

Effective 5/12/2020

Chapter 57
Maintenance Funding Practices Act

Part 1
General Provisions

13-57-101 Title.

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

Enacted by Chapter 118, 2020 General Session

13-57-102 Definitions.

As used in this chapter:

- (1) "Business entity" means a sole proprietorship, partnership, limited partnership, limited liability company, corporation, or other entity or association used to carry on a business for profit.
- (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) "Individual" means a person who:
 - (a) resides in this state; and
 - (b) has or may have a pending legal action in this state.
- (6) "Legal funding" means a payment of \$500,000 or less to an individual in exchange for the right to receive an amount out of the potential proceeds of any realized settlement, judgment, award, or verdict the individual may receive in a civil legal action.
- (7) "Maintenance funding agreement" means an agreement between an individual and a maintenance funding provider under which the maintenance funding provider provides legal funding to the individual.
- (8)
 - (a) "Maintenance funding provider" means a business entity that engages in the business of legal funding.
 - (b) "Maintenance funding provider" does not include:
 - (i) an immediate family member of an individual;
 - (ii) an accountant providing accounting services to an individual; or
 - (iii) an attorney providing legal services to an individual.

Enacted by Chapter 118, 2020 General Session

Part 2
Maintenance Funding Providers

13-57-201 Maintenance funding provider registration and registration renewal.

- (1) Except as provided in Subsection (4), a business entity may not act as a maintenance funding provider in this state without registering with the division.

- (2) To register as a maintenance funding provider, a business entity shall submit to the division an application for registration:
 - (a) in the manner the division determines; and
 - (b) that includes:
 - (i) an application fee in an amount determined by the division in accordance with Sections 13-1-2 and 63J-1-504; and
 - (ii) anything else the division requires as established in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3) Each year a maintenance funding provider shall renew the maintenance funding provider's registration by submitting to the division an application for registration renewal:
 - (a) in the manner the division determines; and
 - (b) that includes:
 - (i) an application fee in an amount determined by the division in accordance with Sections 13-1-2 and 63J-1-504; and
 - (ii) anything else the division requires as established in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (4) A business entity who acts as a maintenance funding provider in the state between May 12, 2019, and May 12, 2020, is permitted to continue to act as a maintenance funding provider:
 - (a) if the person:
 - (i) applies for registration in accordance with this section; and
 - (ii) complies with the requirements of this chapter; and
 - (b) until the division makes a determination regarding the person's application for registration under this section.

Enacted by Chapter 118, 2020 General Session

13-57-202 Maintenance funding provider operations.

- (1) A maintenance funding provider may only provide legal funding to an individual if the maintenance funding provider and the individual enter into a maintenance funding agreement that meets the requirements of Section 13-57-301.
- (2) Before executing a maintenance funding agreement, a maintenance funding provider shall file with the division a template of the maintenance funding agreement.
- (3) A maintenance 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 an individual to the maintenance 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 an individual to the person;
 - (c) refer an individual or potential individual to a person described in Subsection (3)(a), unless the referral is to a local or state bar association referral service;
 - (d) intentionally advertise materially false or misleading information about the maintenance funding provider's services;
 - (e) make or attempt to influence a decision relating to the conduct, settlement, or resolution of a legal action for which the maintenance funding provider provides legal funding; or
 - (f) knowingly pay or offer to pay court costs, filing fees, or attorney fees using legal funding.

- (4) A maintenance funding provider shall provide an individual who enters a maintenance funding agreement a copy of the executed maintenance funding agreement.

Enacted by Chapter 118, 2020 General Session

13-57-203 Annual reports.

- (1) On or before April 1 of each year, a maintenance funding provider registered in accordance with Section 13-57-201 shall file a report:
- (a) under oath;
 - (b) with the director; and
 - (c) in a form the director prescribes.
- (2) The report described in Subsection (1) shall include, for the preceding calendar year:
- (a) the number of maintenance funding agreements entered into by the maintenance funding provider;
 - (b) the total dollar amount of legal funding the maintenance funding provider provided;
 - (c) the total dollar amount of charges under each maintenance funding agreement, itemized and including the annual rate of return;
 - (d) the total dollar amount and number of maintenance funding transactions in which the realized profit to the company was as contracted in the maintenance funding agreement;
 - (e) the total dollar amount and number of maintenance funding transactions in which the realized profit to the company was less than contracted; and
 - (f) any other information the director requires concerning the maintenance funding provider's business or operations in the state.

Enacted by Chapter 118, 2020 General Session

Part 3
Maintenance Funding Agreements

13-57-301 Maintenance funding agreements.

- (1) A maintenance funding agreement shall:
- (a) be in writing;
 - (b) contain a right of rescission permitting the individual to cancel the agreement without penalty or further obligation, if the individual returns to the maintenance funding provider the full amount of the disbursed funds:
 - (i) within five business days after the day on which the individual and maintenance funding provider enter the agreement; and
 - (ii)
 - (A) in person by delivering the maintenance funding provider's uncashed check to the maintenance funding provider's office; or
 - (B) by insured, certified, or registered United States mail to the address specified in the maintenance funding agreement in the form of the maintenance funding 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 maintenance funding provider provides to the individual;
 - (e) include an itemization of one-time charges;

- (f) include a payment schedule that:
 - (i) includes the funded amount and all charges; and
 - (ii) lists the total amount of any realized settlement, judgment, award, or verdict to be paid to the maintenance funding provider at the end of each six-month period, if the contract is satisfied during that period; and
 - (g) include a provision that the maintenance funding agreement includes no charge or fee other than the charges and fees disclosed in the maintenance funding agreement; and
 - (h) include a provision that:
 - (i) if there are no available proceeds from the legal action, the individual will owe the maintenance funding provider nothing; and
 - (ii) the maintenance funding provider's total charges will be paid only to the extent there are available proceeds from the legal action after the settlement of all liens, fees, and other costs.
- (2) A maintenance funding agreement may not require an individual to make a payment to the maintenance funding provider in an amount determined as a percentage of the recovery from the legal action.

Enacted by Chapter 118, 2020 General Session

13-57-302 Required disclosures.

- A maintenance funding provider shall disclose in a maintenance funding agreement:
- (1) that the maintenance funding provider may not participate in deciding whether, when, or the amount for which a legal action is settled;
 - (2) that the maintenance 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 MAINTENANCE 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 MAINTENANCE 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 maintenance funding provider if you either: 1. return to the maintenance funding provider the full amount of the disbursed funds by delivering the maintenance funding provider's uncashed check to the maintenance funding provider's office in person; or 2. send, by insured, certified, or registered United States mail, to the maintenance 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 maintenance funding provider's uncashed check or a registered or certified check or money order"; and
 - (5) immediately above the line for the individual'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."

Enacted by Chapter 118, 2020 General Session

Part 4 Division Duties

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 business entity to register with the division as a maintenance funding provider, in accordance with Section 13-57-201;
- (2) establish a filing process for a maintenance funding provider to file a maintenance funding agreement with the division;
- (3) establish a filing process for annual reports required under Section 13-57-203; and
- (4) carry out the provisions of this chapter.

Enacted by Chapter 118, 2020 General Session

13-57-402 Public education regarding legal funding -- Reporting to Legislature.

- (1) The director shall help educate the general public regarding legal funding in the state by:
 - (a) analyzing and summarizing data maintenance funding providers submit under Section 13-57-203; and
 - (b) publishing the analysis and summary described in Subsection (1)(a) on the division's web page.
- (2) Before October 1, 2022, the director shall report to the Business and Labor Interim Committee on the status of legal funding in the state and make any recommendation the director decides is necessary to improve the regulatory framework of legal funding, including a recommendation on whether to limit charges a maintenance funding provider may impose under a maintenance funding agreement.

Enacted by Chapter 118, 2020 General Session

Part 5 Miscellaneous

13-57-501 Enforceability.

If a maintenance funding provider violates a provision of this chapter, a maintenance funding agreement associated with the violation is unenforceable by the maintenance funding provider or any successor-in-interest to the maintenance funding agreement.

Enacted by Chapter 118, 2020 General Session

13-57-502 Penalties -- Enforcement.

- (1) After notice and an opportunity for an administrative hearing in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division may, in addition to exercising the division's enforcement powers under Section 13-2-6, enforce the provisions of this chapter by:
 - (a) revoking or suspending a maintenance funding provider's registration;
 - (b) ordering a maintenance funding provider to cease and desist from further legal funding;
 - (c) imposing a penalty of up to:
 - (i) \$1,000 per violation; or
 - (ii) \$10,000 per violation that the division finds willful; or
 - (d) ordering the maintenance funding provider to make restitution to an individual.
- (2) The division's enforcement powers under this section and Section 13-2-6 do not affect an individual's legal claim against a maintenance funding provider.

Enacted by Chapter 118, 2020 General Session

13-57-503 Applicability.

The requirements of this chapter for a maintenance funding provider do not apply to:

- (1) a bank while in the course of conducting a banking business as described in Section 7-3-1;
- (2) a deferred deposit lender, as defined in Section 7-23-102, while engaged in the business of deferred deposit lending;
- (3) a title lender, as defined in Section 7-24-102, while engaged in the business of extending a title loan; or
- (4) a creditor, as defined in Section 70C-1-302, subject to the provisions of Title 70C, Utah Consumer Credit Code.

Enacted by Chapter 118, 2020 General Session