

House Bill 2637

Sponsored by Representative DRAZAN (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires person that provides litigation funding as sponsor to obtain license from Director of Department of Consumer and Business Services. Specifies application contents and procedures and basis on which director may approve or deny license or revoke or suspend license that director has issued. Specifies conditions and requirements of license.

Specifies duties of licensee and prohibitions that apply to licensee. Provides that director may examine or investigate licensee and enforce violations of provisions of Act by issuing cease and desist order, imposing civil penalty in amount that does not exceed \$2,500, revoking license and other means.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to licensing requirements for persons that provide litigation funding; creating new pro-
3 visions; amending ORS 725A.990; and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. As used in sections 1 to 22 of this 2021 Act and in ORS 725A.990:**

6 (1) **"Licensee"** means a person who has obtained a license under section 4 of this 2021
7 Act.

8 (2)(a) **"Litigation funding"** means an arrangement under which a sponsor provides fund-
9 ing for the purpose of paying the costs and expenses associated with pursuing a legal claim
10 by means of an action before a court, or a proceeding before an administrative body or ar-
11 bitration panel, in return for an agreement to assign to the sponsor a contingent right to
12 receive a portion of any monetary proceeds from any settlement, judgment, award or verdict
13 that results from the action, suit or proceeding.

14 (b) **"Litigation funding"** does not include:

15 (A) **Legal services or an advance of legal costs that an attorney provides to a resident**
16 **individual in the course of representing the resident individual under a contingency fee**
17 **agreement that complies with the requirements of the Oregon State Bar's Oregon Rules of**
18 **Professional Conduct;**

19 (B) **A consumer finance loan, as defined in ORS 725.010;**

20 (C) **Funding that a sponsor provides to a business entity for the purpose of bringing a**
21 **legal claim that arose in the course of the business entity's business or profession and that**
22 **does not involve a claim for a resident individual's personal injury or death; or**

23 (D) **Funding that an attorney or law firm seeks or obtains from a financial institution,**
24 **as defined in ORS 706.008, for the purpose of conducting the attorney's or the law firm's**
25 **ordinary business operations other than litigation on behalf of a client of the attorney or law**
26 **firm.**

27 (3) **"Nationwide Multistate Licensing System"** means a system that the Conference of

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 State Bank Supervisors and the American Association of Residential Mortgage Regulators,
 2 or assignees of the Conference of State Bank Supervisors or the American Association of
 3 Residential Mortgage Regulators, develop and maintain for participating state agencies to
 4 use in licensing and registering persons that provide nondepository financial services.

5 (4) "Person" means an individual or an entity.

6 (5) "Recipient" means a resident individual of this state who receives litigation funding
 7 from a sponsor for the purpose of bringing an action before a court or a proceeding before
 8 an administrative body or arbitration panel to seek a remedy for a legal claim.

9 (6) "Resident individual" means a natural person who resides in this state.

10 (7) "Sponsor" means a person that engages in the business of providing litigation funding
 11 to resident individuals of this state.

12 **SECTION 2.** (1)(a) A person may not provide litigation funding as a sponsor unless the
 13 person obtains a license from the Director of the Department of Consumer and Business
 14 Services under section 4 of this 2021 Act.

15 (b) A person may not engage in the business of providing litigation funding to a recipient
 16 on behalf of another person unless the person obtains a license under section 4 of this 2021
 17 Act, regardless of whether the other person must obtain a license under paragraph (a) of this
 18 subsection.

19 (2) If a sponsor or an agent of the sponsor provided litigation funding to a recipient at
 20 a time when the sponsor or agent did not have a license from the director under section 4
 21 of this 2021 Act, the contract under which the sponsor or agent provided litigation funding
 22 is void, and the sponsor or agent, or a successor, assignee or affiliate of the sponsor or
 23 agent, may not enforce the terms and conditions of the contract or otherwise collect, receive
 24 or retain any moneys from the proceeds of any settlement, judgment, award or verdict that
 25 results from the action, suit or proceeding for which the sponsor or agent provided litigation
 26 funding.

27 (3) Subsection (1) of this section does not apply to a person that does not collect a fee
 28 or consideration in connection with litigation funding and:

29 (a) Does not negotiate directly with a recipient the terms and conditions of a contract
 30 to provide litigation funding;

31 (b) Acts solely as an intermediary between the sponsor and the recipient;

32 (c) Transmits information, electronically or otherwise, concerning a recipient to a spon-
 33 sor for the purpose of assisting a sponsor in negotiating a contract for litigation funding; or

34 (d) Prepares, issues or delivers a negotiable instrument from a sponsor to a recipient or
 35 from a recipient to a sponsor in the capacity of an intermediary.

36 (4) The director by order may determine whether, notwithstanding subsection (2) of this
 37 section, a person may enforce a contract to provide litigation funding if the director deter-
 38 mines that a license the director issued under section 4 of this 2021 Act lapsed inadvertently
 39 or by mistake.

40 **SECTION 3.** (1) An applicant for a license to provide litigation funding as a sponsor shall
 41 apply to the Director of the Department of Consumer and Business Services in writing on a
 42 form and in a manner that the director specifies by rule. An application to provide litigation
 43 funding as a sponsor must:

44 (a) List the applicant's name, residence address and business address, including universal
 45 resource locators for any electronic addresses the applicant uses for the applicant's business,

1 and any assumed business name that the applicant has registered under ORS 648.012 and
 2 under which the applicant intends to operate as a sponsor;

3 (b) Name and list the residence address and business address for the applicant's officers
 4 and directors, if the applicant is a corporation, or for the applicant's members, if the appli-
 5 cant is a partnership, limited liability company or other association;

6 (c) Identify the county and city in which, and the street address, if any, at or from which,
 7 the applicant will transact business;

8 (d) Provide the name and address of the applicant's registered agent in this state; and

9 (d) Provide any other information the director requires.

10 (2) At the time the applicant submits an application under this section, the applicant
 11 shall:

12 (a) Pay to the director a license fee in an amount the director specifies under section 6
 13 of this 2021 Act. If the director for cause does not issue a license or if the applicant with-
 14 draws the application after the director has investigated the applicant, the director shall
 15 refund the license fee, less an amount the director retains to pay the administrative and
 16 investigative costs the director incurred in connection with the application.

17 (b) File with the director a corporate surety bond or irrevocable letter of credit in an
 18 amount, not less than \$50,000, that the director specifies by rule. The corporate surety bond
 19 must run to the State of Oregon, be designated exclusively to pay all obligations due to re-
 20 cipients who prevail in an action against the bond and be issued by an insured institution,
 21 as defined in ORS 706.008, that is authorized to transact business in this state. A licensee
 22 shall maintain the corporate surety bond or irrevocable letter of credit described in this
 23 paragraph continuously as a condition of retaining the licensee's license and shall renew or
 24 replace the bond in the amount the director specifies if claims against the bond result in a
 25 withdrawal of or a reduction in the amount of the bond.

26 **SECTION 4.** (1)(a) Within 90 days after receiving an application under section 3 of this
 27 2021 Act, the Director of the Department of Consumer and Business Services may issue and
 28 deliver to the applicant a license to provide litigation funding as a sponsor at or from the
 29 location identified in the application if the director finds that:

30 (A) The applicant and the applicant's officers and directors, if the applicant is a corpo-
 31 ration, or the applicant's members, if the applicant is a partnership, limited liability company
 32 or other association, have the financial responsibility, experience, character and general fit-
 33 ness necessary to warrant the belief that the applicant will operate the business honestly,
 34 fairly and efficiently and in compliance with the provisions of sections 1 to 22 of this 2021
 35 Act.

36 (B) The applicant has paid the fee required under section 3 (2)(a) of this 2021 Act.

37 (C) The applicant has filed the corporate surety bond or irrevocable letter of credit de-
 38 scribed in section 3 (2)(b) of this 2021 Act.

39 (D) Grounds do not exist under section 5 of this 2021 Act to disapprove the application.

40 (E) Other reasons or conditions that would warrant the director's refusal to issue a li-
 41 cense do not exist.

42 (b) The director, consistent with the requirements of sections 1 to 22 of this 2021 Act,
 43 may issue a license under this section by means of an agreement with the Nationwide
 44 Multistate Licensing System and may, by rule, conform the practices, procedures and infor-
 45 mation that the Department of Consumer and Business Services uses to issue a license to

1 the requirements of the Nationwide Multistate Licensing System.

2 (2) An applicant may not become a licensee under this section unless the applicant has
3 approval to transact business in this state.

4 (3)(a) The director shall disapprove an application and deny the applicant a license if the
5 director finds that the applicant does not meet the standard set forth in subsection (1)(a)(A)
6 of this section, has not paid the application fee required by subsection (1)(a)(B) of this sec-
7 tion, has not filed the required corporate surety bond or irrevocable letter of credit required
8 by subsection (1)(a)(C) of this section, or that grounds described in subsection (1)(a)(D) of
9 this section exist and warrant the director's disapproval and denial.

10 (b) If the director disapproves an application or denies the applicant a license under
11 paragraph (a) of this subsection, the director shall notify the applicant immediately and shall
12 state the director's reasons for the disapproval or denial.

13 (4)(a) The director by rule shall prescribe the form of the license the director issues un-
14 der this section. At a minimum, the director shall require the license to display the licensee's
15 full name, any assumed business name and the address at which the licensee conducts busi-
16 ness.

17 (b) The director in the license shall include a license number or other identifying number
18 that a recipient can use to verify the licensee's status as a licensee in electronic or remote
19 communications, as provided in section 8 (1)(b) of this 2021 Act.

20 (c) A license the director issues under this section:

21 (A) Is not transferable or assignable; and

22 (B) Remains in full force and effect until:

23 (i) The director revokes or suspends the license in accordance with section 9 of this 2021
24 Act; or

25 (ii) The licensee surrenders the license in accordance with section 11 of this 2021 Act.

26 (5) The director may issue more than one license to the same licensee if the director
27 finds that for each additional license the licensee meets the qualifications set forth in this
28 section. Each license the director issues must be for a separate and distinct place at or from
29 which the licensee conducts business in accordance with sections 1 to 22 of this 2021 Act.

30 **SECTION 5.** (1) The Director of the Department of Consumer and Business Services may
31 disapprove an application submitted under section 3 of this 2021 Act and deny a license to
32 the applicant if a person named in the application:

33 (a) Cannot meet financial obligations as the obligations mature, has liabilities that exceed
34 assets or is in a financial condition that prevents the person from conducting business with
35 safety to residents of this state;

36 (b) Engaged in dishonest, fraudulent or illegal practices or conduct in a business or pro-
37 fession;

38 (c) Failed to comply with, or knowingly or repeatedly violated, sections 1 to 22 of this 2021
39 Act or a rule the director adopted under sections 1 to 22 of this 2021 Act;

40 (d) Was convicted of a crime, an essential element of which is fraud;

41 (e) Is permanently or temporarily enjoined by a court of competent jurisdiction from
42 engaging in or continuing a practice or conduct in connection with providing litigation
43 funding as a sponsor; or

44 (f) Is subject to an order in which:

45 (A) The director imposed a fine or other civil penalty on the person under sections 1 to

1 22 of this 2021 Act;

2 (B) The director removed the person from an office in an entity that is subject to
3 sections 1 to 22 of this 2021 Act; or

4 (C) A state or federal agency with authority over nondepository financial institutions,
5 within a five-year period before the applicant submitted an application under section 3 of this
6 2021 Act:

7 (i) Imposed a fine or other civil penalty on the person; or

8 (ii) Removed the person from an office in an entity that engages in the business of pro-
9 viding litigation funding.

10 (2) If the director denies a license to an applicant under this section, the director shall
11 provide the applicant with a reasonable opportunity for a hearing under ORS chapter 183.

12 **SECTION 6.** (1) A licensee each year shall pay to the Director of the Department of
13 Consumer and Business Services a license fee in an amount the director specifies by rule.
14 The licensee shall pay the fee not later than the date the director sets in the rule.

15 (2) The director shall specify the amount of the fee described in subsection (1) of this
16 section after considering:

17 (a) The amount of other moneys available for the director to use in performing the
18 director's duties;

19 (b) The costs the director will incur in performing the director's duties in the year in
20 which the director will collect the fee, including costs associated with providing information
21 about the licensee to residents of this state; and

22 (c) The amount the director needs to establish and maintain a reasonable emergency
23 fund.

24 (3) In addition to any license fee the director collects under subsection (1) of this section,
25 whenever the director devotes extra attention to a licensee's affairs, either because the
26 licensee requests the attention or the director determines that the extra attention is neces-
27 sary, the director shall charge as a fee for the extra attention the actual cost the director
28 incurs.

29 **SECTION 7.** (1) On or before February 15 of each year, or on a date the Director of the
30 Department of Consumer and Business Services establishes by rule, a licensee shall file a
31 report with the director in a form and with the content the director specifies by rule. The
32 report must contain information the director requires concerning the licensee's business
33 during the previous calendar year and the operations in each place of business at or from
34 which the licensee operates in this state.

35 (2) The director may assess against a licensee a penalty of \$10 for each day after Febru-
36 ary 15, or after the date the director specifies in subsection (1) of this section, during which
37 the licensee fails to file a report required under this section.

38 **SECTION 8.** (1)(a) A licensee may not provide litigation funding as a sponsor except un-
39 der the name or assumed business name and at the place of business the Director of the
40 Department of Consumer and Business Services specifies in a license the director issued
41 under section 4 of this 2021 Act. The licensee at all times shall display the license conspicu-
42 ously in the licensee's place of business.

43 (b) If a licensee communicates primarily or solely by means of remote or electronic
44 communication in the course of soliciting or entering into a contract with a resident indi-
45 vidual to provide litigation funding or in the course of communicating with a recipient with

1 respect to a contract to provide litigation funding, the licensee shall:

2 (A) Display a facsimile of the license or the license number or other identifying number
3 that the director issued to the licensee conspicuously on all electronic communication with
4 the resident individual or recipient;

5 (B) Disclose the licensee's license number or other identifying number to the resident
6 individual or recipient at the beginning of each remote oral communication with the resident
7 individual or recipient; and

8 (C) Identify the Department of Consumer and Business Services as the agency that is-
9 sued the license in all electronic or remote communications with the resident individual or
10 recipient.

11 (2) A licensee shall notify the director within 10 business days after any of the informa-
12 tion the licensee submitted with an application under section 3 of this 2021 Act has changed
13 materially or has become inaccurate or incomplete.

14 (3) A licensee that changes the location at or from which the licensee provides litigation
15 funding as a sponsor shall notify the director in writing and return the licensee's license.
16 The director shall amend the license to reflect the new location and return the amended li-
17 cense to the licensee.

18 (4) The director may allow the licensee to change the location at or from which the
19 licensee provides litigation funding as a sponsor to a location outside the city named in the
20 original license only if the director determines that the new location will serve substantially
21 the same community that the location named in the original license served.

22 (5) If the director disapproves the proposed new location, the director shall immediately
23 notify the licensee of the disapproval and return the license unchanged to the licensee.

24 (6) The director shall provide means by which a resident individual may use the website
25 of the Department of Consumer and Business Services to search for and verify that a
26 licensee has a license, using as search terms the licensee's name or assumed business name
27 or any physical or electronic address the director has on file for the licensee. Except for in-
28 formation the director exempts from disclosure by rule, the website must display as search
29 results for a licensee the licensee's name and any assumed business name and a summary
30 of:

31 (a) All contact information for the licensee that the director has on file;

32 (b) Any complaints the director has received about the licensee and any resolution of the
33 complaints; and

34 (c) Any disciplinary actions the director has taken against the licensee.

35 **SECTION 9.** (1) The Director of the Department of Consumer and Business Services may
36 revoke a license the director issued under section 4 of this 2021 Act if the director:

37 (a) Gives the licensee 10 days' written notice in which the director specifies the action
38 the director will take and the general grounds for the action;

39 (b) Provides the licensee with reasonable opportunity for a hearing under ORS chapter
40 183 in connection with the action; and

41 (c) Finds that:

42 (A) The licensee failed to pay the annual license fee;

43 (B) The licensee failed to comply with a demand, ruling or requirement the director made
44 under sections 1 to 22 of this 2021 Act;

45 (C) The licensee violated a provision of sections 1 to 22 of this 2021 Act or a rule the di-

1 rector adopted under sections 1 to 22 of this 2021 Act; or

2 (D) A fact or condition exists that clearly would have warranted the director's refusing
 3 to issue the license had the fact or condition existed at the time the licensee submitted an
 4 application under section 3 of this 2021 Act.

5 (2) The director, without notice or hearing, may suspend a license for a period not ex-
 6 ceeding 30 days, pending investigation. The director shall provide the licensee with a rea-
 7 sonable opportunity for a hearing under ORS chapter 183 if the director proposes to suspend
 8 a license for a period longer than 30 days.

9 (3) The director may revoke or suspend only the particular license with respect to which
 10 grounds for revocation or suspension exist. If the director finds that grounds for revoking
 11 or suspending a license exist with respect to more than one of the locations at or from which
 12 a licensee operates, the director may revoke or suspend the license issued to the licensee for
 13 each location with respect to which grounds for revocation or suspension exist.

14 **SECTION 10.** The Director of the Department of Consumer and Business Services may
 15 reinstate a license the director revoked if the licensee:

- 16 (1) Complies with applicable provisions of law;
- 17 (2) Complies with a demand, ruling or requirement the director issues or imposes; and
- 18 (3) Pays a fee of \$25.

19 **SECTION 11.** (1) A licensee may deliver a written notice to the Director of the Depart-
 20 ment of Consumer and Business Services to surrender a license the director issued to the
 21 licensee under section 4 of this 2021 Act.

22 (2) A licensee shall surrender a license under which the licensee did not provide or enter
 23 into a contract to provide litigation funding as a sponsor for a period of 12 consecutive
 24 months.

25 (3) A licensee's surrendering a license under subsection (1) or (2) of this section does not
 26 affect the licensee's civil or criminal liability for acts the licensee committed before surren-
 27 dering the license.

28 **SECTION 12.** Revocation, suspension or surrender of a license the Director of the De-
 29 partment of Consumer and Business Services issued to a licensee under section 4 of this 2021
 30 Act does not impair or affect the rights or obligations specified in a lawful contract between
 31 the licensee and a resident individual that existed before the revocation, suspension or sur-
 32 render.

33 **SECTION 13.** (1) The Director of the Department of Consumer and Business Services, to
 34 secure information the director requires and to ensure compliance with sections 1 to 22 of
 35 this 2021 Act and rules the director adopts under sections 1 to 22 of this 2021 Act:

36 (a) May at any time investigate a licensee or a person required under section 2 of this
 37 2021 Act to obtain a license.

38 (b) Shall examine a licensee not less than once every two years and may inspect and ex-
 39 amine the licensee at other times that the director determines are necessary.

40 (2) For purposes of subsection (1) of this section:

41 (a) A licensee or a person required to obtain a license to provide litigation funding as a
 42 sponsor is subject to inspection and shall give the director free access to the licensee's or
 43 person's place of business, books, accounts, records, files, safes and vaults.

44 (b) The director may:

45 (A) Conduct an investigation or examination without prior notice to the person the di-

1 rector investigates or examines.

2 (B) Compel the attendance of a witness or other person from whom the director requires
3 testimony necessary to conduct an investigation or examination and examine the witness or
4 person under oath.

5 (C) Require a licensee or a person required to obtain a license to provide litigation fund-
6 ing as a sponsor to produce books, accounts, records, files or other documents.

7 (c) A person that is subject to investigation or examination under this section may not
8 knowingly give or cause to be given to the director a document or an oral or written state-
9 ment or report that is false in any material respect.

10 (3) If the director investigates or examines under this section a licensee or a person re-
11 quired to obtain a license to provide litigation funding as a sponsor, the licensee or person
12 shall pay the director for the actual cost of the investigation or examination. The director
13 may maintain an action to recover the cost in a court of competent jurisdiction.

14 SECTION 14. The Director of the Department of Consumer and Business Services may
15 specify by rule the form and content of the books and records the licensee must keep in ac-
16 cordance with the provisions of sections 1 to 22 of this 2021 Act. The licensee shall preserve
17 and make available the books and records for a period of at least two years after the licensee
18 makes the final entry that is recorded in the book or record in connection with a contract
19 to provide litigation funding.

20 SECTION 15. A licensee shall:

21 (1) Set forth and provide to a recipient in a written contract that is complete in all re-
22 spects, without blanks or incomplete sections other than spaces in which a recipient may
23 sign or execute the contract or acknowledge written contract provisions by signature or in-
24 itials, all of the terms and conditions under which the licensee will provide litigation funding.
25 The contract must include all of the following provisions:

26 (a) The contract document is fully integrated.

27 (b) The recipient may rescind the contract without penalty or further obligation if within
28 five business days after executing the contract or receiving funds from the licensee the re-
29 cipient notifies the licensee of the rescission and returns any funds the recipient received
30 from the licensee.

31 (c) An initialed acknowledgement from the recipient as to whether:

32 (A) An attorney represents the recipient in the action or proceeding for which the
33 licensee provides the litigation funding; and

34 (B) The recipient's attorney has reviewed the provisions of the contract on the
35 recipient's behalf.

36 (d) The recipient's attorney, if any, did not pay to or receive from the licensee, and will
37 not pay to or receive from the licensee at any time, a fee or consideration for soliciting the
38 contract or for a referral in connection with the contract.

39 (e) The licensee shall notify the administrator of any trust or fund into which the pro-
40 ceeds of a settlement, judgment, award or verdict are paid of any liens that the contract
41 creates, attaches or records with respect to the proceeds.

42 (f) The recipient is not responsible for and is not liable to pay any fees, charges or other
43 amounts that are not fully disclosed within the first five pages of the contract document.

44 (g) The recipient is not liable for any fees, charges or any monetary amount whatsoever
45 if the recipient does not recover any proceeds from a settlement, judgment, award or verdict

1 that results from an action or proceeding for which the licensee provided litigation funding.

2 (h) The licensee may not provide any legal advice or other direction or require in any
 3 manner or capacity any act with respect to bringing, maintaining, settling or otherwise re-
 4 solving the recipient's action, proceeding or legal claim or as to how the recipient or the
 5 recipient's attorney chooses, implements or follows a legal strategy, tactic or other course
 6 of action before or during an action or proceeding.

7 (i) The disclosures described in subsection (2) of this section are material terms of the
 8 contract, and a licensee's failure to include the disclosures is a breach of the contract for
 9 which the recipient may seek actual damages or statutory damages of \$200, whichever is
 10 greater.

11 (2) Set forth in the contract document described in subsection (1) of this section the
 12 following disclosures, placed conspicuously within the first five pages of the contract docu-
 13 ment:

14 (a) Some or all of the funds the licensee provides to the recipient may be subject to
 15 taxation.

16 (b) The total amount of litigation funding the licensee will provide.

17 (c) An itemization of fees, charges or other amounts the recipient must pay or that the
 18 licensee will receive as compensation under the contract.

19 (d) The total amount the licensee will receive as compensation under the contract, to the
 20 extent the amount is calculable or known at the time the recipient executes the contract,
 21 including the amount of any fees, charges or other compensation the recipient must pay to
 22 the licensee under the contract.

23 (e) Where in the contract document the recipient may view any schedule of payments
 24 or amortization schedule that applies to any amount due to the licensee under the contract.

25 (f) The cumulative amount due from the recipient to the licensee for any previous liti-
 26 gation funding the recipient has received from the licensee in this and any other contracts
 27 with the licensee that the recipient executed before the execution date for this contract.

28 (g) The recipient is not liable for any fees, charges or any monetary amount whatsoever
 29 if the recipient does not recover any proceeds from a settlement, judgment, award or verdict
 30 that results from the action or proceeding for which the licensee provided litigation funding.

31 (h) The licensee shall accept a reduced sum as full payment of all fees, charges and other
 32 amounts due from the recipient if the proceeds of the recipient's recovery under a settle-
 33 ment, judgment, award or verdict is insufficient to pay all of the fees, charges and other
 34 amounts due to the licensee under the contract.

35 (i) Statements that are displayed all in capital letters in the equivalent of a 14-point bold
 36 font, that read as specified in each subparagraph of this paragraph and that are separated
 37 by lines, boxes or other visual devices that break the text into the following divisions:

38 (A) YOUR RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITH-
 39 OUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE (5) BUSINESS DAYS AFTER
 40 THE DATE ON WHICH YOU SIGNED THIS CONTRACT OR RECEIVED FUNDS FROM
 41 (NAME OF LICENSEE) BY: RETURNING THE FUNDS TO THE OFFICES OF (NAME, AD-
 42 DRESS AND OFFICE HOURS OF LICENSEE) OR BY UNITED STATES MAIL TO (NAME
 43 AND MAILING ADDRESS OF LICENSEE). FOR PURPOSES OF DETERMINING THE
 44 FIVE-DAY DEADLINE, THE POSTMARK ON A RETURN BY UNITED STATES MAIL OR
 45 THE DATE ON THE RETURN RECEIPT FOR REGISTERED OR CERTIFIED MAIL IS THE

1 **DATE OF THE RETURN.**

2 (B) (NAME OF LICENSEE) DOES NOT HAVE ANY RIGHT WHATSOEVER TO MAKE
 3 ANY DECISIONS ABOUT THE CONDUCT OF YOUR LAWSUIT OR DISPUTE. ALL RIGHTS
 4 TO DECISIONS RELATED TO BRINGING, MAINTAINING, SETTLING OR OTHERWISE
 5 RESOLVING YOUR LAWSUIT OR DISPUTE REMAIN WITH YOU AND YOUR ATTORNEY
 6 AND (LICENSEE) WILL NOT PROVIDE ANY ADVICE, LEGAL OR OTHERWISE, OR MAKE
 7 ANY DECISIONS RELATED TO BRINGING, MAINTAINING, SETTLING OR OTHERWISE
 8 RESOLVING YOUR LAWSUIT OR DISPUTE.

9 (C) ALL FEES, CHARGES AND OTHER AMOUNTS DUE FROM YOU TO (LICENSEE)
 10 ARE PAYABLE SOLELY FROM THE PROCEEDS OF ANY SETTLEMENT, JUDGMENT,
 11 AWARD OR VERDICT THAT RESOLVES THE LEGAL CLAIMS IN YOUR LAWSUIT OR
 12 DISPUTE. IF YOU DO NOT RECOVER ANY PROCEEDS FROM THE SETTLEMENT,
 13 JUDGMENT, AWARD OR VERDICT, YOU DO NOT OWE (LICENSEE) ANY FEE, CHARGE
 14 OR OTHER AMOUNT UNLESS YOU HAVE VIOLATED THE TERMS OF THIS CONTRACT
 15 OR COMMITTED FRAUD AGAINST (LICENSEE).

16 (3) Set forth all in capital letters in the contract document, immediately above the space
 17 for the recipient's signature or other attestation, this text: DO NOT SIGN THIS CONTRACT
 18 BEFORE YOU READ IT COMPLETELY. IF THIS CONTRACT HAS ANY BLANKS OR IN-
 19 COMPLETE SECTIONS OTHER THAN SPACES FOR YOUR INITIALS OR SIGNATURE,
 20 YOU MAY ASK (LICENSEE) FOR A COMPLETELY FILLED-IN COPY OF THIS CONTRACT
 21 BEFORE AGREEING TO ITS TERMS. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD
 22 OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON YOUR CIRCUMSTANCES,
 23 YOU MAY ALSO WANT TO SEEK THE ADVICE OF A TAX ADVISOR, FINANCIAL PRO-
 24 FESSIONAL OR ACCOUNTANT.

25 SECTION 16. (1) A licensee shall provide to a recipient or, if the recipient is represented
 26 by an attorney, to the recipient's attorney, a written document separate from all other
 27 communications the licensee has with the recipient or the attorney that displays an estimate
 28 of the net amount the recipient can expect to recover from a settlement, judgment, award
 29 or verdict if the recipient prevails in an action or proceeding to seek a remedy for the
 30 recipient's legal claim. The licensee shall express the estimate described in this subsection
 31 as a percentage of the amount of the recipient's recovery less all fees, charges and amounts
 32 the licensee will receive as compensation from the recovery, unless the licensee will receive
 33 a flat amount from the recovery, in which case the licensee shall disclose the total amount
 34 of the licensee's compensation.

35 (2) If a recipient has entered into a contingent fee agreement with the recipient's attor-
 36 ney, the attorney shall provide to the recipient in a written document separate from all other
 37 communications the attorney has with the recipient an estimate of the net amount the re-
 38 cipient can expect to recover from a settlement, judgment, award or verdict if the recipient
 39 prevails in an action or proceeding to seek a remedy for the recipient's legal claim. The es-
 40 timate described in this subsection must be expressed as a percentage of the amount of the
 41 recovery less all fees, charges and amounts the licensee and the attorney will receive as
 42 compensation from the recovery.

43 (3) To the extent that a licensee or attorney can provide a recipient with an exact de-
 44 termination of the percentage described in subsection (1) or (2) of this section, the licensee
 45 or attorney shall disclose the exact percentage. If the licensee or attorney can provide only

1 an estimate, the licensee or attorney shall disclose the methodology and calculation that the
 2 licensee or attorney used in arriving at the estimate and shall identify any variable or
 3 missing information that prevents an exact determination.

4 **SECTION 17. A licensee may not:**

5 (1) Advertise, print, display, publish, distribute or broadcast or cause or permit to be
 6 advertised, printed, displayed, published, distributed or broadcast in any manner whatsoever
 7 a statement or representation that is false, misleading or deceptive with respect to a rate,
 8 term or condition for providing litigation funding to a resident individual.

9 (2) Pay or offer to pay a fee, commission or other consideration to an attorney, law firm,
 10 medical provider, chiropractor, physical therapist or any employee of an attorney, law firm,
 11 medical provider, chiropractor or physical therapist to obtain the names or contact infor-
 12 mation of, or referrals to, a resident individual for the purpose of soliciting or entering into
 13 a contract for litigation funding.

14 (3) Accept or receive any fee, rebate or consideration from an attorney, law firm, medical
 15 provider, chiropractor or physical therapist or an employee of an attorney, law firm, medical
 16 provider, chiropractor or physical therapist in connection with any contract to provide liti-
 17 gation funding.

18 (4) Refer a resident individual to a specific attorney, law firm, medical provider,
 19 chiropractor or physical therapist or an employee of a specific attorney, law firm, medical
 20 provider, chiropractor or physical therapist, except that the licensee may refer a resident
 21 individual to an attorney referral service provided by the Oregon State Bar.

22 (5) Fail to provide to a recipient or the recipient's attorney complete and true copies of
 23 all contracts and related documents under which the licensee provides litigation funding to
 24 the recipient.

25 (6) Obtain or attempt to obtain from a recipient a waiver or disclaimer of any remedy
 26 including, but not limited to, actual, statutory or punitive damages that the recipient re-
 27 covers in an action or proceeding to vindicate the recipient's legal claim.

28 (7) Require or direct a recipient or the recipient's attorney to enter into binding or
 29 mandatory arbitration or otherwise waive the recipient's right to a trial by jury.

30 (8) Offer or provide to the recipient any legal advice concerning a contract for litigation
 31 funding or concerning the legal claim for which the recipient is seeking a remedy.

32 (9) Assign to a third party or otherwise securitize in whole or in part a contract between
 33 the licensee and the recipient for litigation funding, except that if the licensee retains legal
 34 responsibility for administering, collecting payment for or otherwise enforcing the contract,
 35 the licensee may:

36 (a) Assign the contract to a wholly owned subsidiary of the licensee or an affiliate of the
 37 licensee that is under common control with the licensee; or

38 (b) Grant a security interest to the proceeds of the contract in accordance with other-
 39 wise applicable law.

40 (10) Report a recipient to a consumer reporting agency, as described in section 603(p) of
 41 the federal Fair Credit Reporting Act (15 U.S.C. 1681a(p)) as in effect on the effective date
 42 of this 2021 Act, if the net proceeds of a settlement, judgment, award or verdict the recipient
 43 obtains in an action or proceeding is insufficient to compensate the licensee under the terms
 44 of a contract for litigation funding.

45 (11) Request or receive any right or ability to direct or require in any manner or capacity

1 any act with respect to bringing, maintaining, settling or otherwise resolving a recipient's
 2 action, proceeding or legal claim or as to how the recipient or the recipient's attorney
 3 chooses, implements or follows a legal strategy, tactic or other course of action before or
 4 during an action or proceeding.

5 (12) Charge a recipient during any calendar year more than 18 percent of the sum the
 6 licensee provided as litigation funding for any one action, proceeding or legal claim, regard-
 7 less of the number of transactions that occur between the licensee and the recipient with
 8 respect to the action, proceeding or legal claim.

9 (13) Compound any amount that a licensee charges in accordance with subsection (12)
 10 of this section more often than semiannually.

11 (14) Include all charges the recipient pays the licensee directly or indirectly in all calcu-
 12 lations of the annual percentage fee or rate the licensee receives from the recipient and base
 13 the annual percentage fee or rate only upon amounts the recipient actually receives from the
 14 licensee.

15 (15) Assess fees or charges under a contract for litigation funding for a term that ex-
 16 ceeds 42 months from the date on which the contract becomes effective.

17 (16) Carry over or incorporate into a subsequent contract for litigation funding with the
 18 same recipient any obligation that remains from a previous contract for litigation funding.

19 (17) Knowingly enter into a contract to provide litigation funding to a recipient who has
 20 previously assigned or sold a portion of the recipient's right to receive the proceeds of a
 21 settlement, judgment, award or verdict that results from the recipient's legal claim, unless
 22 the licensee purchases from the previous sponsor the entire amount of the recipient's debt
 23 to the previous sponsor or the licensee agrees to accept as compensation a remaining portion
 24 of the recipient's right to receive the proceeds, except that a licensee may agree to provide
 25 litigation funding to a recipient in concert with another sponsor if the recipient and the
 26 recipient's attorney consent to arrangement in writing.

27 **SECTION 18.** (1) A party to a contract for litigation funding shall provide a copy of the
 28 contract to all parties to an action or proceeding for which the contract provides litigation
 29 funding without awaiting a request for discovery or other production, unless a court orders
 30 or stipulates otherwise.

31 (2)(a) A party to a contract for litigation funding shall provide to any other person that
 32 is not a party to the action or proceeding for which the contract provides litigation funding
 33 compensation for reasonable costs of:

34 (A) Responding to a subpoena to produce documents, electronically stored materials or
 35 other tangible items;

36 (B) Permitting an inspection of the other person's premises; or

37 (C) Appearing at a deposition.

38 (b) Reasonable costs under paragraph (a) of this subsection include, but are not limited
 39 to:

40 (A) Costs the other person incurs in identifying, searching for, collecting and producing
 41 the documents, electronically stored materials or tangible items required under the
 42 subpoena;

43 (B) Measurable costs of any disruptions to the other person's ordinary business oper-
 44 ations;

45 (C) Costs of travel to appear at a deposition; and

1 (D) Fees that an attorney for the other person charges for services directly related to
 2 compliance with the subpoena.

3 **SECTION 19.** (1) A person who claims to be aggrieved by a practice that violates a pro-
 4 vision of sections 1 to 22 of this 2021 Act or a rule the Director of the Department of Con-
 5 sumer and Business Services adopted under sections 1 to 22 of this 2021 Act may, not later
 6 than one year after the date of the alleged violation, file with the Director of the Department
 7 of Consumer and Business Services a verified written complaint. The complaint must state
 8 the name and address of the licensee or the person alleged to have committed the unlawful
 9 practice and the particulars of the alleged unlawful practice. The director may require the
 10 complaint to set forth other information that the director considers pertinent.

11 (2) A licensee shall state in every contract to provide litigation funding to a resident in-
 12 dividual and in any solicitation for such a contract, in a type size equal to at least 12-point
 13 type, that the resident individual or the resident individual's attorney may file a complaint
 14 with the director as provided in this section.

15 (3) After receiving a complaint under this section, the director may, under section 13 of
 16 this 2021 Act, investigate the unlawful practice and the licensee or the person alleged in the
 17 complaint to have committed the unlawful practice.

18 **SECTION 20.** (1) If the Director of the Department of Consumer and Business Services
 19 has reasonable cause to believe that a person violated, is violating or is about to violate a
 20 provision of sections 1 to 22 of this 2021 Act or a rule the director adopted or an order the
 21 director issued under sections 1 to 22 of this 2021 Act, the director may order the person to
 22 cease and desist from the violation.

23 (2) The director, in an order the director issues under subsection (1) of this section, shall:

24 (a) State the facts constituting the violation;

25 (b) Require the person named in the order to cease and desist from the violation or to
 26 meet specific conditions;

27 (c) State the effective date of the order; and

28 (d) Advise the person named in the order that the person has a right to a contested case
 29 hearing under ORS chapter 183.

30 (3) An order under this section is effective 30 days after the date of the order, unless the
 31 person named in the order requests a hearing on the order, and remains in effect until the
 32 director or a court withdraws the order.

33 (4) If an individual named in an order under this section fails to comply with the order,
 34 in addition to imposing a civil penalty under ORS 725A.990, the director may issue an order
 35 to remove or suspend the individual from the individual's office or position.

36 **SECTION 21.** (1) If the Director of the Department of Consumer and Business Services
 37 finds that an officer or director of a licensee is dishonest, reckless or incompetent or refuses
 38 to comply with the law, with a rule the Director of the Department of Consumer and Busi-
 39 ness Services adopted or with a written requirement or instruction the director imposed or
 40 issued, the director may order the licensee to suspend the licensee's officer or director from
 41 the officer or director's office or position.

42 (2) The Director of the Department of Consumer and Business Services, for any of the
 43 reasons set forth in section 5 of this 2021 Act, may order a licensee to remove an officer or
 44 director of the licensee from office.

45 **SECTION 22.** (1) The Director of the Department of Consumer and Business Services, in

1 accordance with ORS chapter 183, may adopt rules for the purposes of carrying out and en-
2 forcing the provisions of sections 1 to 22 of this 2021 Act.

3 (2) Before the director adopts a rule under subsection (1) of this section, the director
4 shall submit a copy of the rule to each licensee.

5 (3) The director may institute an action or proceeding and make a specific ruling, demand
6 or finding that the director considers necessary to carry out or enforce a provision of
7 sections 1 to 22 of this 2021 Act or a rule the director adopted, an order the director issued
8 or an action the director took to carry out or enforce the provisions of sections 1 to 22 of
9 this 2021 Act.

10 (4) If the director determines that a licensee's violation of sections 1 to 22 of this 2021
11 Act caused a person that submitted a complaint to the director under section 19 of this 2021
12 Act an ascertainable loss of money or property, the director may seek restitution for the
13 complainant by bringing an action against the corporate surety bond or irrevocable letter
14 of credit the licensee filed with the director under section 3 of this 2021 Act.

15 **SECTION 23.** ORS 725A.990 is amended to read:

16 725A.990. (1) The Director of the Department of Consumer and Business Services may assess a
17 civil penalty of not more than \$2,500 against a person who violates a provision of **sections 1 to 22**
18 **of this 2021 Act or** ORS 725A.010 to 725A.092 [*and 725A.990*] or a rule the director adopted or final
19 order the director issued under **sections 1 to 22 of this 2021 Act or** ORS 725A.010 to 725A.092
20 [*and 725A.990*]. The director, in addition to imposing a penalty under this subsection for the vio-
21 lation, may revoke the licensee's license.

22 (2) A civil penalty under this section must be imposed as provided in ORS 183.745.

23 (3) Except as provided in subsection (4) of this section, moneys collected under this section must
24 be paid to the State Treasurer and credited as provided in ORS 705.145.

25 (4) In addition to any other penalty provided by law, the director may assess against a person
26 who makes a payday loan or title loan in violation of ORS 725A.020 a civil penalty in an amount
27 equal to the interest the person receives that exceeds nine percent per annum. The director shall
28 pay all moneys collected under this subsection to the Department of State Lands for the benefit of
29 the Common School Fund.

30 (5)(a) **In addition to and not in lieu of any other penalties or remedies provided under**
31 **sections 1 to 22 of this 2021 Act or other applicable law, a licensee's violation of a provision**
32 **of sections 1 to 22 of this 2021 Act renders any contract between the licensee and a recipient**
33 **voidable at the recipient's election and unenforceable by the licensee or a successor in in-**
34 **terest to the licensee. A violation of a provision of sections 1 to 22 of this 2021 Act by both**
35 **the licensee and the recipient renders the contract void and unenforceable by either the**
36 **licensee or the recipient or any successor in interest to the licensee or recipient.**

37 **SECTION 24.** Sections 1 to 22 of this 2021 Act and the amendments to ORS 725A.990 by
38 section 23 of this 2021 Act apply to solicitations for contracts to provide litigation funding
39 that occur on and after the operative date specified in section 25 of this 2021 Act and to
40 contracts to provide litigation funding that are executed on and after the operative date
41 specified in section 25 of this 2021 Act.

42 **SECTION 25.** (1) Sections 1 to 22 of this 2021 Act and the amendments to ORS 725A.990
43 by section 23 of this 2021 Act become operative on January 1, 2022.

44 (2) The Director of the Department of Consumer and Business Services may adopt rules
45 and take any other action before the operative date specified in subsection (1) of this section

1 that is necessary to enable the director, on and after the operative date specified in sub-
2 section (1) of this section, to undertake and exercise all of the duties, functions and powers
3 conferred on the director by sections 1 to 22 of this 2021 Act and the amendments to ORS
4 725A.990 by section 23 of this 2021 Act.

5 SECTION 26. This 2021 Act takes effect on the 91st day after the date on which the 2021
6 regular session of the Eighty-first Legislative Assembly adjourns sine die.

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