

## CHAPTER 436

### SPECIAL PURPOSE CONTRACTS

#### CONSUMER LEGAL FUNDING ACT

- Sec.
- 436.550. Citation of law
- 436.552. Definitions.
- 436.554. Contract requirements.
- 436.556. Prohibited acts.
- 436.558. Predetermined payment to company, amount - limitation on length of contract term.
- 436.560. Disclosures, requirements.
- 436.562. Attorney general, no restriction on exercise of powers and duties - contract void, when.
- 436.564. Assignment of potential proceeds of a legal claim - contract not a loan - priority of liens.
- 436.566. Financial interest in company, restrictions.
- 436.568. Communications not discoverable, when - work-product doctrine and attorney-client privilege not abrogated.
- 436.570. License required, procedure - supervision and enforcement - cease and desist orders, civil penalty - license sanctions, when - examination and investigation of company, when - rulemaking authority.
- 436.572. Discovery, usual rules to apply.

#### CONSUMER LEGAL FUNDING ACT

**436.550. Citation of law.** - Sections 436.550 to 436.572 shall be known and may be cited as the "Consumer Legal Funding Act". (L. 2023 S.B. 103)

**436.552. Definitions.** - As used in sections 436.550 to 436.572, the following terms mean:

(1) **"Advertise"**, publishing or disseminating any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of

inducing a consumer to enter into a consumer legal funding contract;

(2) **"Affiliate"**, as defined in section 515.505;

(3) **"Charges"**, the amount of moneys to be paid to the consumer legal funding company by or on behalf of the consumer above the funded amount provided by or on behalf of the company to a consumer under sections 436.550 to 436.572. Charges include all administrative, origination, underwriting, or other fees, no matter how denominated;

(4) **"Consumer"**, a natural person who has a legal claim and resides or is domiciled in Missouri;

(5) **"Consumer legal funding company"** or "company", a person or entity that enters into a consumer legal funding contract with a consumer for an amount less than five hundred thousand dollars. The term shall not include:

(a) An immediate family member of the consumer;

(b) A bank, lender, financing entity, or other special purpose entity;

a. That provides financing to a consumer legal funding company; or

b. To which a consumer legal funding company grants a security interest or transfers any rights or interest in a consumer legal funding; or

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

(6) **"Consumer legal funding contract"**, a nonrecourse contractual transaction in which a consumer legal funding company purchases and a 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 consumer's legal claim, so long as all of the following apply:

(a) The consumer, at their sole discretion, shall use the funds to address personal needs or household expenses;

(b) The consumer shall not use the funds to pay for attorneys' fees, legal filings, legal marketing, legal document preparation or drafting, appeals, expert testimony, or other litigation-related expenses;

(7) **"Director"**, the director of the division of finance within the department of commerce and insurance;

(8) **"Division"**, the division of finance within the department of commerce and insurance;

(9) **"Funded amount"**, the amount of moneys provided to or on behalf of the consumer in the consumer legal funding contract. "Funded amount" shall not include charges;

(10) **"Funding date"**, the date on which the funded amount is transferred to the consumer by the consumer legal funding company either by personal delivery, via wire, automated clearing house transfer, or other electronic means, or by insured, certified, or registered United States mail;

(11) **"Immediate family member"**, a parent; sibling; child by blood, adoption, or marriage; spouse; grandparent; or grandchild;

(12) **"Legal claim"**, a bona fide civil claim or cause of action;

(13) **"Medical provider"**, any person or business providing medical services of any kind to a consumer including, but not limited to, physicians, nurse practitioners, hospitals, physical therapists, chiropractors, or radiologists as well as any of their employees or contractors or any practice groups, partnerships, or incorporations of the same;

(14) **"Resolution date"**, the date the amount funded to the consumer, plus the agreed-upon charges, is delivered to the consumer legal funding company.  
(L. 2023 S.B. 103)

**436.554. Contract requirements.** - 1.

All consumer legal funding contracts shall meet the following requirements:

(1) The contract shall be completely filled in when presented to the consumer for signature;

(2) The contract shall contain, in bold and boxed type, a right of rescission allowing the consumer to cancel the contract without penalty or further obligation if, within ten business days after the funding date, the consumer either:

(a) Returns the full amount of the disbursed funds to the consumer legal funding company by delivering the company's uncashed check to the company's office in person; or

(b) Mails a notice of cancellation by insured, certified, or registered United States mail to the address specified in the contract and includes a return of the full amount of disbursed funds in such mailing in the form of the company's uncashed check or a registered or certified check or money order;

(3) The contract shall contain the initials of the consumer on each page; and

(4) The contract shall require the consumer to give nonrevocable written direction to the consumer's attorney requiring the attorney to notify the consumer legal funding company when the legal claim has been resolved. Once the consumer legal funding company confirms in writing the amount due under the contract, the consumer's attorney shall pay, from the proceeds of the resolution of the legal claim, the consumer legal funding company the amount due within ten business days.

2. The consumer legal funding company shall provide the consumer's attorney with a written notification of the consumer legal funding contract provided to the consumer within three business days of the funding date by way of postal mail, courier service, facsimile, or other means of proof of delivery method.

3. A consumer legal funding contract shall be entered into only if the contract involves an existing legal claim in which the consumer is represented by an attorney.

(L. 2023 S.B. 103)

**436.556. Prohibited acts.** - No consumer legal funding company shall:

(1) Pay or offer to pay commissions, referral fees, or other forms of consideration to any attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees for referring a consumer to the company;

(2) Accept any commissions, referral fees, rebates, or other forms of consideration from an attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees;

(3) Intentionally advertise materially false or misleading information regarding its products or services;

(4) Refer, in furtherance of an initial legal funding, a customer or potential customer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees. However, the company may refer the customer to a local or state bar association referral service if a customer needs legal representation;

(5) Fail to promptly supply a copy of the executed contract to the consumer's attorney;

(6) Knowingly provide funding to a consumer who has previously assigned or sold a portion of the right to proceeds from the consumer's legal claim unless the consumer legal funding company pays or purchases the entire unsatisfied funded amount and contracted charges from the prior consumer legal funding company or the two companies agree to a lesser

amount in writing. However, multiple companies may agree to contemporaneously provide funding to a consumer, provided that the consumer and the consumer's attorney consent to the arrangement in writing;

(7) Receive any right to or make any decisions with respect to the conduct of the underlying legal claim or any settlement or resolution thereof. The right to make such decisions shall remain solely with the consumer and the attorney in the legal claim;

(8) Knowingly pay or offer to pay for court costs, filing fees, or attorney's fees either during or after the resolution of the legal claim by using funds from the consumer legal funding contract. The consumer legal funding contract shall include a provision advising the consumer that the funding shall not be used for such costs or fees; or

(9) Sell a consumer litigation funding contract in whole or in part to a third party. However, if the consumer legal funding company retains responsibility for collecting payment, administering, and otherwise enforcing the consumer legal funding contract, the provisions of this subdivision shall not apply to any of the following:

(a) An assignment to a wholly owned subsidiary of the consumer legal funding company;

(b) An assignment to an affiliate of the consumer legal funding company that is under common control;

(c) The granting of a security interest under Article 9 of the Uniform Commercial Code, or as otherwise permitted by law.

(L. 2023 S.B. 103)

**436.558. Predetermined payment to company, amount - limitation on length of contract term.**

- 1. The contracted amount to be paid to the consumer legal funding company shall be set as a predetermined amount based upon intervals of time from the funding date to the resolution date and shall not be determined as a percentage of the recovery from the legal claim.

2. No consumer legal funding contract shall be valid if its terms exceed a period of forty-eight months. No consumer legal funding contract shall be automatically renewed.

(L. 2023 S.B. 103)

**436.560. Disclosures, requirements.**

- All consumer legal funding contracts shall contain the disclosures specified in this section, which shall constitute material terms of the

contract. Unless otherwise specified, the disclosures shall be typed in at least twelve-point bold-type font and be placed clearly and conspicuously within the contract, as follows:

(1) On the front page under appropriate headings, language specifying:

(a) The funded amount to be paid to the consumer by the consumer legal funding company;

(b) An itemization of one-time charges;

(c) The total amount to be assigned by the consumer to the company, including the funded amount and all charges; and

(d) A payment schedule to include the funded amount and charges, listing all dates and the amount due at the end of each six-month period from the funding date until the date the maximum amount due to the company by the consumer to satisfy the amount due pursuant to the contract;

(2) Within the body of the contract, in accordance with the provisions under subdivision (2) of subsection 1 of section 436.554: "Consumer's Right to Cancellation: You may cancel this contract without penalty or further obligation within ten business days after the funding date if you either:

(a) Return the full amount of the disbursed funds to the consumer legal funding company by delivering the company's uncashed check to the company's office in person; or

(b) Mail a notice of cancellation by insured, certified, or registered United States mail to the company at the address specified in the contract and include a return of the full amount of disbursed funds in such mailing in the form of the company's uncashed check or a registered or certified check or money order.";

(3) Within the body of the contract, a statement that the company has no influence over any aspect of the consumer's legal claim or any settlement or resolution of the consumer's legal claim and that all decisions related to the consumer's legal claim remain solely with the consumer and the consumer's attorney;

(4) Within the body of the contract, in all capital letters and in at least twelve-point bold-type font contained within a box: "THE FUNDED AMOUNT AND AGREED-UPON 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. IF THERE IS NO RECOVERY OF ANY DAMAGES FROM YOUR LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO PAY BACK THE CONSUMER LEGAL FUNDING COMPANY IN FULL, YOU WILL NOT BE

OBLIGATED TO PAY THE CONSUMER LEGAL FUNDING COMPANY ANYTHING IN EXCESS OF YOUR RECOVERY UNLESS YOU HAVE VIOLATED THIS CONTRACT. YOU WILL NOT OWE (INSERT NAME OF THE CONSUMER LEGAL FUNDING COMPANY) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM UNLESS YOU OR YOUR ATTORNEY HAVE VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR UNLESS YOU HAVE COMMITTED FRAUD AGAINST THE CONSUMER LEGAL FUNDING COMPANY."; and

(5) Located immediately above the place on the contract where the consumer's signature is required, in twelve-point font: "Do not sign this contract before you read it completely or 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 want to consult a tax, public or private benefits 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."  
(L. 2023 S.B. 103)

**436.562. Attorney general, no restriction on exercise of powers and duties - contract void, when.** - 1. Nothing in sections 436.550 to 436.572 shall be construed to restrict the exercise of powers or the performance of the duties of the state attorney general that he or she is authorized to exercise or perform by law.

2. If a court of competent jurisdiction determines that a consumer legal funding company has intentionally violated the provisions of sections 436.550 to 436.572 in a consumer legal funding contract, the consumer legal funding contract shall be voided.  
(L. 2023 S.B. 103)

**436.564. Assignment of potential proceeds of a legal claim - contract not a loan - priority of liens.** - 1. The contingent right to receive an amount of the potential proceeds of a legal claim is assignable.

2. Nothing contained in sections 436.550 to 436.572 shall be construed to cause any consumer legal funding contract conforming to sections 436.550 to 436.572 to be deemed a loan or to be subject to any of the provisions governing loans. A consumer legal funding contract that complies with sections 436.550 to

436.572 is not subject to any other statutory or regulatory provisions governing loans or investment contracts. To the extent that sections 436.550 to 436.572 conflict with any other law, such sections shall supersede the other law for the purposes of regulating consumer legal funding in this state.

3. Only attorney's liens related to the legal claim, Medicare, or other statutory liens related to the legal claim shall take priority over claims to proceeds from the consumer legal funding company. All other liens and claims shall take priority by normal operation of law.

4. No consumer legal funding company shall report a consumer to a credit reporting agency if insufficient funds remain from the net proceeds to repay the company.  
(L. 2023 S.B. 103)

**436.566. Financial interest in company, restrictions.** - An attorney or law firm retained by the consumer in the legal claim shall not have a financial interest in the consumer legal funding company offering consumer legal funding to that consumer. Additionally, any practicing attorney who has referred the consumer to his or her retained attorney shall not have a financial interest in the consumer legal funding company offering consumer legal funding to that consumer.  
(L. 2023 S.B. 103)

**436.568. Communications not discoverable, when - work-product doctrine and attorney-client privilege not abrogated.** - No communication between the consumer's attorney in the legal claim and the consumer legal funding company necessary to ascertain the status of a legal claim or a legal claim's expected value shall be discoverable by a party with whom the claim is filed or against whom the claim is asserted. This section does not limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and attorney-client privilege.  
(L. 2023 S.B. 103)

**436.570. License required, procedure - supervision and enforcement - cease and desist orders, civil penalty - license sanctions, when - examination and investigation of company, when - rulemaking authority.** - 1. A consumer legal funding company shall not engage in the business of consumer legal funding in this state unless it has

first obtained a license from the division of finance.

2. A consumer legal funding company's initial or renewal license application shall be in writing, made under oath, and on a form provided by the director.

3. Every consumer legal funding company, at the time of filing a license application, shall pay the sum of five hundred fifty dollars for the period ending the thirtieth day of June next following the date of payment; thereafter, a like fee shall be paid on or before June thirtieth of each year and shall be credited to the division of finance fund established under section 361.170.

4. A consumer legal funding license shall not be issued unless the division of finance, upon investigation, finds that the character and fitness of the applicant company, and of the officers and directors thereof, are such as to warrant belief that the business shall operate honestly and fairly within the purposes of sections 436.550 to 436.572.

5. Every applicant shall also, at the time of filing such application, file a bond satisfactory to the division of finance in an amount not to exceed fifty thousand dollars. The bond shall provide that the applicant shall faithfully conform to and abide by the provisions of sections 436.550 to 436.572, to all rules lawfully made by the director under sections 436.550 to 436.572, and the bond shall act as a surety for any person or the state for any and all amount of moneys that may become due or owing from the applicant under and by virtue of sections 436.550 to 436.572, which shall include the result of any action that occurred while the bond was in place for the applicable period of limitations under statute and so long as the bond is not exhausted by valid claims.

6. If an action is commenced on a licensee's bond, the director may require the filing\* of a new bond. Immediately upon any recovery on the bond, the licensee shall file a new bond.

7. To ensure the effective supervision and enforcement of sections 436.550 to 436.572, the director may, under chapter 536:

(1) Deny, suspend, revoke, condition, or decline to renew a license for a violation of sections 436.550 to 436.572, rules issued under sections 436.550 to 436.572, or order or directive entered under sections 436.550 to 436.572;

(2) Deny, suspend, revoke, condition, or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of sections 436.550 to 436.572, or withholds information or makes a material misstatement in an application for a license or renewal of a license;

(3) Order restitution against persons subject to sections 436.550 to 436.572 for violations of sections 436.550 to 436.572; and

(4) Order or direct such other affirmative action as the director deems necessary.

8. Any letter issued by the director and declaring grounds for denying or declining to grant or renew a license may be appealed to the circuit court of Cole County. All other matters presenting a contested case involving a licensee may be heard by the director under chapter 536.

9. Notwithstanding the prior approval requirement of subsection 1 of this section, a consumer legal funding company that has applied with the division of finance between August 28, 2023, or when the division of finance has made applications available to the public, whichever is later, and six months thereafter may engage in consumer legal funding while the license application of the company or an affiliate of the company is awaiting approval by the division of finance and until such time as the applicant has pursued all appellate remedies and procedures for any denial of such application. All funding contracts in effect prior to August 28, 2023, are not subject to the terms of sections 436.550 to 436.572.

10. If it appears to the director that any consumer legal funding company is failing, refusing, or neglecting to make a good faith effort to comply with the provisions of sections 436.550 to 436.572, or any laws or rules relating to consumer legal funding, the director may issue an order to cease and desist, which may be enforceable by a civil penalty of not more than one thousand dollars per day for each day that the neglect, failure, or refusal continues. The penalty shall be assessed and collected by the director. In determining the amount of the penalty, the director shall take into account the appropriateness of the penalty with respect to the gravity of the violation, any history of previous violations, and any other matters justice may require.

11. If any consumer legal funding company fails, refuses, or neglects to comply with the provisions of sections 436.550 to 436.572, or of any laws or rules relating to consumer legal funding, its license may be suspended or revoked by order of the director after a hearing before said director on any order to show cause why such order of suspension or revocation should not be entered and that specifies the grounds therefor. Such an order shall be served on the particular consumer legal funding company at least ten days prior to the hearing. Any order made and entered by the director may be appealed to the circuit court of Cole County.

12. (1) The division shall conduct an examination of each consumer funding company at least once every twenty-four months and at such other times as the director may determine.

(2) For any such investigation or examination, the director and his or her representatives shall have free and immediate access to the place or places of business and the books and records, and shall have the authority to place under oath all persons whose testimony may be required relative to the affairs and business of the consumer legal funding company.

(3) The director may also make such special investigations or examination as the director deems necessary to determine whether any consumer legal funding company has violated any of the provisions of sections 436.550 to 436.572 or rules promulgated thereunder, and the director may assess the reasonable costs of any investigation or examination incurred by the division to the company.

13. The division of finance shall have the authority to promulgate rules to carry out the provisions of sections 436.550 to 436.572. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2023, shall be invalid and void.

(L. 2023 S.B. 103)

\*Word "filling" appears in original rolls.

**436.572. Discovery, usual rules to apply.** - A consumer legal funding contract is a fact subject to the usual rules of discovery.

(L. 2023 S.B. 103)