

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) "Legal claim" means a civil claim or action;*

11 *(3) "Nonrecourse consumer legal funding company" or "company" means a person*
12 *engaged in the business of nonrecourse consumer legal funding transactions;*
13 *and*

14 *(4) "Nonrecourse consumer legal funding transaction" means a transaction in*
15 *which:*

16 *(a) A person provides funding in the amount of five hundred thousand dollars*
17 *(\$500,000) or less to a consumer; and*

18 *(b) The consumer assigns to the person a contingent right to receive an amount*
19 *of the potential proceeds of any settlement, judgment, award, or verdict*
20 *obtained in a legal claim of the consumer.*

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

23 *This subtitle shall not apply to:*

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

25 *(2) An attorney or accountant who provides medical services or an advance to a*
26 *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 person shall not engage in the business of nonrecourse consumer legal funding
- 13 transactions without having first obtained a license from the commissioner under
- 14 this section.
- 15 (2) For a license under this section, the commissioner shall promulgate
- 16 administrative regulations to establish the:
- 17 (a) Term during which the license will be valid; and
- 18 (b) Application form to be filed by an applicant.
- 19 (3) An initial application filed under this section shall contain information that
- 20 allows the commissioner to make an evaluation of the character, fitness, and
- 21 financial responsibility of the applicant, including:
- 22 (a) A copy of the applicant's articles of incorporation, articles of organization,
- 23 certificate of limited partnership, or other organizational documents;
- 24 (b) Proof of a Kentucky registered agent for service of process; and
- 25 (c) Proof of a surety bond or irrevocable letter of credit that is:
- 26 1. Equal to fifty thousand dollars (\$50,000); and
- 27 2. Issued by a financial institution authorized by law to transact business

1 in Kentucky.

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

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

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

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

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

14 (b) An application to renew a license shall contain current information on all
15 matters required in the initial license application under subsection (2) of
16 this section.

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

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

20 (a) Accompanied by a fee established by the commissioner in administrative
21 regulation; and

22 (b) Subject to KRS 61.870 to 61.884.

23 (9) When establishing the fees required under subsection (8)(a) of this section, the
24 commissioner may establish fees at rates sufficient to cover the costs of the
25 administration of this subtitle.

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

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

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

4 (2) Subject to Section 11 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) Contain a written acknowledgement by the attorney representing the consumer in
11 the legal claim that the attorney has received a signed copy of the contract;

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

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

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

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

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

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

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

26 A nonrecourse consumer legal funding company shall not:

27 (1) Pay, or offer to pay, a commission, referral fee, or rebate to any attorney, law

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

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

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

4 (b) A servicing charge calculated at an annual rate of seven percent (7%) of the
5 funded amount;

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

7 1. Two hundred fifty dollars (\$250) if the funded amount is less than five
8 thousand dollars (\$5,000); or

9 2. Five hundred dollars (\$500) if the funded amount is five thousand
10 dollars (\$5,000) or more; or

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

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

15 (1) No communication between an attorney and a nonrecourse consumer legal
16 funding company relating to a nonrecourse consumer legal funding transaction
17 contract shall limit, waive, or abrogate the scope or nature of any statutory or
18 common law privilege, including the work-product doctrine and the attorney-
19 client privilege.

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

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

27 ➔SECTION 8. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286

1 IS CREATED TO READ AS FOLLOWS:

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

4 (a) Impose a civil penalty not to exceed five thousand dollars (\$5,000) against
5 the company; and

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

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

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

11 2. A violation of any provision of this subtitle by a nonrecourse
12 consumer legal funding company.

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

16 (3) The commissioner may impose a civil penalty not to exceed fifty thousand dollars
17 (\$50,000) against any person that engages in the business of nonrecourse
18 consumer legal funding transactions without a license in violation of subsection
19 (1) of Section 3 of this Act.

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

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

23 (b) The violation:

24 1. Was committed by a nonrecourse consumer legal funding company;
25 and

26 2. Involved a deceptive or abusive act by the nonrecourse legal funding
27 company.

1 ➔ SECTION 9. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286
2 IS CREATED TO READ AS FOLLOWS:

3 *Nothing in this subtitle shall be construed to restrict the exercise of powers or the*
4 *performance of duties of the Attorney General which he or she is authorized to exercise*
5 *or perform by law.*

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

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

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

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

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

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

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

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

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

26 (h) "Nationwide consumer reporting agency" means a consumer reporting agency
27 that compiles and maintains files on consumers on a nationwide basis as

1 defined by Section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. sec.
2 1681a(p); and

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

- 5 1. A director, general partner, or executive officer;
- 6 2. In the case of a limited liability company, a managing member or
7 manager;
- 8 3. Any person who directly or indirectly has the right to vote twenty-five
9 percent (25%) or more of a class of voting securities;
- 10 4. Any person who has the power to sell or direct the sale of twenty-five
11 percent (25%) or more of a class of voting securities;
- 12 5. In the case of a partnership or limited liability company, any person that
13 has the right to receive twenty-five percent (25%) or more of the capital
14 upon dissolution; or
- 15 6. Any person that exercises control.

16 (2) This subtitle shall not apply to:

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

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

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

27 (1) Except as provided in KRS 360.040 **and Section 4 of this Act**, the legal rate of

1 interest is eight percent (8%) per annum, but any party or parties may agree, in
2 writing, for the payment of interest in excess of that rate as follows:

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

9 (b) At any rate on money due or to become due upon any contract or other
10 obligation in writing where the original principal amount is in excess of
11 fifteen thousand dollars (\$15,000).

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

18 (3) The party entitled to be paid in any written contract or obligation specifying a rate
19 of interest shall be entitled to recover interest after default at the rate of interest as is
20 expressed in the contract or obligation prior to the default and that interest rate shall
21 be the interest rate for the purpose of KRS 360.040(3). If the interest rate expressed
22 in the contract or obligation is a variable rate, the interest rate after default and until
23 judgment shall be calculated and adjusted as provided in the contract or obligation
24 prior to the default.

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

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

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

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

7 (1) Any contract, agreement, or conveyance made in consideration of services to be
8 rendered in the prosecution or defense, or aiding in the prosecution or defense, in or
9 out of court, of any suit, by any person not a party on record in the suit, whereby the
10 thing sued for or in controversy or any part thereof[,] is to be taken, paid, or
11 received for such services or assistance, is void.

12 (2) Nothing in this section shall be construed to prohibit a contract, agreement, or
13 conveyance that is entered by a nonrecourse consumer legal funding company in
14 compliance with Subtitle 13 of KRS Chapter 286.