

Amendment No. 908

Assembly Amendment to Senate Bill No. 432 Second Reprint (BDR 52-1146)

Proposed by: Assemblyman Yeager

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of S.B. 432 R2 (§§ 30, 36.2, 36.4, 36.6, 38.95).

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red-strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

SJQ/AAK



Date: 5/23/2019

S.B. No. 432—Revises provisions relating to certain financial transactions.
(BDR 52-1146)



SENATE BILL NO. 432—COMMITTEE ON JUDICIARY

MARCH 25, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to certain financial transactions.
(BDR 52-1146)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to financial services; imposing certain requirements on certain transactions in which a person provides money to a consumer who has a pending legal action in exchange for certain proceeds from that legal action; requiring certain persons who engage in such transactions to obtain a license from the Commissioner of Financial Institutions; imposing certain requirements on such licensees; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 2-38.9 of this bill establish provisions relating to transactions in which a person provides a consumer who has a pending legal claim in this State with money ***in an amount that does not exceed \$500,000*** and the consumer assigns to that person the right to receive an amount of the potential proceeds of a settlement, judgment, award or verdict obtained as a result of the legal action of the consumer. **Section 10** of this bill designates this type of transaction as a “consumer litigation funding transaction.” **Section 8** of this bill designates the provider of money to a consumer in such a transaction as a “consumer litigation funding company.”

Sections 18, 19 and 19.3 of this bill generally require a contract to enter into a consumer litigation funding transaction to meet certain requirements and contain certain disclosures relating to the amount of fees the consumer will be charged and the rights of the consumer with regard to the consumer litigation funding transaction.

Section 20 of this bill prohibits a consumer litigation funding company from: (1) paying or accepting certain referral fees or commissions; (2) referring a consumer to engage certain professionals; (3) advertising false information; (4) entering into a consumer litigation funding transaction with a consumer who has already received money from another company, with certain exceptions; (5) making decisions with regard to the legal claim of the consumer; and (6) paying certain legal fees of the consumer with money from the consumer funding transaction.

Section 21 of this bill requires the amount the consumer is required to pay the consumer litigation funding company in exchange for the money received by the consumer to be set as a predetermined amount. **Section 21** prohibits a company from charging fees that exceed a rate of 40 percent annually.

Section 25 of this bill prohibits a person from engaging in business as a consumer litigation funding company without a license issued by the Commissioner of Financial Institutions. **Section 25** provides that a person who engages in such business without a license

is guilty of a misdemeanor. **Sections 26-32** of this bill set forth the application process to obtain such a license and set forth certain requirements an applicant must meet.

Sections 35 and 36 of this bill require a person who has obtained a license to engage in business as a consumer litigation funding company to maintain assets of at least \$50,000 and to keep certain records. **Section 36.2** of this bill requires the Commissioner to make an annual examination of a licensee. **Sections 38.3 and 38.6** of this bill authorize the Commissioner to impose fines and suspend or revoke the license of a licensee for certain violations of the provisions of this bill. **Section 38.2** of this bill authorizes the Commissioner to take certain additional actions against a licensee or certain other persons for violations of the provisions of this bill. **Section 38** of this bill requires each licensee to submit to the Commissioner an annual report with certain information regarding the activities of the licensee in the preceding year and to make the information contained in the report available to the public not later than 1 year after the report is submitted. **Section 38.9** of this bill authorizes: (1) a person to file a complaint against a licensee; and (2) the Commissioner to investigate and hold hearings concerning such a complaint. **Sections 36.4, 36.6 and 38.95** of this bill require a licensee to pay certain assessments.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 52 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 38.9, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 16, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Advertise” means the commercial use of any medium, including, without limitation, radio, television, the Internet or a similar medium of communication, by a consumer litigation funding company for the purpose of inducing a consumer to enter into a consumer litigation funding transaction.*

Sec. 3.5. *“Applicant” means a person who applies to the Commissioner to obtain a license to engage in the business of a consumer litigation funding company pursuant to the provisions of this chapter. The term does not include a parent company or affiliate of such a person.*

Sec. 4. *“Charges” means the amount of money to be paid to a consumer litigation funding company by a consumer above the funded amount provided by the consumer litigation company to the consumer. The term includes, without limitation, administrative fees, origination fees, underwriting fees or other fees, however denominated. The term does not include a document preparation fee.*

Sec. 5. *“Commissioner” means the Commissioner of Financial Institutions.*

Sec. 6. *“Consumer” means a natural person who:*

1. Resides or is domiciled in this State; and

2. Has a pending legal claim.

Sec. 7. *“Consumer litigation funding” means the money provided directly or indirectly to a consumer by a consumer litigation funding company in a consumer litigation funding transaction.*

Sec. 8. *1. “Consumer litigation funding company” or “company” means a person that enters into a consumer litigation funding transaction with a consumer.*

2. The term does not include:

(a) An immediate family member of a consumer;

(b) An attorney or accountant who provides services to a consumer;

(c) A medical provider that provides medical services on the basis of a lien against any potential litigation recovery;

(d) A medical factoring company; or

(e) A financial institution or similar entity:

(1) That provides financing to a consumer litigation funding company; or

(2) To which a consumer litigation funding company grants a security interest or transfers any right or interest in a consumer litigation funding transaction.

Sec. 9. "Consumer litigation funding contract" means a written agreement between a consumer and a consumer litigation funding company that provides for a consumer litigation funding transaction.

Sec. 10. "Consumer litigation funding transaction" means a nonrecourse transaction in which:

1. A consumer litigation funding company provides consumer litigation funding to a consumer ~~for~~ in an amount that does not exceed \$500,000; and

2. The consumer assigns to the company a contingent right to receive an amount of the potential proceeds of a settlement, judgment, award or verdict obtained in the legal claim of the consumer.

Sec. 10.5. "Document preparation fee" means a one-time fee per legal claim, not to exceed \$500, assessed for document preparation services related to the preparation of a consumer litigation funding contract.

Sec. 11. "Funded amount" means the amount of consumer litigation funding provided to or on behalf of a consumer in a consumer litigation funding transaction. The term does not include charges.

Sec. 12. "Funding date" means the date on which a company transfers to a consumer the funded amount of consumer litigation funding.

Sec. 13. "Immediate family member" means a parent, sibling, child by blood, adoption or marriage, spouse, grandparent or grandchild.

Sec. 14. "Legal claim" means a bona fide civil claim or cause of action.

Sec. 15. "Licensee" means a person who has been issued one or more licenses to engage in the business of a consumer litigation funding company.

Sec. 16. "Resolution date" means the date upon which:

1. A consumer, or a person on behalf of a consumer, delivers to a consumer litigation company an amount of money equivalent to the funded amount plus any agreed upon charges; or

2. The legal claim of a consumer is lost or abandoned.

Sec. 17. The Commissioner may adopt regulations for the administration and enforcement of this chapter, in addition to and not inconsistent with this chapter.

Sec. 18. 1. A consumer litigation funding contract must:

(a) Be written in a clear and comprehensible language that is understandable to an ordinary layperson.

(b) Be filled out completely when presented to the consumer for signature.

(c) Contain a provision advising a consumer of the right to cancel the contract. Such a provision must provide that the consumer may cancel the contract without penalty or further obligation if, within 5 business days after the funding date, the consumer:

(1) Delivers in person to the consumer litigation funding company, at the address specified in the contract, the uncashed check issued by the consumer litigation funding company or the full amount of money that was disbursed to the consumer by the consumer litigation funding company; or

(2) Mails, by insured, certified or registered mail, to the address specified in the contract, a notice of cancellation and includes in such mailing the uncashed check issued by the consumer litigation funding company or a return of the full amount of money that was disbursed to the consumer by the consumer litigation funding company.

(d) Contain the initials of the consumer on each page.

(e) Contain a statement that the consumer is not required to pay any other fees or charges other than what is agreed to and disclosed within the contract.

(f) If the consumer seeks more than one consumer litigation funding contract with the same company, contain a disclosure providing the cumulative amount due from the consumer for all consumer litigation funding transactions, including, without limitation, all fees and charges under all consumer litigation funding contracts if repayment is made any time after the contracts are executed.

(g) Contain a statement of the maximum amount the consumer may be obligated to pay under the consumer litigation funding contract other than in the case of material breach, fraud or misrepresentation by the consumer.

(h) Contain clear, conspicuous and accurate details of how charges, including, without limitation, any applicable fees, are incurred or accrued.

(i) Contain a statement that the consumer litigation funding contract is governed by the laws of the State of Nevada.

2. A consumer litigation contract must contain a written acknowledgment by the attorney retained by the consumer in the legal claim of the consumer attesting to the following:

(a) To the best of the knowledge of the attorney, the funded amount and any charges and applicable fees relating to the consumer litigation funding have been disclosed to the consumer.

(b) The attorney is being paid on a contingency basis pursuant to a written fee agreement.

(c) All proceeds of the legal claim will be disbursed via the trust account of the attorney or a settlement fund established to receive the proceeds of the legal claim on behalf of the consumer.

(d) The attorney is following the written irrevocable instructions of the consumer with regard to the consumer litigation funding transaction.

(e) The attorney is obligated to disburse money from the legal claim and take any other steps to ensure that the terms of the consumer litigation funding contract are fulfilled.

(f) The attorney has not received a referral fee or other consideration from the consumer litigation funding company in connection with the consumer litigation funding, nor will the attorney receive such fee or other consideration in the future.

(g) The attorney has not provided advice related to taxes, benefits or any other financial matter regarding this transaction.

3. A consumer litigation funding contract that does not contain the written acknowledgment required by paragraph (c) of subsection 2 is void. If the acknowledgment is completed, the contract shall remain valid if the consumer terminates the representation of the initial attorney or retains a new attorney with respect to the legal claim of the consumer.

Sec. 19. A consumer litigation funding contract must contain the disclosures specified in this section, which shall constitute material terms of the contract. Except as otherwise provided in this section, the disclosure shall be typed in at least 12-point bold type or font and be placed clearly and conspicuously within the contract, as follows:

1 1. On the front page of the contract under appropriate headings, language
2 specifying:

3 (a) The funded amount to be paid to the consumer by the consumer litigation
4 funding company;

5 (b) An itemization of one-time charges and fees;

6 (c) The maximum total amount to be assigned by the consumer to the
7 company, including, without limitation, the funded amount and all charges and
8 fees; and

9 (d) A payment schedule to include the funded amount, charges and fees,
10 listing all dates and the amount due at the end of each 180-day period from the
11 funding date, until the date the maximum amount is due to the company by the
12 consumer to satisfy the amount due under the consumer litigation funding
13 contract.

14 2. Within the body of the contract, substantially the following form:

15
16 *Consumer's right to cancellation: You may cancel this contract without*
17 *penalty or further obligation within five (5) business days after the*
18 *funding date if you either:*

19 1. Deliver in person to the consumer litigation funding company at
20 the address specified in the contract the uncashed check that was issued
21 by the consumer litigation funding company or the full amount of money
22 that was disbursed to you by the company; or

23 2. Mail, by insured, certified or registered mail, to the consumer
24 litigation funding company at the address specified in the contract a
25 notice of cancellation and include in such mailing the uncashed check
26 issued by the consumer litigation funding company or a return of the full
27 amount of money that was disbursed to you by the company.

28
29 3. Within the body of the contract, in substantially the following form:

30
31 *The consumer litigation funding company shall not have a role in*
32 *deciding whether, when and how much the legal claim is settled for. The*
33 *consumer and the attorney of the consumer shall notify the company of*
34 *the outcome of the legal claim by settlement or adjudication before the*
35 *resolution date. The company may seek updated information about the*
36 *status of the legal claim. The company shall not interfere with the*
37 *independent professional judgment of the attorney in the handling of the*
38 *legal claim or any settlement thereof.*

39
40 4. Within the body of the contract, in all capital letters and in at least a 12-
41 point bold type or font contained within a box:

42
43 **THE FUNDED AMOUNT AND AGREED UPON CHARGES SHALL**
44 **BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM,**
45 **AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE**
46 **AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL**
47 **NOT OWE (INSERT NAME OF THE CONSUMER LITIGATION**
48 **FUNDING COMPANY) ANYTHING IF THERE ARE NO PROCEEDS**
49 **FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED ANY**
50 **MATERIAL TERM OF THIS CONTRACT OR YOU HAVE**
51 **KNOWINGLY PROVIDED FALSE INFORMATION OR COMMITTED**
52 **FRAUD AGAINST (INSERT NAME OF THE CONSUMER**
53 **LITIGATION FUNDING COMPANY).**

5. *Located immediately above the place on the contract where the signature of the consumer is required, in 12-point bold type or font:*

Do not sign this contract before you read it completely. Do not sign this contract if it contains any blank spaces. You are entitled to a completely filled-in copy of the contract before you sign this contract. You should obtain the advice of an attorney. Depending on the circumstances, you may wish to consult a tax, public or private benefit planning or financial professional. You acknowledge that your attorney in the legal claim has provided no tax, public or private benefit planning or financial advice regarding this transaction. You further acknowledge that your attorney has explained the terms and conditions of the consumer litigation funding contract.

6. *Within the body of the contract, in substantially the following form:*

A copy of the executed contract must be promptly delivered to the attorney for the consumer.

Sec. 19.3. 1. *A consumer litigation funding contract must include a written disclosure, signed by the consumer that is typed in at least a 12-point font.*

2. *The disclosure described in subsection 1 must be separate from the consumer litigation funding contract described in section 19 of this act.*

3. *The disclosure described in subsection 1 must include, without limitation:*

(a) *A summary of all applicable charges and fees;*

(b) *The full cost of the consumer litigation funding transaction, written in bold font;*

(c) *The full amount of the consumer litigation funding;*

(d) *A statement that the attorney retained by the consumer in the legal claim of the consumer is being retained on a contingency basis pursuant to a written fee agreement;*

(e) *A statement that the consumer is fully informed and aware that all proceeds of the legal claim of the consumer will be disbursed via the trust account of the retained attorney or a settlement fund established to receive the proceeds of the legal claim on behalf of the consumer;*

(f) *A statement that the retained attorney has not received and will not receive a referral fee or other consideration from the consumer litigation funding company in connection with the consumer litigation funding transaction; and*

(g) *An acknowledgment, signed by the consumer, that the consumer was fully informed and aware of the charges and fees and the full cost of the consumer litigation funding transaction at the time of the execution of the consumer litigation funding contract.*

Sec. 19.7. *If a consumer cancels a consumer litigation funding contract pursuant to section 18 of this act, the consumer litigation funding company shall promptly forward notice of the cancellation to the attorney or law firm retained by the consumer in the legal claim of the consumer.*

Sec. 20. 1. *A consumer litigation funding company shall not:*

(a) *Pay or offer to pay a commission, referral fee or other form of consideration to an attorney, law firm, medical provider, chiropractor or physical therapist, or any employee of such a person, for referring a consumer to the company.*

1 (b) Accept a commission, referral fee or other form of consideration from an
2 attorney, law firm, medical provider, chiropractor or physical therapist, or any
3 employee of such a person.

4 (c) Intentionally advertise materially false or misleading information
5 regarding the products or services of the consumer litigation funding company.

6 (d) Refer a consumer to engage a specific attorney, law firm, medical
7 provider, chiropractor or physical therapist, or any employee of such a person. A
8 company may refer a consumer in search of legal representation to a lawyer
9 referral service operated, sponsored or approved by the State Bar of Nevada or a
10 local bar association.

11 (e) Except as otherwise provided in subsection 2, knowingly provide
12 consumer litigation funding to a consumer who has previously assigned or sold a
13 portion of the right of the consumer to proceeds from his or her legal claim to
14 another company without first making payment to or purchasing the entire
15 funded amount and charges of that company, unless a lesser amount is otherwise
16 agreed to in writing by the consumer litigation funding companies.

17 (f) Receive any right to, or make, any decisions with respect to the conduct,
18 settlement or resolution of the legal claim of a consumer.

19 (g) Knowingly pay or offer to pay for court costs, filing fees or attorney's fees
20 during or after the resolution of the legal claim of a consumer using money from
21 a consumer litigation funding transaction.

22 2. Two or more consumer litigation funding companies may agree to
23 contemporaneously provide consumer litigation funding to a consumer if the
24 consumer and the attorney of the consumer agree to the arrangement in writing.

25 3. An attorney or law firm retained by the consumer in connection with his
26 or her legal claim shall not have a financial interest in the consumer litigation
27 funding company offering consumer litigation funding to that consumer.

28 4. An attorney who has referred the consumer to his or her retained
29 attorney or law firm shall not have a financial interest in the consumer litigation
30 funding company offering consumer litigation funding to that consumer.

31 5. A consumer litigation funding company shall not use any form of
32 consumer litigation funding contract in this State unless the contract has been
33 filed with the Commissioner in accordance with procedures for filing prescribed
34 by the Commissioner.

35 **Sec. 21.** 1. A consumer litigation funding company shall require the
36 amount to be paid to the company under a consumer litigation funding contract
37 to be set as a predetermined amount based upon intervals of time from the
38 funding date though the resolution date. The amount must not exceed the funded
39 amount plus charges not to exceed a rate of 40 percent annually.

40 2. The amount to be paid to a company under a consumer litigation funding
41 contract must not be determined as a percentage of the recovery of the legal claim
42 of a consumer.

43 **Sec. 22.** 1. If a court of competent jurisdiction determines that a
44 consumer litigation funding company has willfully committed a deceptive and
45 abusive violation of this chapter with regard to a specific consumer litigation
46 funding transaction, the contract shall be void.

47 2. Nothing in this chapter shall be construed to restrict the exercise of
48 powers or the performance of the duties of the Attorney General which he or she
49 is authorized to exercise or perform by law.

50 **Sec. 23.** 1. The contingent right to receive an amount of the potential
51 proceeds of a legal claim is assignable by a consumer.

52 2. Nothing in this chapter shall be construed to cause any consumer
53 litigation funding transaction conforming to this chapter to be deemed a loan or

to be subject to any of the provisions of law governing loans. A consumer litigation funding transaction that complies with this chapter is not subject to any other statutory or regulatory provisions governing loans or investment contracts. If there is a conflict between the provisions of this chapter and any other statute, the provisions of this chapter control.

3. Only a lien imposed by an attorney pursuant to NRS 18.015 that is related to the legal claim of the consumer or a lien imposed by Medicare that is related to the legal claim of a consumer takes priority over any lien imposed by a consumer litigation funding company. All other liens take priority by normal operation of law.

Sec. 24. Any communication between the attorney of a consumer in a legal claim and a consumer litigation funding company as it pertains to a consumer litigation funding transaction is subject to the attorney-client privilege, including, without limitation, the work-product doctrine.

Sec. 25. 1. A person shall not engage in the business of a consumer litigation funding company in this State without having first obtained a license from the Commissioner pursuant to this chapter.

2. For the purpose of this section, a person is "engaged in the business of a consumer litigation funding company" if the person:

(a) Solicits or engages in consumer litigation funding transactions in this State; or

(b) Is located in this State and solicits or engages in consumer litigation funding transactions outside of this State.

3. Any person and the several members, officers, directors, agents and employees thereof who violate or participate in the violation of this section are guilty of a misdemeanor.

Sec. 25.5. The provisions of section 25 of this act shall apply to any person who seeks to evade its application by any device, subterfuge or pretense whatever, including, but not thereby limiting the generality of the foregoing:

1. The loan, forbearance, use or sale of credit (as guarantor, surety, endorser, comaker or otherwise), money, goods, or things in action.

2. The use of collateral or related sales or purchases of goods or services, or agreements to sell or purchase, whether real or pretended.

3. Receiving or charging compensation for goods or services, whether or not sold, delivered or provided.

4. The real or pretended negotiation, arrangement or procurement of a loan through any use or activity of a third person, whether real or fictitious.

Sec. 26. 1. A person who wishes to obtain a license from the Commissioner to engage in the business of a consumer litigation funding company shall submit an application to the Commissioner. The application must be made in writing, under oath and on a form prescribed by the Commissioner. The application must include:

(a) If the applicant is a natural person, the name and address of the applicant.

(b) If the applicant is a business entity, the name and address of each:

(1) Partner;

(2) Officer;

(3) Director;

(4) Manager or member who acts in a managerial capacity; and

(5) Registered agent,

↳ of the business entity.

1 (c) Such other information, as the Commissioner determines necessary,
2 concerning the financial responsibility, background, experience and activities of
3 the applicant and its:

4 (1) Partners;

5 (2) Officers;

6 (3) Directors; and

7 (4) Managers or members who act in a managerial capacity.

8 (d) The address of each location at which the applicant proposes to do
9 business under the license.

10 2. A person may apply for a license for an office or other place of business
11 located outside this State from which the applicant will conduct business in this
12 State if the applicant submits with the application for a license a statement signed
13 by the applicant which states that the applicant agrees to:

14 (a) Make available at a location within this State the books, accounts, papers,
15 records and files of the office or place of business located outside this State to the
16 Commissioner or a representative of the Commissioner; or

17 (b) Pay the reasonable expenses for travel, meals and lodging of the
18 Commissioner or a representative of the Commissioner incurred during any
19 investigation or examination made at the office or place of business located
20 outside this State.

21 ➤ The person must be allowed to choose between the provisions of paragraph (a)
22 or (b) in complying with the provisions of this subsection.

23 3. The Commissioner shall consider an application to be withdrawn if the
24 Commissioner has not received all information and fees required to complete the
25 application within 6 months after the date the application is first submitted to the
26 Commissioner or within such later period as the Commissioner determines in
27 accordance with any existing policies of joint regulatory partners. If an
28 application is deemed to be withdrawn pursuant to this subsection or if an
29 applicant otherwise withdraws an application, the Commissioner shall not issue a
30 license to the applicant unless the applicant submits a new application and pays
31 any required fees.

32 Sec. 27. 1. In addition to any other requirements set forth in this chapter,
33 each applicant must submit:

34 (a) Proof satisfactory to the Commissioner that the applicant:

35 (1) Has a good reputation for honesty, trustworthiness and integrity and
36 is competent to transact the business for which the applicant seeks to be licensed
37 in a manner which protects the interests of the general public.

38 (2) Has not made a false statement of material fact on the application for
39 the license.

40 (3) Has not committed any of the acts specified in subsection 2.

41 (4) Has not had a license issued pursuant to this chapter suspended or
42 revoked within the 10 years immediately preceding the date of the application.

43 (5) Has not been convicted or, or entered a plea of nolo contendere to, a
44 felony or any crime involving fraud, misrepresentation or moral turpitude.

45 (6) If the applicant is a natural person:

46 (I) Is at least 21 years of age; and

47 (II) Is a citizen of the United States or lawfully entitled to remain and
48 work in the United States.

49 (b) A complete set of his or her fingerprints and written permission
50 authorizing the Division of Financial Institutions of the Department of Business
51 and Industry to forward the fingerprints to the Central Repository for Nevada
52 Records of Criminal History for submission to the Federal Bureau of
53 Investigation for its report.

2. In addition to any other lawful reasons, the Commissioner may refuse to issue a license to an applicant if the applicant:

(a) Has committed or participated in any act for which, if committed or done by a holder of a license, would be grounds for the suspension or revocation of the license.

(b) Has previously been refused a license pursuant to this chapter or has had such a license suspended or revoked.

(c) Has participated in any act which was a basis for the denial or revocation of a license pursuant to this chapter.

(d) Has falsified any of the information submitted to the Commissioner in support of the application for a license.

Sec. 28. 1. In addition to any other requirements, a natural person who applies for a license pursuant to this chapter shall:

(a) Include the social security number of the applicant in the application submitted to the Commissioner; and

(b) Submit to the Commissioner the statement prescribed by the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The Commissioner shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the registration; or

(b) A separate form prescribed by the Commissioner.

3. A license as a consumer litigation funding company may not be issued or renewed by the Commissioner if the applicant:

(a) Fails to submit the statement required pursuant to subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Commissioner shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

Sec. 29. 1. If the Commissioner receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is licensed as a consumer litigation funding company, the Commissioner shall deem the license issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the Commissioner receives a letter issued to the licensee by the district attorney or other public agency pursuant to NRS 425.550 stating that the licensee has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

2. The Commissioner shall reinstate the license of a licensee that has been suspended by a district court pursuant to NRS 425.540 if the Commissioner receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose license was suspended stating that the person

1 whose license was suspended has complied with the subpoena or warrant or has
2 satisfied the arrearage pursuant to NRS 425.560.

3 **Sec. 30. 1.** An application submitted to the Commissioner pursuant to
4 section 26 of this act must be accompanied by:

5 (a) A nonrefundable fee of not more than \$1,000 for the application and
6 survey;

7 (b) Any additional expenses incurred in the process of investigation as the
8 Commissioner deems necessary; and

9 (c) A fee of not less than \$200 and not more than \$1,000.

10 2. An applicant shall, at the time of filing an application, file with the
11 Commissioner, a surety bond payable to the State of Nevada and satisfactory to
12 the Commissioner in an amount not to exceed \$50,000. The terms of the bond
13 must run concurrent with the period of time during which the license will be in
14 effect. The bond must provide that the applicant will faithfully conform to and
15 abide by the provisions of this chapter and to all regulations lawfully made by the
16 Commissioner under this chapter and to any such person any and all amounts of
17 money that may become due or owing to this State or to such person from the
18 applicant under this chapter during the period for which the bond is given.

19 3. Each bond must be in a form satisfactory to the Commissioner, issued by
20 a bonding company authorized to do business in this State and must secure the
21 faithful performance of the obligations of the licensee respecting the provision of
22 the services of the consumer litigation funding company.

23 4. A licensee shall, within 10 days after the commencement of any action or
24 notice of entry of any judgment against the licensee by any creditor or claimant
25 arising out of business regulated by this chapter give notice thereof to the
26 Commissioner by certified mail with details sufficient to identify the action or
27 judgment. The surety shall, within 10 days after it pays any claim or judgment to
28 a creditor or claimant, give notice thereof to the Commissioner by certified mail
29 with details sufficient to identify the creditor or claimant and the claim or
30 judgment so paid.

31 5. The liability of the surety on a bond is not affected by any
32 misrepresentation, breach of warranty, failure to pay a premium or other act or
33 omission of the licensee, or by any insolvency or bankruptcy of the licensee.

34 6. The liability of the surety continues as to all transactions entered into in
35 good faith by the creditors and claimants with the agents of the licensee within 30
36 days after the earlier of:

37 (a) The death of the licensee or the dissolution or liquidation of his or her
38 business; or

39 (b) The termination of the bond.

40 7. A licensee or his or her surety shall not cancel or alter a bond except
41 after notice to the Commissioner by certified mail. The cancellation or alteration
42 is not effective until 10 days after receipt of the notice by the Commissioner. A
43 cancellation or alteration does not affect any liability incurred or accrued on the
44 bond before the expiration of the 30-day period designated in subsection 6.

45 8. The Commissioner shall adopt regulations establishing the amount of the
46 fees and the bond required pursuant to this section. All money received by the
47 Commissioner pursuant to this section must be placed in the Investigative
48 Account created by NRS 232.545.

49 **Sec. 31. 1.** Upon the filing of the application and the payment of the fees,
50 the Commissioner shall investigate the facts concerning the application and the
51 requirements provided for in this chapter.

52 2. The Commissioner may hold a hearing on the application at a time not
53 less than 30 days after the application was filed or not more than 60 days after

1 that date. The hearing must be held in the Office of the Commissioner or such
2 other place as the Commissioner may designate. Notice in writing of the hearing
3 must be sent to the applicant and to any licensee to which a notice of the
4 application has been given and to such other person as the Commissioner may
5 see fit, at least 10 days before the date set for the hearing.

6 3. The Commissioner shall make his or her order granting or denying the
7 application within 10 days after the date of the closing of the hearing, unless the
8 period is extended by written agreement between the applicant and the
9 Commissioner.

10 4. An applicant is entitled to a hearing on the question of the qualifications
11 of the applicant for licensure upon written request to the Commissioner if:

12 (a) The Commissioner has notified the applicant in writing that the
13 application has been denied; or

14 (b) The Commissioner has not issued a license within 60 days after the
15 application for a license was filed.

16 5. A request for a hearing may not be made more than 15 days after the
17 Commissioner has mailed a written notice to the applicant that the application
18 has been denied and stating in substance the findings of the Commissioner
19 supporting the denial of the application.

20 6. The Commissioner may adopt regulations to carry out the provisions of
21 this section.

22 **Sec. 32. If the Commissioner finds:**

23 1. That the financial responsibility, experience, character and general
24 fitness of the applicant are such as to command the confidence of the public and
25 to warrant belief that the business will be operated lawfully, honestly, fairly and
26 efficiently, within the purposes of this chapter;

27 2. That the applicant has complied with the provisions of this chapter; and

28 3. That the applicant has available for the operation of the business liquid
29 assets of at least \$50,000,

30 he or she shall thereupon enter an order granting the application, and file his
31 or her findings of fact together with the transcript of any hearing held under this
32 chapter, and forthwith issue and deliver a license to the applicant.

33 **Sec. 33. 1.** A licensee who wishes to change the address of an office or
34 other place of business for which he or she has a license pursuant to the
35 provisions of this chapter must, at least 10 days before changing the address, give
36 written notice of the proposed change to the Commissioner.

37 2. Upon receipt of the proposed change of address pursuant to subsection 1,
38 the Commissioner shall provide written approval of the change and the date of
39 the approval.

40 3. If a licensee fails to provide notice as required pursuant to subsection 1,
41 the Commissioner may impose a fine in an amount not to exceed \$1,000.

42 **Sec. 34.** A license issued pursuant to this chapter is not transferable or
43 assignable.

44 **Sec. 35.** Every licensee shall maintain assets of at least \$50,000 either used
45 or readily available for use in the conduct of the business of each licensed office.

46 **Sec. 35.5.** A licensee who has an office or other place of business located
47 outside of this State shall file with the Commissioner the information required
48 pursuant to NRS 77.310 and continuously maintain a registered agent for service
49 of legal process. Such agent must be an attorney who is licensed to practice law
50 in this State and who has an office located in this State.

51 **Sec. 36. 1.** Each licensee shall keep and use in his or her business such
52 books and accounting records as are in accord with sound and accepted
53 accounting practices.

2. Each licensee shall maintain a separate record or ledger card for the account of each borrower and shall set forth separately the amount of cash advance and the total amount of interest and charges, but such a record may set forth precomputed declining balances based on the scheduled payments, without a separation of principal and charges.

3. Each licensee shall preserve all such books and accounting records for at least 2 years after making the final entry therein.

4. Each licensee who operates an office or other place of business outside this State that is licensed pursuant to this chapter shall:

(a) Make available at a location within this State the books, accounts, papers, records and files of the office or place of business located outside this State to the Commissioner or a representative of the Commissioner; or

(b) Pay the reasonable expenses for travel, meals and lodging of the Commissioner or a representative of the Commissioner incurred during any investigation or examination made at the office or place of business located outside this State.

Sec. 36.2. 1. At least once each year, the Commissioner or his or her authorized representative shall make an examination of the place of business of each licensee and of the transactions, books, papers and records of each licensee that pertain to the business licensed under this chapter.

2. For each examination conducted pursuant to subsection 1, the Commissioner shall charge and collect from the licensee a fee for conducting the examination and preparing and typing the report of the examination at the rate established and, if applicable, adjusted pursuant to NRS 658.101.

Sec. 36.4. Each licensee shall pay the assessment levied pursuant to NRS 658.055 and cooperate fully with the audits and examinations performed pursuant thereto.

Sec. 36.6. In addition to any other fee provided by this chapter, the Commissioner shall assess and collect from each licensee the reasonable cost of auditing the books and records of a licensee.

Sec. 37. A licensee shall not conduct the business of a consumer litigation funding company under any name or at a place other than stated in the license. Nothing in this section shall be construed to prohibit:

1. Consumer litigation funding transactions by mail; or

2. Accommodations for a consumer when necessitated by hours of employment, sickness or other emergency situations.

Sec. 38. 1. On or before January 31 of each year, a licensee shall submit a report to the Commissioner containing:

(a) The number of consumer litigation funding transactions in which the company engaged in this State for the immediately preceding year;

(b) A summation of the total funded amount of the consumer litigation funding transactions in which the company engaged in this State for the immediately preceding year, expressed in dollars; and

(c) The annual percentage charged to each consumer when repayment was made.

2. If a licensee operated more than one office or provides consumer litigation funding to persons outside of the State, the licensee shall submit a composite report of all consumer litigation funding transactions in which the company engaged for the immediately preceding year.

3. The Commissioner shall make the information contained in the report available to the public upon request in a manner which maintains the confidentiality of the name of each company and consumer.

1 **Sec. 38.2.** 1. *The Commissioner may enforce this chapter and regulations*
2 *adopted pursuant thereto by taking one or more of the following actions:*

3 (a) *Ordering a licensee or a director, employee or other agent of a licensee to*
4 *cease and desist from any violations;*

5 (b) *Ordering a licensee or a director, employee or other agent of a licensee*
6 *who has caused a violation to correct the violation, including, without limitation,*
7 *making restitution of money to a person aggrieved by a violation;*

8 (c) *Imposing on a licensee or a director, employee or other agent of a*
9 *licensee who has caused a violation a civil penalty not to exceed \$5,000 for each*
10 *violation; or*

11 (d) *Suspending or revoking the license of a licensee in accordance with*
12 *section 38.6 of this act.*

13 2. *If a person violates or knowingly authorizes, directs or aids in the*
14 *violation of a final order issued pursuant to paragraph (a) or (b) of subsection 1,*
15 *the Commissioner may impose a civil penalty not to exceed \$10,000 for each*
16 *violation.*

17 3. *The Commissioner may maintain an action to enforce this chapter in any*
18 *county in this State.*

19 4. *The Commissioner may recover the reasonable costs of enforcing*
20 *subsections 1, 2 and 3, including, without limitation, attorney's fees, based on the*
21 *hours reasonably expended and the hourly rates for attorneys of comparable*
22 *experience in the community.*

23 5. *In determining the amount of a civil penalty imposed pursuant to*
24 *subsection 1 or 2, the Commissioner shall consider the seriousness of the*
25 *violation, the good faith of the violator, any previous violations by the violator*
26 *and any other factor the Commissioner considers relevant to the determination of*
27 *a civil penalty.*

28 **Sec. 38.3.** 1. *The Commissioner may impose an administrative fine of not*
29 *more than \$50,000 upon a person who, without a license, conducts any business*
30 *or activity for which a license is required pursuant to the provisions of this*
31 *chapter.*

32 2. *The Commissioner shall afford to any person fined pursuant to*
33 *subsection 1 reasonable notice and an opportunity for a hearing pursuant to the*
34 *provisions of NRS 233B.121.*

35 3. *A person fined by the Commissioner pursuant to subsection 1 is entitled*
36 *to judicial review of the decision of the Commissioner in the manner provided by*
37 *chapter 233B of NRS.*

38 **Sec. 38.6.** 1. *The Commissioner may suspend or revoke a license if:*

39 (a) *The licensee has failed to pay the annual license fee;*

40 (b) *The licensee, either knowingly or without any exercise of due care to*
41 *prevent it, has violated any provision of this chapter or any lawful regulation*
42 *adopted pursuant thereto;*

43 (c) *The licensee has failed to pay an applicable tax, fee or assessment; or*

44 (d) *Any fact or condition exists which would have justified the Commissioner*
45 *in denying the licensee's original application for a license pursuant to the*
46 *provisions of this chapter.*

47 2. *If the Commissioner has reason to believe that grounds for revocation or*
48 *suspension of a license exist, the Commissioner shall give 20 days' written notice*
49 *to the licensee stating the contemplated action and, in general, the grounds*
50 *therefor and set a date for a hearing.*

51 3. *At the conclusion of a hearing, the Commissioner shall:*

52 (a) *Enter a written order either dismissing the charges, revoking the license*
53 *or suspending the license for a period of not more than 60 days, which period*

1 *must include any prior temporary suspension. The Commissioner shall send a*
2 *copy of the order to the licensee by registered or certified mail.*

3 *(b) Impose upon the licensee an administrative fine of not more than \$10,000*
4 *for each violation by the licensee of any provision of this chapter or any*
5 *regulation adopted pursuant thereto.*

6 *(c) If a fine is imposed pursuant to this section, enter such order as is*
7 *necessary to recover the costs of the proceeding, including investigative costs and*
8 *attorney's fees of the Commissioner.*

9 4. *Unless otherwise provided in an order, the order for the revocation or*
10 *suspension of a license applies only to the license granted to a person for the*
11 *particular location for which grounds for revocation or suspension exist.*

12 5. *A licensee upon whom a fine has been imposed or whose license was*
13 *suspended or revoked pursuant to this section is entitled to judicial review of the*
14 *decision in the manner provided by chapter 233B of NRS.*

15 **Sec. 38.8.** 1. *Except as otherwise provided in this section, if a licensee*
16 *willfully:*

17 *(a) Enters into a consumer litigation funding contract for an amount of*
18 *interest or any other charge or fee that violates the provisions of this chapter or*
19 *any regulation adopted pursuant thereto;*

20 *(b) Demands, collects or receives an amount of interest or any other charge*
21 *or fee that violates the provisions of this chapter or any regulation adopted*
22 *pursuant thereto; or*

23 *(c) Commits any other act or omission that violates the provisions of this*
24 *chapter or any regulation adopted pursuant thereto,*
25 *↪ the consumer litigation funding contract is void and the licensee is not entitled*
26 *to collect, receive or retain any principal, interest or other charges or fees with*
27 *respect to the consumer litigation funding transaction.*

28 2. *The provisions of this section do not apply if:*

29 *(a) A licensee shows by a preponderance of the evidence that the violation*
30 *was not intentional and resulted from a bona fide error of computation,*
31 *notwithstanding the maintenance of procedures reasonably adapted to avoid that*
32 *error; and*

33 *(b) Within 60 days after discovering the error, the licensee notifies the*
34 *customer of the error and makes whatever adjustments in the account are*
35 *necessary to correct the error.*

36 **Sec. 38.9.** 1. *A consumer, an attorney for a consumer or any other person*
37 *who believes that any provision of this chapter has been violated may file a*
38 *complaint with the Commissioner. Such a complaint must include:*

39 *(a) The full name and address of the person filing the complaint;*

40 *(b) A clear and concise statement of facts sufficient to establish that the*
41 *alleged violation occurred, including, without limitation, the date, time and place*
42 *of the alleged violation and the name of each person involved in the alleged*
43 *violation; and*

44 *(c) A certification by the person filing the complaint that the facts alleged in*
45 *the complaint are true to the best knowledge and belief of the person.*

46 2. *Upon the receipt of a complaint filed pursuant to subsection 1, the*
47 *Commissioner may investigate and conduct hearings concerning the complaint.*

48 **Sec. 38.95.** NRS 658.098 is hereby amended to read as follows:

49 658.098 1. On a quarterly or other regular basis, the Commissioner shall
50 collect an assessment pursuant to this section from each:

51 *(a) Check-cashing service or deferred deposit loan service that is supervised*
52 *pursuant to chapter 604A of NRS;*

53 *(b) Collection agency that is supervised pursuant to chapter 649 of NRS;*

- 1 (c) Bank that is supervised pursuant to chapters 657 to 668, inclusive, of NRS;
- 2 (d) Trust company or family trust company that is supervised pursuant to
- 3 chapter 669 or 669A of NRS;
- 4 (e) Person engaged in the business of selling or issuing checks or of receiving
- 5 for transmission or transmitting money or credits that is supervised pursuant to
- 6 chapter 671 of NRS;
- 7 (f) Savings and loan association or savings bank that is supervised pursuant to
- 8 chapter 673 of NRS;
- 9 (g) Person engaged in the business of lending that is supervised pursuant to
- 10 chapter 675 of NRS;
- 11 (h) Thrift company that is supervised pursuant to chapter 677 of NRS; and
- 12 (i) Credit union that is supervised pursuant to chapter 678 of NRS.
- 13 ***(j) Consumer litigation funding company that is supervised pursuant to the***
- 14 ***chapter consisting of sections 2 to 38.9, inclusive, of this act.***

15 2. The Commissioner shall determine the total amount of all assessments to

16 be collected from the entities identified in subsection 1, but that amount must not

17 exceed the amount necessary to recover the cost of legal services provided by the

18 Attorney General to the Commissioner and to the Division of Financial Institutions.

19 The total amount of all assessments collected must be reduced by any amounts

20 collected by the Commissioner from an entity for the recovery of the costs of legal

21 services provided by the Attorney General in a specific case.

22 3. The Commissioner shall collect from each entity identified in subsection 1

23 an assessment that is based on:

24 (a) A portion of the total amount of all assessments as determined pursuant to

25 subsection 2, such that the assessment collected from an entity identified in

26 subsection 1 shall bear the same relation to the total amount of all assessments as

27 the total assets of that entity bear to the total of all assets of all entities identified in

28 subsection 1; or

29 (b) Any other reasonable basis adopted by the Commissioner.

30 4. The assessment required by this section is in addition to any other

31 assessment, fee or cost required by law to be paid by an entity identified in

32 subsection 1.

33 5. Money collected by the Commissioner pursuant to this section must be

34 deposited in the State Treasury pursuant to the provisions of NRS 658.091.

35 **Sec. 39.** 1. Notwithstanding the amendatory provisions of this act, a

36 consumer litigation funding company that ~~submits~~:

37 (a) Holds a license issued pursuant to chapter 675 of NRS on or before October

38 1, 2019; and

39 (b) Submits an application for licensure pursuant to section 26 of this act on or

40 before January 1, 2020,

41 ➤ shall be deemed to hold a license to engage in the business of a consumer

42 litigation funding company issued pursuant to section 32 of this act and may

43 continue to conduct consumer litigation funding transactions while the application

44 for licensure is pending approval or denial.

45 2. The Commissioner of Financial Institutions may adopt regulations for the

46 administration and enforcement of this section.

47 3. As used in this section:

48 (a) "Consumer litigation funding company" has the meaning ascribed to it in

49 section 8 of this act.

50 (b) "Consumer litigation funding transaction" has the meaning ascribed to it in

51 section 10 of this act.

1 **Sec. 40.** The amendatory provisions of this act do not apply to any contract
2 entered into before July 1, 2019, until the contract is amended, extended or
3 renewed.

4 **Sec. 41.** Sections 28 and 29 of this act expire by limitation on the date on
5 which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures
6 under which the state has authority to withhold or suspend, or to restrict the use of
7 professional, occupational and recreational licenses of persons who:

8 1. Have failed to comply with a subpoena or warrant relating to a proceeding
9 to determine the paternity of a child or to establish or enforce an obligation for the
10 support of a child; or

11 2. Are in arrears in the payment for the support of one or more children,
12 ➤ are repealed by the Congress of the United States.