**South Carolina General Assembly**

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**S. 390**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Kimpson

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Introduced in the Senate on February 8, 2017

Currently residing in the Senate Committee on **Banking and Insurance**

Summary: Consumer litigation funding company

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/8/2017 Senate Introduced and read first time ([Senate Journal‑page 9](file:///h:\sj\20170208.docx))

2/8/2017 Senate Referred to Committee on **Banking and Insurance** ([Senate Journal‑page 9](file:///h:\sj\20170208.docx))

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**VERSIONS OF THIS BILL**

[2/8/2017](file:///p:\pprever\2017-18\390_20170208.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 37‑3‑414 SO AS TO REQUIRE A CONSUMER LITIGATION FUNDING COMPANY TO MAKE CERTAIN DISCLOSURES ON A LITIGATION FINANCING CONTRACT, TO PROHIBIT A CONSUMER LITIGATION FUNDING COMPANY FROM TAKING CERTAIN ACTIONS, TO REQUIRE A CONSUMER LITIGATION FUNDING COMPANY TO PROVIDE NOTICE AND DOCUMENTS TO A CONSUMER’S ATTORNEY IF THE CONSUMER IS REPRESENTED BY COUNSEL, AND TO REQUIRE A CONSUMER LITIGATION FUNDING COMPANY TO SUBMIT AN ANNUAL REPORT CONTAINING CERTAIN INFORMATION RELATED TO THE COMPANY’S BUSINESS AND OPERATIONS.

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

SECTION 1. Title 37, Chapter 4 of the 1976 Code is amended by adding:

“Section 37‑3‑414. (A) For the purposes of this section, the term:

(1) ‘Administrator’ has the same meaning as in Section 37‑6‑103.

(2) ‘Consumer’ means a natural person who is seeking or has obtained consumer litigation funding, provided:

(a) the claim is in South Carolina; or

(b) the person resides in or is domiciled in South Carolina, or both.

(3) ‘Consumer litigation funding’ means a transaction, whether recourse or nonrecourse, in which a person makes a consumer loan and in return, the consumer assigns to such person a right to receive an amount of the proceeds of a settlement, insurance payment, judgment, award or verdict the consumer may receive in an action or claim. This term does not include legal services provided on a contingency fee basis, or advanced legal costs, where such services or costs are provided to or on behalf of a consumer by an attorney representing the consumer in the dispute and in accordance with the South Carolina Rules of Professional Conduct.

(4) ‘Consumer litigation funding company’, ‘litigation funding company’, or ‘company’ means a person, wherever located, engaged in the business of offering and providing consumer litigation funding loans.

(5)(a) ‘Net proceeds’ means the amount recovered by a consumer as a result of a legal claim less costs associated with the legal claim or the underlying events giving rise to the legal claim, including:

(i) attorney’s fees, attorney liens, and litigation costs;

(ii) claims or liens for medical services related to the injury for which the claim was brought, owned, and asserted by the provider of such services;

(iii) claims or liens for reimbursement arising from third parties who have paid related medical expenses, including claims from insurers, employers with self‑funded health care plans, and publicly financed health care plans; and

(iv) liens for workers’ compensation benefits paid to the consumer.

(b) The definition of ‘net proceeds’ may not be construed to affect the priority of claims or liens other than those for payments to the consumer litigation funding company under a consumer litigation funding contract subject to this chapter.

(B) Unless otherwise specified, the following disclosures must be typed in at least fourteen‑point, bold font and be placed clearly and conspicuously within the litigation financing contract, as follows:

(1) a description of possible alternatives to a litigation funding contract, including secured or unsecured personal loans, and life insurance policies;

(2) on the front page of the contract, a disclosure of the total amount to be repaid by the consumer if repaid at the following intervals:

(a) six months;

(b) twelve months;

(c) eighteen months;

(d) twenty‑four months;

(e) thirty months; and

(f) thirty‑six months;

(3) in a space in immediate proximity to the area reserved for the consumer’s signature on the contract, in a box with bold fifteen‑point font stating the following in capitalized letters: ‘SOUTH CAROLINA CONSUMERS: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION FOR ANY REASON AND AT ANY TIME WITHIN FIVE BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM [insert name of litigation funding provider].’ The contract also must specify that in order for the cancellation to be effective, the consumer either must return the full amount of disbursed funds to the company by delivering the litigation funding provider’s uncashed check to the provider’s offices in person within five business days of the disbursement of funds or mail a notice of cancellation and include in the mailing a return of the full amount of disbursed funds in the form of the provider’s check, or a registered or certified check or money order, by insured, registered or certified United States mail postmarked within five business days of receiving funds from the litigation funding provider, at the address specified for such cancellation in the contract;

(4) located immediately above the place where the consumer’s signature is required, the contract must include the following in capitalized letters: ‘ CONSUMER NOTICE: DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY FILLED‑IN COPY OF THIS CONTRACT. BEFORE SIGNING BELOW, YOU SHOULD GET THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES, YOU MAY WANT TO SPEAK WITH A TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL PROFESSIONAL.’;

(5) a statement that the company has no right to make any decisions regarding the conduct of the legal claim or any settlement or resolution thereof and that the right to make such decisions remains solely with the consumer and his or her attorney;

(6) any other statements or disclosures considered necessary or appropriate by the administrator;

(7) contracts for a nonrecourse loan also shall contain:

(a) notification that some or all of the funded amount may be taxable; and

(b) the following statement in bold, capitalized letters: ‘IF THERE IS NO RECOVERY OF ANY MONEY FROM YOUR LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO PAY THE LOAN BACK IN FULL, YOU WILL NOT OWE [insert name of litigation funding company] ANYTHING IN EXCESS OF YOUR RECOVERY.’

(C) A consumer litigation funding company may not:

(1) enter into a consumer litigation funding transaction:

(a) for a loan finance charge in excess of ten percent plus the prime rate in effect on January first of the year in which the contract is entered, as reported by the Federal Reserve Board in Federal Reserve Statistical Release H. 15. No company may separate or divide a transaction into two or more transactions with the purpose or with the effect of obtaining a total interest rate in excess of that authorized; or

(b) for a term exceeding three years;

(2) attempt to collect an amount in excess of the consumer’s net proceeds or what is otherwise permitted by law. This amount constitutes excess charges and must be returned to the consumer;

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

(4) accept any 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;

(5) refer a consumer to a specific attorney, law firm, health care provider, or health care facility or any of their employees; provided, if a consumer does not have legal representation, the provider shall refer the consumer to a local or state bar referral service operated by a bar association or a nonprofit organization;

(6) fail to promptly provide copies of contract documents to the consumer or to the consumer’s attorney;

(7) receive any right to make any decisions with respect to the conduct of the consumer’s legal claim or any settlement or resolution. The right to make these decisions shall remain solely with the consumer and his attorney;

(8) require binding arbitration in the event of a dispute between the consumer and the company. A consumer has the right to a trial in the event of a contractual dispute; or

(9) assign a contract, in whole or in part, to a third party or report a consumer to credit reporting agency if insufficient funds remain from the new proceeds to repay a nonrecourse loan.

(D) If a consumer is represented by an independent attorney, the company must notify and provide copies of all closing documents to the attorney no less than five days before the intended closing. The attorney is acting as an attorney and is not accepting a duty as a financial advisor.

(E)(1) Annually, before April sixteenth, each company shall file a report with the administrator in a form prescribed by the administrator. The report must include, at a minimum, the following concerning the company’s business and operations during the preceding calendar year:

(a) the number of contracts entered;

(b) the dollar value of funded amounts to consumers;

(c) the dollar value of charges under each contract, itemized and expressed as an annual percentage rate;

(d) the dollar amount and number of litigation funding transactions in which the realization to the company was as contracted; and

(e) the dollar amount and number of litigation funding transactions in which the realization to the company was less than contracted.

(2) Data collected by the administrator pursuant to this section is confidential and may be released to the public only in composite form.”

SECTION 2. This act takes effect upon approval by the Governor.

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