

HB0312S01 compared with HB0312

~~{deleted text}~~ shows text that was in HB0312 but was deleted in HB0312S01.

inserted text shows text that was not in HB0312 but was inserted into HB0312S01.

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~~{LITIGATION}~~ Representative James A. Dunnigan proposes the following substitute bill:

MAINTENANCE FUNDING PRACTICES ACT

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a ~~{litigation}~~ maintenance funding provider to register with the Division of Consumer Protection;
- ▶ establishes operating requirements for a ~~{litigation}~~ maintenance funding provider;
- ▶ establishes reporting requirements for a maintenance funding provider and the division;
- ▶ establishes requirements for ~~{litigation}~~ maintenance funding agreements;

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- ▶ requires a ~~{litigation}~~maintenance 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}~~Maintenance Funding Practices Act; and
- ▶ addresses enforceability of a ~~{litigation}~~maintenance funding agreement ~~{; and};~~;

~~{~~ → establishes an interest cap on litigation funding.

~~{~~Money Appropriated in this Bill:

None

Other Special Clauses:

None

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

13-57-203, 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}~~ **13-57-501**, Utah Code Annotated 1953

13-57-502, Utah Code Annotated 1953

13-57-503, Utah Code Annotated 1953

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.

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(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~~ Maintenance Funding Practices Act.

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

CHAPTER 57. ~~LITIGATION~~ MAINTENANCE FUNDING PRACTICES ACT

Part 1. General Provisions

13-57-101. Title.

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This chapter is known as the "~~{Litigation}~~Maintenance Funding Practices Act."

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

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.

~~{1}~~5 "~~{Consumer}~~Individual" 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)~~6~~ "Legal funding" means a payment to ~~{a consumer}~~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 ~~{consumer}~~individual may receive in a civil legal action.

(6)~~7~~ "~~{Litigation}~~Maintenance funding agreement" means an agreement between ~~{a consumer}~~an individual and a ~~{litigation}~~maintenance funding provider under which the ~~{litigation}~~maintenance funding provider provides legal funding to the ~~{consumer}~~individual.

(7)~~8~~ (a) "~~{Litigation}~~Maintenance funding provider" means a ~~{person that provides legal funding to a consumer}~~.

~~——~~ (b) "Litigation" business entity that engages in the business of legal funding.

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

(i) an immediate family member of ~~{a consumer}~~an individual; ~~{or}~~

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(ii) ~~an accountant who provides providing~~ accounting services to ~~a consumer~~
~~an individual; or~~

(iii) an attorney providing legal services to an individual.

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

Part 2. ~~Litigation~~ Maintenance Funding Providers

**13-57-201. ~~Litigation~~ Maintenance funding provider registration and
registration renewal.**

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

(2) To register as a ~~litigation~~ maintenance funding provider, a ~~person~~ business entity 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; and

(iii) ~~all information~~ anything else 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) as established in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

(3) (a) 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) 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; and

(iii) anything else the division requires as established in rule made in accordance with

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Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

13-57-202. ~~{ Litigation }~~ **Maintenance** funding provider operations.

(1) A ~~{ litigation }~~ **maintenance** funding provider may only provide legal funding to ~~{ a consumer }~~ **an individual** if the ~~{ litigation }~~ **maintenance** funding provider and the ~~{ consumer }~~ **individual** enter into a ~~{ litigation }~~ **maintenance** funding agreement that meets the requirements of Section 13-57-301.

(2) Before executing a ~~{ litigation }~~ **maintenance** funding agreement, a ~~{ litigation }~~ **maintenance** funding provider shall file with the division a template of the ~~{ litigation }~~ **maintenance** funding agreement.

(3) A ~~{ litigation }~~ **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 ~~{ a consumer }~~ **an individual** to the ~~{ litigation }~~ **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 ~~{ a consumer }~~ **an individual** to the person;

(c) refer ~~{ a consumer }~~ **an individual** or potential ~~{ consumer }~~ **individual** 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 }~~ **maintenance** funding provider's services;

(e) fail to promptly give a copy of an executed ~~{ litigation }~~ **maintenance** funding agreement to the attorney who represents the ~~{ consumer }~~ **individual** in the legal action for which the ~~{ litigation }~~ **maintenance** 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 }~~ **maintenance** funding provider provides

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legal funding; or

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

(4) A ~~{litigation}~~ **maintenance** funding provider shall provide ~~{a consumer}~~ **an individual** who enters a ~~{litigation}~~ **maintenance** funding agreement a copy of the executed ~~{litigation}~~ **maintenance** funding agreement.

Section 6. Section ~~{13-57-301}~~ **13-57-203** is enacted to read:

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.

Section 7. Section **13-57-301** is enacted to read:

Part 3. ~~{Litigation}~~ **Maintenance Funding Agreements**

13-57-301. ~~{Litigation}~~ **Maintenance funding agreements.**

(1) A ~~{litigation}~~ **maintenance** funding agreement shall:

(a) be in writing;

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

(i) within five business days after the day on which the ~~consumer~~ individual and ~~litigation~~ 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 ~~litigation~~ maintenance funding provider provides to the ~~consumer~~ individual;

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

(f) include the total of any realized settlement, judgment, award, or verdict the ~~consumer~~ individual assigns to the ~~litigation~~ maintenance 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)~~ (g) include a payment schedule that:

(i) includes the funded amount and charges; and

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

(A) beginning after the day on which the ~~consumer~~ individual 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;~~

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~~(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)h~~ 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

~~(k)i~~ include a provision that:

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

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

Section ~~7~~ 8. Section **13-57-302** is enacted to read:

13-57-302. Required disclosures.

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

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

(2) that the ~~litigation~~ 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 ~~LITIGATION~~ MAINTENANCE FUNDING PROVIDER HERE) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED A

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MATERIAL TERM OF THIS AGREEMENT OR YOU HAVE COMMITTED FRAUD AGAINST THE ~~{LITIGATION}~~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 ~~{litigation}~~maintenance funding provider if you either: 1. return to the ~~{litigation}~~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 ~~{litigation}~~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 ~~{litigation}~~maintenance funding provider's uncashed check or a registered or certified check or money order"; and

(5) immediately above the line for the ~~{consumer's}~~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."

Section ~~{8}~~9. Section **13-57-401** is enacted to read:

Part 4. ~~{Miscellaneous}~~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 ~~{person}~~business entity to register with the division as a ~~{litigation}~~maintenance funding provider, in accordance with Section 13-57-201;

(2) establish a filing process for a ~~{litigation}~~maintenance funding provider to file a ~~{litigation}~~maintenance funding agreement with the division;

(3) establish a filing process for annual reports required under Section 13-57-203; and

~~{3}~~4 carry out the provisions of this chapter.

Section ~~{9}~~10. Section **13-57-402** is enacted to read:

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13-57-402. ~~Enforceability.~~

~~If a litigation}~~ 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) On or before October 1 of each odd-numbered year, 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 ~~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}~~ may impose under a maintenance funding agreement.

Section ~~{10}~~ 11. Section ~~{13-57-403}~~ 13-57-501 is enacted to read:

Part 5. Miscellaneous

~~{13-57-403}~~ 13-57-501. ~~Interest rate limit}~~ Enforceability.

~~{(1) A litigation}~~ If a maintenance 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, 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.

Section 12. Section 13-57-502 is enacted to read:

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:

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(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.

Section 13. Section 13-57-503 is enacted to read:

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 ~~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.~~

~~‡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; or~~

~~(3) a title lender, as defined in Section 7-24-102, while engaged in the business of extending a title loan.~~