Reprinted
February 16, 2011

SENATE BILL No. 97

DIGEST OF SB 97 (Updated February 15, 2011 3:53 pm - DI 106)

Citations Affected: IC 24-10.

Synopsis: Funding of lawsuits. Establishes a procedure by which a company may provide a loan to the plaintiff in an action in exchange for the contingent right to receive a part of the potential proceeds of the action. Provides that a violation of the conditions under which a loan may be offered to a plaintiff constitutes a deceptive act subject to enforcement by the attorney general.

Effective: July 1, 2011.

Head, Waltz, Randolph

January 5, 2011, read first time and referred to Committee on Judiciary.
January 27, 2011, amended, reported favorably — Do Pass.
February 15, 2011, read second time, amended, ordered engrossed.

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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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SENATE BILL No. 97

A BILL FOR AN ACT to amend the Indiana Code concerning commercial law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 24-10 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

ARTICLE 10. CONSUMER LEGAL FUNDING

Chapter 1. Definitions

Sec. 1. As used in this article, "consumer" means a natural person who:

(1) resides or is domiciled in Indiana; or

(2) elects to enter into a consumer legal funding transaction under this article, whether the election is made in person, over the Internet, by facsimile, or by any other electronic means, in Indiana.

Sec. 2. As used in this article, "consumer legal funding" means the funding provided to a consumer by a consumer legal funding company in a consumer legal funding transaction.

Sec. 3. (a) As used in this article, "consumer legal funding company" means a person or entity that enters into a consumer

legal funding transaction with a consumer.

(b) The term includes the following:

(1) An affiliate or subsidiary of a consumer legal funding company.

(2) An entity or person who buys a whole or partial interest in a consumer legal funding.

(3) A person who acts as an agent to provide a consumer legal funding from a third party for a fee.

(4) A person who acts as an agent for a third party in providing a consumer legal funding for a fee, regardless of whether approval or acceptance by the third party is necessary to create a legal obligation for the third party.

(5) Any other person or entity that is determined by the attorney general to be engaged in a transaction that is in substance:

(A) a disguised consumer legal funding; or

(B) a subterfuge for the purpose of avoiding this chapter.

(c) The term does not include the following:

(1) A bank, lender, financing entity, or other special purpose entity:

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

(B) to which a consumer legal funding company grants a security interest or transfers any rights or interest in a consumer legal funding.

(2) An attorney or accountant who provides services to a consumer.

Sec. 4. As used in this article, "consumer legal funding contract" means a written agreement between a consumer and a consumer legal funding company providing for a consumer legal funding transaction.

Sec. 5. As used in this article, "consumer legal funding transaction" means a transaction in which:

(1) a consumer legal funding company provides consumer legal funding to a consumer; and

(2) the consumer assigns to the consumer legal funding company the contingent right to receive a part of the proceeds of the settlement, insurance payment, or award of damages obtained in the consumer's legal action.

Sec. 6. As used in this article, "funding amount" means the dollar amount of funds provided to the consumer by the consumer legal funding company after the execution of the consumer legal

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funding contract as consideration for the assignment of a contingent right to receive a part of the proceeds of the settlement, insurance payment, or award of damages obtained in the legal action.

Sec. 7. As used in this article, "funding date" means the date on which the funded amount is given to the consumer by the consumer legal funding company.

Sec. 8. (a) As used in this article, "legal action" means:

(1) a bona fide civil action in which damages may be awarded; or

(2) a cause of action or legal claim upon which a civil action or statutory claim described in subdivision (1) may be based.

(b) The term includes:

(1) any settlement or negotiations toward settlement of a civil action described in subsection (a)(1); or

(2) any agreement or negotiations toward an agreement under which a civil action based upon a cause of action described in subsection (a)(2) would not be initiated.

Sec. 9. As used in this article, "proceeds" means the funds from a settlement, insurance payment, or award of damages obtained in the consumer's legal action from which a payment to the consumer legal funding company may be made after deductions are made in accordance with this chapter.

Sec. 10. As used in this article, "resolution date" means the date on which:

(1) the repayment of the funding amount; and

(2) the payment of agreed upon fees under the consumer legal funding contact;

is received by the consumer legal funding company.

Chapter 2. Consumer Legal Funding

Sec. 1. (a) A consumer legal funding company may not enter into a consumer legal funding transaction with a consumer with respect to a particular legal action unless the consumer legal funding company is registered under section 8 of this chapter.

(b) A consumer legal funding contract entered into in violation of this section is void.

Sec. 2. A consumer legal funding contract must be in writing and must comply with the following requirements:

(1) The contract must contain on the front page, each with a separate heading and in at least 12 point bold type, the following disclosures:

(A) The total funding amount paid to the consumer.

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(B) An itemization of one (1) time fees.

(C) The total dollar amount of the proceeds assigned by the consumer to the consumer legal funding company, set forth in one hundred eighty (180) day intervals for one thousand eighty (1,080) days beginning one hundred eighty (180) days after the funding date.

(D) A disclosure of the semiannual fee for each one hundred eighty (180) day interval. This fee must be expressed as a percentage number.

(2) The contract must provide that the consumer may cancel the contract not later than thirty (30) business days following the funding date, without penalty or further obligation. The contract must contain the following notice written in at least 12 point bold type: "Consumer's right to cancellation: You may cancel this contract without penalty or further obligation within thirty (30) business days after the funding date.".

(3) The contract may also specify that in order for the cancellation described in subdivision (2) to be effective the consumer must either return to the consumer legal funding company the total funding amount by:

(A) delivering the consumer legal funding company's uncashed check to the company's offices in person not later than thirty (30) business days after receipt of the funding amount;

(B) sending a notice of cancellation via registered or certified mail and including in the mailing a return of the total funding amount in the form of the consumer legal funding company's uncashed check not later than thirty (30) business days after receipt of the funding amount; or

(C) sending a registered, certified, or cashier's check or money order, by insured, registered, or certified United States mail, postmarked not later than thirty (30) business days after receipt of the funding amount, to the address specified in the contract for cancellation.

(4) The contract must contain the following statements in at least 12 point bold type:

(A) "(Insert name of the consumer legal funding company) agrees that it has no right to and will not make any decisions with respect to the conduct of the legal action or any settlement or resolution of the legal action, and that the right to make those decisions remains solely with you and your attorney in the legal action. (Insert name of the

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consumer legal funding company) further agrees that it has no right to pursue the legal action on your behalf.".

(B) "(Insert name of the consumer legal funding company) agrees that it may accept only:

(i) an assignment of a contingent right to receive a portion of the potential proceeds from the settlement, insurance payment, or award of damages obtained in the legal action;

(ii) the contracted return of the funding amount; and

(iii) any agreed upon fees. Any agreed upon fees paid to (insert name of the consumer legal funding company) may not be determined as a percentage of your recovery from the legal action but shall be set as a contractually determined amount based upon intervals of time from the funding date through the resolution date. (Insert name of the consumer legal funding company) is not accepting an assignment of your legal action.".

(5) All contracts with the consumer must contain the following statement, in plain language in a box with 15 point bold type, in all capital letters, stating the following:

"THE FUNDING AMOUNT AND AGREED UPON FEES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL ACTION, AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL ACTION. YOU WILL NOT OWE (INSERT NAME OF THE CONSUMER LEGAL FUNDING COMPANY) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL ACTION.".

(6) The contract must contain the following statement in at least 12 point bold type located immediately above the space where the consumer's signature is required:

"Do not sign this agreement before you read it completely or if it contains any blank spaces. You are entitled to a completely filled in copy of this agreement. Before you sign this agreement you should obtain the advice of an attorney. Depending on the circumstances, you may want to consult a tax, public, or private benefit planning or financial professional. You further understand and agree that the funds you receive from (insert name of the consumer legal funding company) may not be used to pay for or applied to the payment of attorney's fees or litigation costs related to your legal action.".

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(7) The executed contract must contain a written acknowledgment by the consumer that the consumer has reviewed the contract in its entirety.

(8) The consumer legal funding company shall provide the consumer's attorney, if the consumer is represented by an attorney, with a written notification of the consumer legal funding provided to the consumer within three (3) business days of the funding date by way of postal mail, courier service, facsimile, or other means of service evidencing proof of delivery, unless there is a written acknowledgment by the attorney representing the consumer in the legal action as to the terms of the contract.

(9) The contracted return of the funding amount, plus any agreed upon fees assigned to the consumer legal funding company on the resolution date, may not be determined as a percentage of the recovery from the legal action but must be fixed as a contractually determined amount based upon intervals of time from the funding date through the resolution date.

Sec. 3. Any:

(1) attorney's fee in the underlying legal action;

(2) Medicare, Medicaid, or statutory health care provider liens arising from the consumer's underlying legal action and required to be applied as against the proceeds of consumer's underlying legal action; or

(3) written voluntary subordination agreement;

take priority over any claim of the consumer legal funding company. All other liens or security interests take priority by normal operation of law.

Sec. 4. Each consumer legal funding company shall adhere to the following:

(1) The consumer legal funding company may not pay or offer to pay any compensation to any attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees for referring a consumer to the consumer legal funding company. The consumer legal funding company agrees not to accept any compensation from any attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees, other than the funding amount and any agreed upon fees the consumer assigned to the consumer legal funding company out of the potential proceeds of the legal action.

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(2) The consumer legal funding company may not advertise false or intentionally misleading information regarding its product or services.

(3) The consumer legal funding company may not provide funding to a consumer who has previously sold and assigned an amount of the potential proceeds of the consumer's legal action to another consumer legal funding company without first purchasing that consumer legal funding company's entire accrued balance, unless otherwise agreed to in writing by the consumer and all consumer legal funding companies which provided the consumer legal funding to the consumer.

(4) The consumer legal funding company may not offer single premium credit life, disability, or unemployment insurance that will be financed through a consumer legal funding transaction.

(5) For a non-English speaking consumer, upon the written request of the consumer or the consumer's attorney:

(A) the terms of the contract required by this chapter must be translated in writing into the language in which oral negotiations were conducted between the consumer legal funding company and the consumer;

(B) the consumer shall sign the translated document containing the translated principal terms and initial each page; and

(C) the translator or attorney shall sign an affirmation confirming that the translated terms have been presented to the consumer in the consumer's primary language and acknowledged by the consumer.

(6) The consumer legal funding company may not knowingly enter into a consumer legal funding contract with a consumer if the consumer's legal action is a pending class action lawsuit at the time of the funding. If a legal action in which a plaintiff has received consumer legal funding becomes a class action matter, no further funding is permitted.

(7) An attorney or law firm may not have a financial interest in the consumer legal funding company providing consumer legal funding to a consumer represented by that attorney or law firm.

(8) Communication between a consumer's attorney and a consumer legal funding company relating to the consumer's consumer legal funding transaction may not limit, waive or abrogate any statutory or common law privilege, including

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the attorney client privilege or the work product doctrine.

(9) The return of the funding amount to the consumer legal funding company, plus any agreed upon fees, may be rendered only out of the proceeds, if any, of the realized settlement, insurance payment, or award of damages the consumer may receive in the consumer's legal action.

(10) If the proceeds of the legal action are insufficient to return the full funding amount plus the agreed upon fees to the consumer legal funding company from the proceeds of the legal action, the consumer legal funding company is entitled only to be paid from the proceeds available from the settlement, insurance payment, or award of damages. However, this subdivision does not apply if the consumer or consumer's attorney is found to have committed fraud against the consumer legal funding company.

(11) The consumer legal funding company has no authority to make any decision with respect to the conduct of the litigation of the legal action or any settlement or resolution of the action. The right to make those decisions remains solely with the consumer and the consumer's attorney representing the consumer in the legal action. The consumer legal funding company has no right to pursue the legal action on the consumer's behalf.

(12) The consumer legal funding company may accept:

(A) an assignment of a contingent right to receive a portion of the potential proceeds;

(B) the contracted return of the funding amount; and

(C) any agreed upon fees. Any agreed upon fees to the consumer legal funding company may not be determined as a percentage of the consumer's recovery from the legal action but must be set as a contractually determined amount based upon intervals of time from the funding date through the resolution date. The consumer legal funding company may not accept an assignment of the consumer's legal action.

(13) The contact between the consumer legal funding company and the consumer is subject to the following limitations:

(A) The consumer legal funding company may not contact the consumer after the funding date in order to influence any decisions with respect to the conduct of the legal action or any settlement or resolution of the legal action.

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However, the consumer legal funding company may contact the consumer or the consumer's attorney to obtain the status of the legal action and may contact the consumer after the funding date to obtain updated attorney contact information.

(B) After the resolution date, a consumer legal funding company may not seek to collect additional funds or threaten civil action for any deficiency.

Sec. 5. A consumer legal funding transaction that complies with this chapter is not:

(1) an investment contract;

(2) a loan; or

(3) subject to any other statutory or regulatory provisions governing loans or investment contracts.

Sec. 6. To the extent that this chapter conflicts with any other law, this chapter supersedes the other law for the purposes of regulating consumer legal funding in Indiana.

Sec. 7. (a) A violation of this chapter is a deceptive act that is actionable by the attorney general.

(b) The attorney general may bring an action under this article to obtain any or all of the following:

(1) An injunction to enjoin future violations of this chapter.

(2) A civil penalty of not more than ten thousand dollars ($10,000) per deceptive act.

(3) The attorney general's reasonable costs in:

(A) the investigation of the deceptive act; and

(B) maintaining the action.

Sec. 8. (a) A consumer legal funding company shall register annually with the attorney general.

(b) The fee to register or renew a registration as a consumer legal funding company is two hundred dollars ($200). After the attorney general has deducted its expenses, the fee shall be deposited in the violent crime victims compensation fund established under IC 5-2-6.1-40.

(c) A person who registers or renews a registration as a consumer legal funding company must include the following:

(1) The name and address of the consumer legal funding company.

(2) Any other information relevant to the attorney general's duties under section 7 of this chapter that is required by the attorney general.

(d) A person who makes a material misstatement in a consumer

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legal funding company registration statement commits false registration as a consumer legal funding company, a Class A infraction.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 97, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 97 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 1.

SENATE MOTION

Madam President: I move that Senate Bill 97 be amended to read as follows:

Page 3, line 31, delete "A consumer legal funding company may not enter".

Page 3, delete lines 32 through 36.

Page 3, line 37, delete "(b)".

Page 3, run in lines 31 through 37.

Page 3, line 41, delete "(c)" and insert "**(b)**".

Page 6, line 11, after "attorney" insert "**, if the consumer is represented by an attorney,**".

(Reference is to SB 97 as printed January 28, 2011.)

YOUNG R MICHAEL

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