

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 13 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:*

7 *(a) Has a pending legal claim; and*

8 *(b) Is represented by an attorney at the time the person receives nonrecourse*
9 *consumer legal funding;*

10 *(2) "Funded amount":*

11 *(a) Means the amount of money provided to, or on behalf of, a consumer*
12 *pursuant to a consumer legal funding contract; and*

13 *(b) Does not include charges;*

14 *(3) "Legal claim" means a civil claim or action;*

15 *(4) "Nonrecourse consumer legal funding company" or "company" means a person*
16 *engaged in the business of nonrecourse consumer legal funding transactions;*
17 *and*

18 *(5) "Nonrecourse consumer legal funding transaction" means a transaction in*
19 *which a consumer assigns to another person a contingent right to receive an*
20 *amount of the potential proceeds of any settlement, judgment, award, or verdict*
21 *obtained in a legal claim of the consumer.*

22 ➔SECTION 2. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286
23 IS CREATED TO READ AS FOLLOWS:

24 *This subtitle shall not apply to:*

25 *(1) An immediate family member of a consumer;*

26 *(2) An attorney or accountant who provides services or an advance to a consumer;*

27 *(3) A medical provider that provides medical services on the basis of a lien against*

- 1 any potential litigation recovery;
- 2 (4) A medical factoring company; or
- 3 (5) A financial institution or similar entity:
- 4 (a) That provides financing to a nonrecourse consumer legal funding
- 5 company; or
- 6 (b) To which a nonrecourse consumer legal funding company:
- 7 1. Grants a security interest; or
- 8 2. Transfers any right or interest in a nonrecourse consumer legal
- 9 funding transaction.
- 10 ➔SECTION 3. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286
- 11 IS CREATED TO READ AS FOLLOWS:
- 12 (1) A nonrecourse consumer legal funding company shall not transact business
- 13 without having first obtained a license from the commissioner.
- 14 (2) For a license issued under this section, the commissioner shall promulgate
- 15 administrative regulations to establish the:
- 16 (a) Term during which the license will be valid; and
- 17 (b) Application form to be filed by an applicant.
- 18 (3) An initial application filed under this section shall contain information that
- 19 allows the commissioner to make an evaluation of the character, fitness, and
- 20 financial responsibility of the applicant, including:
- 21 (a) A copy of the applicant's articles of incorporation, articles of organization,
- 22 certificate of limited partnership, or other organizational documents;
- 23 (b) Proof of a Kentucky registered agent for service of process; and
- 24 (c) Proof of a surety bond or irrevocable letter of credit that is:
- 25 1. Equal to fifty thousand dollars (\$50,000); and
- 26 2. Issued by a financial institution authorized by law to transact business
- 27 in Kentucky.

1 (4) The commissioner shall issue an initial license under this section to an applicant
2 if the commissioner determines that the applicant's business will be operated
3 honestly and fairly within the purposes of this subtitle.

4 (5) The commissioner may deny an initial license under this section to an applicant
5 if:

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

9 (b) Proper notice of the denial and an opportunity for a hearing has been
10 provided in accordance with KRS Chapter 13B.

11 (6) (a) A licensee may apply to renew a license issued under this section by filing
12 an application for renewal with the commissioner.

13 (b) An application to renew a license shall contain current information on all
14 matters required in the initial license application under subsection (3) of
15 this section.

16 (7) The commissioner may issue a temporary license while an application under this
17 section is pending.

18 (8) Applications filed under this section shall be:

19 (a) Accompanied by a fee established by the commissioner in an administrative
20 regulation promulgated in accordance with KRS Chapter 13A; and

21 (b) Subject to KRS 61.870 to 61.884.

22 (9) The commissioner may establish fees under subsection (8)(a) of this section at
23 rates sufficient to cover the costs of the administration of this subtitle.

24 ➔SECTION 4. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286
25 IS CREATED TO READ AS FOLLOWS:

26 (1) Notwithstanding any other law to the contrary, a nonrecourse consumer legal
27 funding transaction shall not be:

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

2 (b) Subject to Section 11 of this Act.

3 (2) A nonrecourse consumer legal funding transaction made in compliance with this
4 subtitle does not involve champerty and is not subject to Section 12 of this Act.

5 ➔SECTION 5. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286
6 IS CREATED TO READ AS FOLLOWS:

7 A nonrecourse consumer legal funding transaction contract shall:

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

10 (a) The total dollar amount to be funded to the consumer;

11 (b) An itemization of one (1) time fees; and

12 (c) The total dollar amount to be repaid by the consumer, in six (6) month
13 intervals for thirty-six (36) months, including all fees;

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

18 (a) Delivering the company's uncashed check to any of the company's offices
19 within five (5) business days following the disbursement of funds; or

20 (b) Mailing, by insured, registered, or certified United States mail, to the
21 address specified in the contract for cancellation, the company's uncashed
22 check, or a registered or certified check or money order, within five (5)
23 business days of receiving the funds;

24 (3) Contain the following notice in a clear and conspicuous manner in at least twelve
25 (12) point boldface type:

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

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

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

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

10 (5) Contain an acknowledgement by the consumer that the consumer has reviewed
11 the contract in its entirety;

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

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

25 (7) Contain the following statement in a box with boldface fifteen (15) point font in
26 capitalized letters:

27 "IF THERE IS NO RECOVERY OF ANY MONEY FROM YOUR LEGAL

1 CLAIM OR IF THERE IS NOT ENOUGH MONEY TO PAY THE
2 NONRECOURSE CONSUMER LEGAL FUNDING COMPANY BACK IN
3 FULL, AFTER ATTORNEY FEES AND LEGAL EXPENSES HAVE BEEN
4 DEDUCTED, YOU WILL NOT OWE THE NONRECOURSE CONSUMER
5 LEGAL FUNDING COMPANY ANYTHING IN EXCESS OF YOUR
6 RECOVERY UNLESS YOU HAVE VIOLATED THIS PURCHASE
7 AGREEMENT.";

8 (8) Provide that in the event of litigation involving the contract, and at the election of
9 the consumer, the venue shall be in the county where the consumer resides;

10 (9) If the attorney representing the consumer in the legal claim requests a copy of the
11 contract, contain a written acknowledgement by the attorney that he or she has
12 received a signed copy of the contract;

13 (10) Provide that the consumer's repayment of the nonrecourse consumer legal
14 funding transaction shall be disbursed via:

15 (a) The trust account of the attorney representing the consumer in the legal
16 claim;

17 (b) A settlement fund established to receive the proceeds obtained in the legal
18 claim of the consumer; or

19 (c) Any other funds at the consumer's discretion; and

20 (11) Provide that the attorney representing the consumer in the legal claim shall not:

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

23 (b) Have a financial interest in the nonrecourse consumer legal funding
24 company offering a nonrecourse consumer legal funding transaction to the
25 consumer.

26 ➔SECTION 6. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286
27 IS CREATED TO READ AS FOLLOWS:

1 A nonrecourse consumer legal funding company shall not:

2 (1) Pay, or offer to pay, a commission, referral fee, or rebate to any attorney, law
3 firm, employee of a law firm, medical provider, or employee of a medical
4 provider, for referring a consumer to the company;

5 (2) Accept any commission, referral fee, or rebate from any attorney, law firm,
6 employee of a law firm, medical provider, or employee of a medical provider;

7 (3) Advertise false or intentionally misleading information regarding the company's
8 product or services;

9 (4) Knowingly provide a nonrecourse consumer legal funding transaction to a
10 consumer who has previously sold and assigned an amount of the consumer's
11 potential proceeds from the legal claim to another nonrecourse consumer legal
12 funding company without first purchasing the other nonrecourse consumer legal
13 funding company's entire accrued balance unless otherwise agreed in writing by
14 the nonrecourse consumer legal funding companies and the consumer;

15 (5) Knowingly pay, or offer to pay, court costs, filing fees, or attorney's fees or costs
16 during or after the resolution of the legal claim;

17 (6) (a) Except as provided in paragraph (b) of this subsection, refer a customer or
18 potential customer to a specific attorney, law firm, or medical provider, or to
19 an employee of a specific attorney, law firm, or medical provider, to further
20 an initial nonrecourse consumer legal funding transaction.

21 (b) A nonrecourse consumer legal funding company may refer a customer or
22 potential customer who needs legal representation to a local or state bar
23 association referral service;

24 (7) Fail to promptly supply copies of the nonrecourse consumer legal funding
25 transaction contract to:

26 (a) The consumer; and

27 (b) The attorney representing the consumer in the legal claim, if requested;

1 (8) Offer or provide legal advice to the consumer regarding the nonrecourse
2 consumer legal funding transaction or the underlying legal claim;

3 (9) Report a consumer to a credit reporting agency if insufficient funds remain from
4 the net proceeds of the legal claim to pay the company;

5 (10) Impose charges and fees in excess of:

6 (a) A fee calculated at an annual rate of thirty-six percent (36%) of the funded
7 amount;

8 (b) A servicing charge calculated at an annual rate of ten dollars (\$10) per one
9 hundred dollars (\$100) of the funded amount;

10 (c) A one (1) time charge for obtaining and preparing documents of:

11 1. If the funded amount is less than five thousand dollars (\$5,000), two
12 hundred fifty dollars (\$250); or

13 2. If the funded amount is five thousand dollars (\$5,000) or more, five
14 hundred dollars (\$500); or

15 (11) Assess fees for any period exceeding thirty-six (36) months from the date of the
16 nonrecourse consumer legal funding transaction contract.

17 ➔SECTION 7. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286
18 IS CREATED TO READ AS FOLLOWS:

19 (1) If a nonrecourse consumer legal funding company knowingly violates any
20 provision of this subtitle, the commissioner may:

21 (a) Except as provided in subsection (3) of this section, impose a civil penalty
22 not to exceed five thousand dollars (\$5,000) against the company; and

23 (b) Revoke any license issued to the company under Section 3 of this Act.

24 (2) (a) Subject to paragraph (b) of this subsection, the commissioner may suspend,
25 revoke, or refuse to renew a license issued under Section 3 of this Act for:

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

1 or

2 2. A violation of any provision of this subtitle by the licensee.

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

6 (3) The commissioner may impose a civil penalty not to exceed fifty thousand dollars
7 (\$50,000) against any nonrecourse consumer legal funding company that violates
8 subsection (1) of Section 3 of this Act.

9 (4) A nonrecourse legal funding transaction contract shall be void if a court of
10 competent jurisdiction determines that:

11 (a) The contract was made in violation of any provision of this subtitle; and

12 (b) The violation:

13 1. Was committed by a nonrecourse consumer legal funding company;
14 and

15 2. Involved a deceptive or abusive act by the nonrecourse consumer legal
16 funding company.

17 ➔SECTION 8. A NEW SECTION OF SUBTITLE 13 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 exercise
21 or perform by law.

22 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO
23 READ AS FOLLOWS:

24 (1) As used in this section, the following have the same meaning as in Section 1 of
25 this Act:

26 (a) "Consumer";

27 (b) "Legal claim";

1 (c) "Nonrecourse consumer legal funding company"; and

2 (d) "Nonrecourse consumer legal funding transaction."

3 (2) (a) Within thirty (30) calendar days of receipt of a written request from a party
4 to a legal claim involving a consumer, the consumer shall disclose to the
5 party whether he or she has entered into a nonrecourse consumer legal
6 funding transaction in connection with the legal claim.

7 (b) If a consumer enters into a nonrecourse consumer legal funding
8 transaction after responding to a request under paragraph (a) of this
9 subsection, the consumer shall update his or her response within thirty (30)
10 calendar days from the date the consumer entered into the transaction.

11 (3) No communication between an attorney and a nonrecourse consumer legal
12 funding company relating to a nonrecourse consumer legal funding transaction
13 shall limit, waive, or abrogate the scope or nature of any statutory or common
14 law privilege, including the work-product doctrine and the attorney-client
15 privilege.

16 (4) A nonrecourse consumer legal funding transaction shall not be admissible in
17 evidence.

18 (5) If a dispute arises between a consumer and a nonrecourse consumer legal
19 funding company concerning a nonrecourse consumer legal funding transaction
20 contract, the responsibilities of the attorney representing the consumer in the
21 legal claim shall be no greater than the attorney's responsibilities under the
22 Kentucky Rules of Professional Conduct.

23 ➔Section 10. KRS 286.4-410 is amended to read as follows:

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

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

26 (b) "Consumer loan company" means a person licensed under this subtitle to
27 engage in the business of making loans to a consumer for personal, family, or

1 household use in the amount or value of fifteen thousand dollars (\$15,000) or
2 less;

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

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

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

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

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

16 (h) "Nationwide consumer reporting agency" means a consumer reporting agency
17 that compiles and maintains files on consumers on a nationwide basis as
18 defined by Section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. sec.
19 1681a(p); and

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

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

1 percent (25%) or more of a class of voting securities;

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

5 6. Any person that exercises control.

6 (2) This subtitle shall not apply to:

7 (a) Any person doing business under and as permitted by any law of this state or
8 of the United States relating to banks, savings banks, trust companies, savings
9 and loan associations, agricultural cooperative associations, credit unions,
10 industrial loan companies, ~~for~~ licensed pawnbrokers, or nonrecourse
11 consumer legal funding companies; or ~~or~~

12 (b) ~~[This subtitle does not apply to]~~ The purchase or acquisition, directly or
13 indirectly, of notes, chattel mortgages, installment or conditional sales
14 contracts, embodying liens or evidencing title retention arising from the bona
15 fide sale of goods or services by a seller of the goods or services.

16 ➔Section 11. KRS 360.010 is amended to read as follows:

17 (1) Except as provided in KRS 360.040 and Section 4 of this Act, the legal rate of
18 interest is eight percent (8%) per annum, but any party or parties may agree, in
19 writing, for the payment of interest in excess of that rate as follows:

20 (a) At a per annum rate not to exceed four percent (4%) in excess of the discount
21 rate on ninety (90) day commercial paper in effect at the Federal Reserve
22 Bank in the Federal Reserve District where the transaction is consummated or
23 nineteen percent (19%), whichever is less, on money due or to become due
24 upon any contract or other obligation in writing where the original principal
25 amount is fifteen thousand dollars (\$15,000) or less; and

26 (b) At any rate on money due or to become due upon any contract or other
27 obligation in writing where the original principal amount is in excess of

1 fifteen thousand dollars (\$15,000).

2 (2) Any party or parties to a contract or obligation described in subsection (1) of this
3 section, and any party or parties who may assume or guarantee the contract or
4 obligation, shall be bound, subject to KRS 371.190, for the rate of interest as is
5 expressed in the contract, obligation, assumption, or guaranty, and no law of this
6 state prescribing or limiting interest rates shall apply to the agreement or to any
7 charges which pertain thereto or in connection therewith.

8 (3) The party entitled to be paid in any written contract or obligation specifying a rate
9 of interest shall be entitled to recover interest after default at the rate of interest as is
10 expressed in the contract or obligation prior to the default and that interest rate shall
11 be the interest rate for the purpose of KRS 360.040(3). If the interest rate expressed
12 in the contract or obligation is a variable rate, the interest rate after default and until
13 judgment shall be calculated and adjusted as provided in the contract or obligation
14 prior to the default.

15 (4) The party entitled to be paid in any written contract or obligation not specifying a
16 rate of interest or to which no interest rate otherwise applies shall be entitled to
17 recover interest after default and until judgment at the legal rate of interest.

18 (5) Nothing in this section shall be construed to amend, repeal, or abrogate any other
19 law of this state pertaining to any particular types of transactions for which the
20 maximum rate of interest is specifically prescribed or provided.

21 (6) Any state or national bank may charge ten dollars (\$10) for any loan negotiated at
22 the bank in this state, even if the legal interest does not amount to that sum.

23 ➔Section 12. KRS 372.060 is amended to read as follows:

24 (1) Any contract, agreement, or conveyance made in consideration of services to be
25 rendered in the prosecution or defense, or aiding in the prosecution or defense, in or
26 out of court, of any suit, by any person not a party on record in the suit, whereby the
27 thing sued for or in controversy or any part thereof[,] is to be taken, paid, or

- 1 received for such services or assistance, is void.
- 2 (2) Nothing in this section shall be construed to prohibit a contract, agreement, or
- 3 conveyance that is entered by a nonrecourse consumer legal funding company in
- 4 compliance with Subtitle 13 of KRS Chapter 286.