



SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

UTAH DEPARTMENT OF COMMERCE

Division of Consumer Protection

MARGARET W. BUSSE
Executive Director

Jacob Hart
Acting Director

September 28, 2022

Sen. Curtis S. Bramble, *Chair*
Rep. Timothy D. Hawkes, *Chair*
Business and Labor Interim Committee
C/O Adam Sweet, Policy Analyst
W210 State Capitol Complex
Salt Lake City, UT 84114

Via email to: asweet@le.utah.gov

RE: Maintenance Funding Practices Act

Chair Bramble and Chair Hawkes,

H.B. 312 (General Session, 2020), *Maintenance Funding Act* required the director of the Division of Consumer Protection ("Consumer Protection") to report to the Business and Labor Interim Committee on the status of legal funding in the state, and to make any recommendation the director decides is necessary to improve the regulatory framework of legal funding, including whether to limit charges a maintenance funding provider may impose under a maintenance funding agreement by October 1, 2022. (Utah Code 13-57-402).

Accordingly, as acting director of the Utah Division of Consumer Protection, I provide the following report:

Consumer Protection collected data from maintenance funding providers in accordance with Utah Code § 13-57-402(1) for the 2020 and 2021 calendar years, and has published the two annual reports analyzing and summarizing that data. The two annual reports are enclosed with this report.

There is a potential change to the statutory language of the MFPA that would remedy a possible issue with respect to the report a provider must annually submit to Consumer Protection. Utah Code § 13-57-203(1) requires "a maintenance funding provider registered in accordance with Section 13-57-201" to file a report with the division regarding the preceding calendar year. This

Division of Consumer Protection

Heber M. Wells Building • 160 East 300 South • P.O. Box 146704, Salt Lake City, UT 84114-6741
www.dcp.utah.gov • telephone (801) 530-6601 • toll-free in Utah (800) 721-7233 • fax (801) 530-6001

provision may be read to only require a report from an actively-registered maintenance funding provider. For example, a maintenance funding provider that operated during the preceding calendar year but is no longer registered, or that operated without registration generally, would arguably not be required to comply with the reporting requirement because the provider is not "registered in accordance with Section 13-57-201." One possible solution would be to amend Subsection 13-57-203(1) to read "On or before April 1 of each year, a maintenance funding provider required to be registered in accordance with Section 13-57-201 shall file a report." This change would eliminate ambiguity regarding the reporting requirement for unregistered providers, and for providers whose registration has expired or otherwise lapsed.


I also recommend review of Utah Code § 13-57-203(2)(c), which requires maintenance funding providers to report to the division itemized charges under each maintenance funding agreement, including the annual rate of return ("ARR"). ARR is not defined by the MFPA, and is not a term that is commonly used in the maintenance funding industry.

Guidance regarding how ARR should be calculated would help ensure that the Legislature receives the data it sought as part of this legislation, and would provide clarity to maintenance funding providers as well.

I have no recommendation regarding whether the state should limit charges a maintenance funding provider may impose in a maintenance funding agreement. Charges vary widely across maintenance funding providers and across individual agreements. I refer the Committee to the two enclosed annual reports, and in particular to figures 4 and 5 in those reports, for additional information regarding charges imposed by maintenance funding providers.

If the interim committee has further questions regarding the MFPA, or Consumer Protection's registration and enforcement activities related to the MFPA, the division stands ready to assist.

Sincerely,



Jacob Hart
Acting Director
Utah Division of Consumer Protection