR ATTORNEY IN**
25 **THE LEGAL CLAIM HAS PROVIDED NO TAX, PUBLIC OR PRIVATE**
26 **BENEFIT PLANNING, OR FINANCIAL ADVICE REGARDING THIS**
27 **TRANSACTION.";**

1 (g) Contain in plain language, in a box with boldface fifteen (15) point font,
2 stating the following in capitalized letters:

3 "IF THERE IS NO RECOVERY OF ANY MONEY FROM YOUR LEGAL
4 CLAIM OR IF THERE IS NOT ENOUGH MONEY TO PAY THE
5 NONRECOURSE CONSUMER LEGAL FUNDING COMPANY BACK IN
6 FULL, AFTER ATTORNEY FEES AND LEGAL EXPENSES HAVE
7 BEEN DEDUCTED, YOU WILL NOT OWE THE NONRECOURSE
8 CONSUMER LEGAL FUNDING COMPANY ANYTHING IN EXCESS
9 OF YOUR RECOVERY UNLESS YOU HAVE VIOLATED THIS
10 PURCHASE AGREEMENT.";

11 (h) Provide that in the event of litigation involving the contract, and at the
12 election of the consumer, the venue shall be in the county where the
13 consumer resides; and

14 (i) Contain a written acknowledgement by the attorney representing the
15 consumer in the legal claim that the attorney has received a signed copy of
16 the contract;

17 (2) The consumer's repayment of the nonrecourse consumer legal funding
18 transaction shall be disbursed via:

19 (a) The trust account of the attorney representing the consumer in the legal
20 claim; or

21 (b) A settlement fund established to receive the proceeds obtained in the legal
22 claim of the consumer; and

23 (3) The attorney representing the consumer in the legal claim shall not:

24 (a) Be paid or offered commissions, referral fees, or rebates by the nonrecourse
25 consumer legal funding company; or

26 (b) Have a financial interest in the nonrecourse consumer legal funding
27 company offering a nonrecourse consumer legal funding transaction to the

1 consumer.

2 ➔SECTION 5. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
3 IS CREATED TO READ AS FOLLOWS:

4 *A nonrecourse consumer legal funding company shall not:*

- 5 *(1) Pay, or offer to pay, a commission, referral fee, or rebate to any attorney, law*
6 *firm, employee of a law firm, medical provider, or employee of a medical*
7 *provider, for referring a consumer to the company;*
- 8 *(2) Accept any commission, referral fee, or rebate from any attorney, employee of a*
9 *law firm, medical provider, or employee of a medical provider;*
- 10 *(3) Advertise false or intentionally misleading information regarding the company's*
11 *product or services;*
- 12 *(4) Knowingly provide a nonrecourse consumer legal funding transaction to a*
13 *consumer who has previously sold and assigned an amount of the consumer's*
14 *potential proceeds from the legal claim to another nonrecourse consumer legal*
15 *funding company without first purchasing the other nonrecourse consumer legal*
16 *funding company's entire accrued balance unless otherwise agreed in writing by*
17 *the nonrecourse consumer legal funding companies and the consumer;*
- 18 *(5) Knowingly pay or offer to pay court costs, filing fees, or attorney's fees or costs*
19 *during or after the resolution of the legal claim;*
- 20 *(6) (a) Except as provided in paragraph (b) of this subsection, refer a customer or*
21 *potential customer to a specific attorney, law firm, or medical provider, or to*
22 *an employee of a specific attorney, law firm, or medical provider, to further*
23 *an initial nonrecourse consumer legal funding transaction.*
- 24 *(b) A nonrecourse consumer legal funding company may refer a customer or*
25 *potential customer who needs legal representation to a local or state bar*
26 *association referral service;*
- 27 *(7) Fail to promptly supply copies of the contract to the consumer and the*

- 1 consumer's attorney;
 2 (8) Offer or provide legal advice to the consumer regarding the nonrecourse
 3 consumer legal funding transaction or the underlying legal claim;
 4 (9) Report a consumer to a credit reporting agency if insufficient funds remain from
 5 the net proceeds of the legal claim to pay the company; or
 6 (10) Assess fees for any period exceeding thirty-six (36) months from the date of the
 7 nonrecourse consumer legal funding transaction contract.

8 ➔SECTION 6. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 9 IS CREATED TO READ AS FOLLOWS:

- 10 (1) No communication between an attorney and a nonrecourse consumer legal
 11 funding company relating to a nonrecourse consumer legal funding transaction
 12 contract shall limit, waive, or abrogate the scope or nature of any statutory or
 13 common law privilege, including the work-product doctrine and the attorney-
 14 client privilege.
 15 (2) If a dispute arises between a consumer and a nonrecourse consumer legal
 16 funding company concerning a nonrecourse consumer legal funding transaction
 17 contract, the responsibilities of the attorney representing the consumer in the
 18 legal claim shall be no greater than the attorney's responsibilities under the
 19 Kentucky Rules of Professional Conduct.

20 ➔SECTION 7. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 21 IS CREATED TO READ AS FOLLOWS:

- 22 (1) If a nonrecourse consumer legal funding company knowingly violates Section 2,
 23 3, 4, 5, or 6 of this Act, the commissioner may:
 24 (a) Impose a civil penalty not to exceed five thousand dollars (\$5,000) against
 25 the company; and
 26 (b) Revoke the license issued under Section 2 of this Act to the company.
 27 (2) (a) Subject to paragraph (b) of this subsection, the commissioner may suspend,

1 revoke, or refuse to renew a license issued under Section 2 of this Act for:

2 1. Conduct of a nonrecourse consumer legal funding company that
3 would have justified denial of a license under Section 2 of this Act; or

4 2. A violation of Section 2, 3, 4, 5, or 6 of this Act by a nonrecourse
5 consumer legal funding company.

6 (b) The commissioner may suspend, revoke, or refuse to renew a license under
7 this subsection after proper notice and an opportunity for a hearing has
8 been provided in accordance with KRS Chapter 13B.

9 (3) The commissioner may impose a civil penalty not to exceed fifty thousand dollars
10 (\$50,000) against any person that engages in the business of nonrecourse
11 consumer legal funding transactions without a license in violation of subsection
12 (1) of Section 2 of this Act.

13 (4) If a court of competent jurisdiction determines that a nonrecourse legal funding
14 company has willfully committed a deceptive and abusive violation of Section 2,
15 3, 4, 5, or 6 of this Act, the nonrecourse consumer legal funding transaction
16 contract shall be void.

17 ➔SECTION 8. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
18 IS CREATED TO READ AS FOLLOWS:

19 Nothing in this subtitle shall be construed to restrict the exercise of powers or the
20 performance of duties of the Attorney General which he or she is authorized to
21 exercise or perform by law.

22 ➔Section 9. KRS 286.4-410 is amended to read as follows:

23 (1) As used in this subtitle, unless the context requires otherwise:

24 (a) "Applicant" means a person filing an application under this subtitle;

25 (b) "Consumer loan company" means a person licensed under this subtitle to
26 engage in the business of making loans to a consumer for personal, family, or
27 household use in the amount or value of fifteen thousand dollars (\$15,000) or

1 less;

2 (c) "Control" means the power to direct the management or policies of a licensee
3 or applicant, whether through ownership of securities, by contract, or
4 otherwise;

5 (d) "Executive officer" means a natural person holding the title or responsibility
6 of president, vice president, chief executive officer, chief financial officer,
7 chief operational officer, or chief compliance officer;

8 (e) "Licensee" means a person licensed under this subtitle;

9 (f) "Managing principal" means a natural person who meets the requirements of
10 KRS 286.4-450 and actively participates in and is primarily responsible for
11 the operations of a licensee;

12 (g) "Material fact" means a fact that a reasonable person knows, or should know,
13 that could reasonably be expected to influence any decision or action taken by
14 the commissioner under this subtitle;

15 (h) "Nationwide consumer reporting agency" means a consumer reporting agency
16 that compiles and maintains files on consumers on a nationwide basis as
17 defined by Section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. sec.
18 1681a(p); and

19 (i) "Person in control of a licensee or applicant" means, with respect to an
20 applicant or licensee, any of the following:

- 21 1. A director, general partner, or executive officer;
- 22 2. In the case of a limited liability company, a managing member or
23 manager;
- 24 3. Any person who directly or indirectly has the right to vote twenty-five
25 percent (25%) or more of a class of voting securities;
- 26 4. Any person who has the power to sell or direct the sale of twenty-five
27 percent (25%) or more of a class of voting securities;

- 1 5. In the case of a partnership or limited liability company, any person that
 2 has the right to receive twenty-five percent (25%) or more of the capital
 3 upon dissolution; or
 4 6. Any person that exercises control.

5 (2) This subtitle shall not apply to:

- 6 **(a)** Any person doing business under and as permitted by any law of this state or
 7 of the United States relating to banks, savings banks, trust companies, savings
 8 and loan associations, agricultural cooperative associations, credit unions,
 9 industrial loan companies, ~~for~~ licensed pawnbrokers, **or nonrecourse**
 10 **consumer legal funding companies; or**~~;~~
 11 **(b)** ~~[This subtitle does not apply to]~~ The purchase or acquisition, directly or
 12 indirectly, of notes, chattel mortgages, installment or conditional sales
 13 contracts, embodying liens or evidencing title retention arising from the bona
 14 fide sale of goods or services by a seller of the goods or services.

15 ➔Section 10. KRS 360.010 is amended to read as follows:

- 16 (1) Except as provided in KRS 360.040 **and Section 3 of this Act**, the legal rate of
 17 interest is eight percent (8%) per annum, but any party or parties may agree, in
 18 writing, for the payment of interest in excess of that rate as follows:
 19 (a) At a per annum rate not to exceed four percent (4%) in excess of the discount
 20 rate on ninety (90) day commercial paper in effect at the Federal Reserve
 21 Bank in the Federal Reserve District where the transaction is consummated or
 22 nineteen percent (19%), whichever is less, on money due or to become due
 23 upon any contract or other obligation in writing where the original principal
 24 amount is fifteen thousand dollars (\$15,000) or less; and
 25 (b) At any rate on money due or to become due upon any contract or other
 26 obligation in writing where the original principal amount is in excess of
 27 fifteen thousand dollars (\$15,000).

- 1 (2) Any party or parties to a contract or obligation described in subsection (1) of this
2 section, and any party or parties who may assume or guarantee the contract or
3 obligation, shall be bound, subject to KRS 371.190, for the rate of interest as is
4 expressed in the contract, obligation, assumption, or guaranty, and no law of this
5 state prescribing or limiting interest rates shall apply to the agreement or to any
6 charges which pertain thereto or in connection therewith.
- 7 (3) The party entitled to be paid in any written contract or obligation specifying a rate
8 of interest shall be entitled to recover interest after default at the rate of interest as is
9 expressed in the contract or obligation prior to the default and that interest rate shall
10 be the interest rate for the purpose of KRS 360.040(3). If the interest rate expressed
11 in the contract or obligation is a variable rate, the interest rate after default and until
12 judgment shall be calculated and adjusted as provided in the contract or obligation
13 prior to the default.
- 14 (4) The party entitled to be paid in any written contract or obligation not specifying a
15 rate of interest or to which no interest rate otherwise applies shall be entitled to
16 recover interest after default and until judgment at the legal rate of interest.
- 17 (5) Nothing in this section shall be construed to amend, repeal, or abrogate any other
18 law of this state pertaining to any particular types of transactions for which the
19 maximum rate of interest is specifically prescribed or provided.
- 20 (6) Any state or national bank may charge ten dollars (\$10) for any loan negotiated at
21 the bank in this state, even if the legal interest does not amount to that sum.
- 22 ➔Section 11. KRS 372.060 is amended to read as follows:
- 23 (1) Any contract, agreement, or conveyance made in consideration of services to be
24 rendered in the prosecution or defense, or aiding in the prosecution or defense, in or
25 out of court, of any suit, by any person not a party on record in the suit, whereby the
26 thing sued for or in controversy or any part thereof[,] is to be taken, paid, or
27 received for such services or assistance, is void.

1 (2) Nothing in this section shall be construed to prohibit a contract, agreement, or
2 conveyance that is entered by a nonrecourse consumer legal funding company in
3 compliance with Sections 1 to 8 of this Act.