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**H.B. 312**

# LITIGATION FUNDING PRACTICES ACT

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James A. Dunnigan**

Senate Sponsor: _____

**LONG TITLE**

**General Description:**

This bill regulates litigation funding practices under the Division of Consumer Protection within the Commerce Department.

**Highlighted Provisions:**

This bill:

- defines terms;
- requires a litigation funding provider to register with the Division of Consumer Protection;
- establishes operating requirements for a litigation funding provider;
- establishes requirements for litigation funding agreements;
- requires a litigation funding provider to make certain disclosures;
- grants rulemaking authority to the Division of Consumer Protection;
- requires the Division of Consumer Protection to administer and enforce the Litigation Funding Practices Act;
- addresses enforceability of a litigation funding agreement; and
- establishes an interest cap on litigation funding.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

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**Utah Code Sections Affected:**

AMENDS:

13-2-1, as last amended by Laws of Utah 2019, Chapters 115, 423 and last amended by Coordination Clause, Laws of Utah 2019, Chapter 115

ENACTS:

13-57-101, Utah Code Annotated 1953

13-57-102, Utah Code Annotated 1953

13-57-201, Utah Code Annotated 1953

13-57-202, Utah Code Annotated 1953

13-57-301, Utah Code Annotated 1953

13-57-302, Utah Code Annotated 1953

13-57-401, Utah Code Annotated 1953

13-57-402, Utah Code Annotated 1953

13-57-403, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **13-2-1** is amended to read:

**13-2-1. Consumer protection division established -- Functions.**

(1) There is established within the Department of Commerce the Division of Consumer Protection.

(2) The division shall administer and enforce the following:

(a) Chapter 5, Unfair Practices Act;

(b) Chapter 10a, Music Licensing Practices Act;

(c) Chapter 11, Utah Consumer Sales Practices Act;

(d) Chapter 15, Business Opportunity Disclosure Act;

(e) Chapter 20, New Motor Vehicle Warranties Act;

(f) Chapter 21, Credit Services Organizations Act;

(g) Chapter 22, Charitable Solicitations Act;

(h) Chapter 23, Health Spa Services Protection Act;

(i) Chapter 25a, Telephone and Facsimile Solicitation Act;

(j) Chapter 26, Telephone Fraud Prevention Act;

(k) Chapter 28, Prize Notices Regulation Act;

(l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(m) Chapter 34, Utah Postsecondary Proprietary School Act;

(n) Chapter 34a, Utah Postsecondary School State Authorization Act;

(o) Chapter 39, Child Protection Registry;

(p) Chapter 41, Price Controls During Emergencies Act;

(q) Chapter 42, Uniform Debt-Management Services Act;

(r) Chapter 49, Immigration Consultants Registration Act;

(s) Chapter 51, Transportation Network Company Registration Act;

(t) Chapter 52, Residential Solar Energy Disclosure Act;

(u) Chapter 53, Residential, Vocational and Life Skills Program Act;

(v) Chapter 54, Ticket Website Sales Act; [~~and~~]

(w) Chapter 56, Ticket Transferability Act[~~.~~]; and

(x) Chapter 57, Litigation Funding Practices Act.

Section 2. Section **13-57-101** is enacted to read:

## CHAPTER 57. LITIGATION FUNDING PRACTICES ACT

### Part 1. General Provisions

**13-57-101. Title.**

This chapter is known as the "Litigation Funding Practices Act."

Section 3. Section **13-57-102** is enacted to read:

**13-57-102. Definitions.**

As used in this chapter:

(1) "Consumer" means a person who:

(a) resides in this state; and

(b) has or may have a pending legal action in this state.

(2) "Director" means the director of the Division of Consumer Protection.

(3) "Division" means the Division of Consumer Protection of the Department of Commerce established in Section 13-2-1.

(4) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(5) "Legal funding" means a payment to a consumer in exchange for the right to

receive an amount out of the potential proceeds of any realized settlement, judgment, award, or verdict the consumer may receive in a civil legal action.

(6) "Litigation funding agreement" means an agreement between a consumer and a litigation funding provider under which the litigation funding provider provides legal funding to the consumer.

(7) (a) "Litigation funding provider" means a person that provides legal funding to a consumer.

(b) "Litigation funding provider" does not include:

(i) an immediate family member of a consumer; or

(ii) an accountant who provides accounting services to a consumer.

Section 4. Section **13-57-201** is enacted to read:

**Part 2. Litigation Funding Providers**

**13-57-201. Litigation funding provider registration.**

(1) A person may not act as a litigation funding provider in this state without registering with the division.

(2) To register as a litigation funding provider, a person shall submit to the division an application for registration:

(a) in the manner the division determines; and

(b) that includes:

(i) proof of a surety bond in an amount of at least $50,000;

(ii) an application fee in an amount determined by the division in accordance with Sections 13-1-2 and 63J-1-504;

(iii) all information the division requires to evaluate the character and fitness:

(A) of the person; or

(B) if the person is an entity, the character and fitness of each officer and director of the entity; and

(iv) anything else the division requires as established in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 5. Section **13-57-202** is enacted to read:

**13-57-202. Litigation funding provider operations.**

(1) A litigation funding provider may only provide legal funding to a consumer if the

litigation funding provider and the consumer enter into a litigation funding agreement that meets the requirements of Section 13-57-301.

(2) Before executing a litigation funding agreement, a litigation funding provider shall file with the division a template of the litigation funding agreement.

(3) A litigation funding provider may not:

(a) pay or offer to pay a commission, referral fee, or any other form of consideration to the following for referring a consumer to the litigation funding provider:

(i) an attorney authorized to practice law;

(ii) a health care provider; or

(iii) an employee, independent contractor, or other person affiliated with a person described in Subsection (3)(a)(i) or (ii);

(b) accept a commission, referral fee, or any other form of consideration from a person described in Subsection (3)(a) for referring a consumer to the person;

(c) refer a consumer or potential consumer to a person described in Subsection (3)(a), unless:

(i) the consumer or potential consumer needs legal representation; and

(ii) the referral is to a local or state bar association referral service;

(d) intentionally advertise materially false or misleading information about the litigation funding provider's services;

(e) fail to promptly give a copy of an executed litigation funding agreement to the attorney who represents the consumer in the legal action for which the litigation funding provider provides legal funding;

(f) make or attempt to influence a decision relating to the conduct, settlement, or resolution of a legal action for which the litigation funding provider provides legal funding; or

(g) knowingly pay or offer to pay court costs, filing fees, or attorney fees using legal funding.

(4) A litigation funding provider shall provide a consumer who enters a litigation funding agreement a copy of the executed litigation funding agreement.

Section 6. Section **13-57-301** is enacted to read:

**Part 3. Litigation Funding Agreements**

**13-57-301. Litigation funding agreements.**

(1) A litigation funding agreement shall:

(a) be in writing;

(b) contain a right of rescission permitting the consumer to cancel the agreement without penalty or further obligation, if the consumer returns to the litigation funding provider the full amount of the disbursed funds:

(i) within five business days after the day on which the consumer and litigation funding provider enter the agreement; and

(ii) (A) in person by delivering the provider's uncashed check to the provider's office; or

(B) by insured, certified, or registered United States mail to the address specified in the agreement in the form of the provider's uncashed check or a registered or certified check or money order;

(c) contain the disclosures described in Section 13-57-302;

(d) include the amount of money the litigation funding provider provides to the consumer;

(e) include an itemization of one-time charges;

(f) include the total of any realized settlement, judgment, award, or verdict the consumer assigns to the litigation funding provider, including the funded amount and all charges;

(g) require a consumer to make a payment to the litigation funding provider in a predetermined amount based on periodic intervals, from the day on which the agreement is executed to the day on which the legal action concludes;

(h) include a payment schedule that:

(i) includes the funded amount and charges; and

(ii) lists all dates and the amount due at the end of each six-month period:

(A) beginning after the day on which the consumer receives funds; and

(B) ending the day on which all obligations under the contract are satisfied; and

(i) contain written acknowledgment from the consumer's attorney in the legal action that:

(i) the attorney has reviewed the agreement;

(ii) all costs and fees are disclosed in the agreement, including the amount to be paid

by the consumer;

(iii) the attorney is being paid per a written fee agreement;

(iv) the attorney will disburse all proceeds of the legal action through the attorney's trust account; and

(v) the attorney is following the consumer's written instruction regarding the legal funding;

(j) include a provision that the agreement includes no charge or fee other than the charges and fees disclosed in the agreement; and

(k) include a provision that:

(i) if there are no available proceeds from the legal action, the consumer will owe the litigation funding provider nothing; and

(ii) the litigation funding provider's total charges will be paid only to the extent there are available proceeds from the legal action.

(2) A litigation funding agreement may not require a consumer to make a payment to the litigation funding provider in an amount determined as a percentage of the recovery from the legal action.

Section 7. Section **13-57-302** is enacted to read:

**13-57-302. Required disclosures.**

A litigation funding provider shall disclose in a litigation funding agreement:

(1) that the litigation funding provider may not participate in deciding whether, when, or the amount for which a legal action is settled;

(2) that the litigation funding provider may not interfere with the independent professional judgment of the attorney handling the legal action or any settlement of the legal action;

(3) the following statement in substantially the following form, in all capital letters and at least a 12-point type: "THE FUNDED AMOUNT AND AGREED-TO CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM, AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE LITIGATION FUNDING PROVIDER HERE) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED A MATERIAL TERM OF THIS

AGREEMENT OR YOU HAVE COMMITTED FRAUD AGAINST THE LITIGATION FUNDING PROVIDER.";

(4) in accordance with Section 13-57-301, the following statement in substantially the following form and at least a 12-point type: "CONSUMER'S RIGHT TO CANCELLATION: You may cancel this agreement without penalty or further obligation within five business days after the day on which you enter into this agreement with the litigation funding provider if you either: 1. return to the litigation funding provider the full amount of the disbursed funds by delivering the provider's uncashed check to the provider's office in person; or 2. send, by insured, certified, or registered United States mail, to the litigation funding provider at the address specified in this agreement, a notice of cancellation and include in the mailing a return of the full amount of disbursed funds in the form of the litigation funding provider's uncashed check or a registered or certified check or money order"; and

(5) immediately above the line for the consumer's signature, the following statement in at least a 12-point type: "Do not sign this agreement before you read it completely or if it contains any blank spaces. You are entitled to a completed copy of the agreement. Before you sign this agreement, you should obtain the advice of an attorney. Depending on your circumstances, you may want to consult a tax, benefits planning, or financial professional."

Section 8. Section **13-57-401** is enacted to read:

**Part 4. Miscellaneous**

**13-57-401. Rulemaking.**

The division shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(1) establish an application process for a person to register with the division as a litigation funding provider, in accordance with Section 13-57-201;

(2) establish a filing process for a litigation funding provider to file a litigation funding agreement with the division; and

(3) carry out the provisions of this chapter.

Section 9. Section **13-57-402** is enacted to read:

**13-57-402. Enforceability.**

If a litigation funding provider violates a provision of this chapter, a litigation funding agreement associated with the violation is unenforceable by the litigation funding provider or

any successor-in-interest to the litigation funding agreement.

Section 10. Section **13-57-403** is enacted to read:

**13-57-403. Interest rate limit.**

(1) A litigation funding provider may not charge a consumer:

(a) an annual interest rate of more than 25% of the original amount of money provided to the consumer as legal funding for a legal action, calculated as described in Subsection (2); or

(b) the interest rate described in Subsection (1)(a) more than one time each year with regard to a single legal action, regardless of the number of legal funding agreements the litigation funding provider enters into with the consumer regarding the legal action.

(2) For purposes of Subsection (1)(a), a litigation funding provider shall determine the original amount of money provided to a consumer as legal funding for a legal action by:

(a) adding all amounts the consumer originally owed, directly or indirectly, to the litigation funding provider under the litigation funding agreement; and

(b) subtracting from the sum of Subsection (2)(a) the sum of all payments the consumer has made to the litigation funding provider under the litigation funding agreement.